

STATE OF MICHIGAN
COURT OF APPEALS

JOANN HORTON,

Plaintiff-Appellant,

v

CHASE,

Defendant-Appellee.

UNPUBLISHED

May 1, 2012

No. 301814

Wayne Circuit Court

LC No. 10-008492-CZ

Before: BORRELLO, P.J., and JANSEN and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion to dismiss. On appeal, plaintiff argues that the trial court erred in failing to grant her request for default judgment, and for failing to strike defendant's motion to dismiss when defendant's attorney failed to sign the motion. For the reasons set forth below, we affirm.

This case arises from a complaint to "quiet title," filed by plaintiff, in propria persona, in the Wayne Circuit Court on July 26, 2010, and later twice served on "Chase" at Post Office Box 9001123 in Louisville, Kentucky, first on August 6, 2010, and again on September 21, 2010. Plaintiff filed a summons with her complaint, which expired on October 25, 2010, for the party she named as "Chase." Plaintiff then filed a motion for a default judgment against defendant. On October 8, 2010, the trial court held a hearing on plaintiff's request for a default judgment, noting that plaintiff failed to provide proof from the court clerk of a default before asking for a default judgment. After asking plaintiff to clarify whether the defendant she intended to serve was JPMorgan Chase Bank, the trial court then instructed plaintiff to serve a resident agent of Chase Bank, if that was plaintiff's intended party, with her complaint. The trial court then denied plaintiff's request for a default judgment. On October 27, 2010, plaintiff served a copy, via express mail, of the summons, original complaint, and request for a default judgment on a registered agent of JPMorgan Chase Bank. On October 28, 2010, defendant filed a motion to dismiss pursuant to MCR 2.116(C)(3) and (C)(8), alleging that plaintiff failed to properly serve defendant, as her first two attempts were sent to a post office box and the third after the summons had expired, and that even if she had properly served defendant, she failed to state a claim under which relief could be granted. The trial court granted defendant's motion to dismiss on the grounds that none of plaintiff's arguments presented at the motion to dismiss responded directly to defendant's claims regarding service or failure to state a claim. This appeal ensued.

Plaintiff first argues that the trial court erred in denying her request for default judgment when defendant failed to appear after she served defendant twice at a post office box and defendant's registered agent. A decision to deny a motion for a default judgment is reviewed for an abuse of discretion. *Reed Estate v Reed*, 293 Mich App 168; ___ NW2d ___ (2011), citing *Muscio v Muscio*, 62 Mich App 167, 170; 233 NW2d 224 (1975). The trial court did not abuse its discretion in denying plaintiff's motion for a default judgment where plaintiff failed to properly serve defendant and follow the court rules.

Plaintiff improperly served her complaint on "Chase" at a Post Office Box. Generally, service of process may be made to a defendant through an agent authorized by written appointment or by law to receive service of process. *Bullington v Corbell*, ___ Mich App ___; ___ NW2d ___ (Docket No. 297665, issued August 16, 2011), slip op at 4-5; MCR 2.105(H)(1); MCL 450.4207(2). The resident agent is an agent of the company upon whom any process, notice, or demand required or permitted by law to be served upon the company may be served. *Bullington*, ___ Mich App at ___ (slip op at 4-5); MCR 2.105(H)(1); MCL 450.4207(2). A plaintiff may not use certified mail as an initial form of service on corporate entities of any kind. *Bullington*, ___ Mich App at ___ (slip op at 4-5); MCR 2.105(H)(1); MCL 450.4207(2). Plaintiff twice sent her initial complaint to "Chase" by certified mail via a Post Office Box in Kentucky and did not serve JPMorgan Chase Bank's resident agent until after her summons had expired. Plaintiff's failure to properly serve JPMorgan Chase Bank before the expiration of the summons, and resultant failure to inform the bank of the action within the time provided by the court rules, supply grounds to dismiss plaintiff's action. MCR 2.105(J)(3). The trial court's decision to deny plaintiff's motion based on improper service was thus not an abuse of discretion. Accordingly, the court never gained personal jurisdiction over JPMorgan Chase Bank as plaintiff failed to serve process upon and notify the bank within the life of the summons.¹

Plaintiff next argues that the trial court erred in granting defendant's motion to dismiss when defendant failed to sign the motion and brief. A trial court's decision regarding whether a party or attorney has violated the signature requirements of the court rules is reviewed on appeal for clear error. *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 91; 592 NW2d 112 (1999). Plaintiff's argument is without merit. Defendant's attorney signed the motion to dismiss and brief in support. Therefore, although plaintiff is correct that a party or attorney of record must sign every document, there is no violation. MCR 2.114(C)(1) and (2).

Affirmed. Defendant being the prevailing party is entitled to costs. MCR 7.219.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Elizabeth L. Gleicher

¹ As the failure to serve process and lack of personal jurisdiction are dispositive of plaintiff's challenge to the trial court's denial of her motion for a default judgment, we need not consider her additional grounds for reversal.