

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JAMES TURNER ROBINSON, JR.,

Plaintiff-Appellant,

v

YU FEN TAN,

Defendant-Appellee.

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UNPUBLISHED

December 16, 2008

No. 281551

Wayne Circuit Court

LC No. 07-709153-NI

Before: Cavanagh, P.J., and Jansen and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court's order quashing service and dismissing plaintiff's action for failure to serve defendant before expiration of the summons. We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

Following an evidentiary hearing, the circuit court determined that plaintiff had not served defendant in accordance with MCR 2.105. Although the process server completed a proof service attesting to personal service on defendant, the process server testified at the hearing that she actually served an unidentified man. Because defendant was not served before the expiration of the summons and did not otherwise submit to the court's jurisdiction, the circuit court granted defendant's motion to quash service and dismissed the action without prejudice pursuant to MCR 2.102(E).

Plaintiff argues that strict compliance with the service of process rules is not required. He contends that dismissal was improper because he and his process server "acted reasonably" in trying to follow the court rules.

This Court reviews de novo issues involving the interpretation and application of court rules. *Associated Builders & Contractors v Dep't of Consumer & Industry Services*, 472 Mich 117, 123-124; 693 NW2d 374 (2005).

The court rules do not authorize the circuit court to excuse the lack of service on the basis of a plaintiff's reasonable efforts. MCR 2.102(E)(1) addresses the effect of failure to serve a defendant with process before expiration of the summons:

On the expiration of the summons as provided in subrule (D), the action is deemed dismissed without prejudice as to a defendant who has not been served

with process as provided in these rules, unless the defendant has submitted to the court's jurisdiction.

The limitation on the court's discretion in this situation is evident in MCR 2.102(F), which addresses the court's ability to set aside the dismissal:

A court may set aside the dismissal of the action as to a defendant under subrule (E) *only* on stipulation of the parties or when *all* of the following conditions are met:

(1) within the time provided in subrule (D), service of process *was in fact made* on the dismissed defendant, or the defendant submitted to the court's jurisdiction;

(2) proof of service of process was filed or the failure to file is excused for good cause shown;

(3) the motion to set aside the dismissal was filed within 28 days after notice of the order of dismissal was given, or, if notice of dismissal was not given, the motion was promptly filed after the plaintiff learned of the dismissal. [Emphasis added.]

These conditions were not satisfied in this case.

Plaintiff's reliance on cases and court rules that concern improper service is misplaced because the present case does not involve improper service, but rather a complete failure of service, for which dismissal without prejudice was required. *In re Gordon Estate*, 222 Mich App 148, 157-158; 564 NW2d 497 (1997); see also *Holliday v Townley*, 189 Mich App 424, 426; 473 NW2d 733 (1991).

Plaintiff also argues that the circuit court should have required defendant's husband, Wayne Lee, to appear in court so that the process server could identify him as the man who accepted the summons and complaint. Whether Lee was the individual who took the summons and complaint is immaterial. Under Michigan law, service on a spouse is not a substitute for personal service on a defendant.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen

/s/ Patrick M. Meter