

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ROBERT EVANS,	:	NO. 08 – 00,986
Appellant	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
ZACHARY CIOFFI,	:	
Appellee	:	

OPINION IN SUPPORT OF ORDER OF DECEMBER 11, 2009,  
IN COMPLIANCE WITH RULE 1925(A) OF  
THE RULES OF APPELLATE PROCEDURE

Appellant appeals from this Court’s Order of December 11, 2009, which sustained Appellee’s preliminary objections and dismissed Appellant’s Complaint.

Plaintiff commenced this action by writ of summons issued May 9, 2008. A return of service was filed by the sheriff on June 30, 2008, indicating “not served” at “1905 West Southern Avenue, South Williamsport, PA”, and that “defendant is not at the listed address. The only address for him is P.O. Box 281, Montoursville, PA 17754”. The writ of summons was never re-issued and no further request for service was directed to the sheriff. Plaintiff then filed a Complaint on August 31, 2009, and according to the Certificate of Service attached thereto, such was mailed by first class mail to “1905 West Southern Avenue, South Williamsport, PA”, where the Sheriff was unable to effectuate service. In his preliminary objections, Appellee contended the Court lacked jurisdiction over his person due to improper service, and that the Complaint should be dismissed for the lack of a good faith effort to effectuate proper service.

In sustaining the preliminary objections, the Court relied on Englert v. Fazio Mechanical Services, Inc., 932 A.2D 122 (Pa. Super. 2007). There, the plaintiffs filed a writ of summons but provided an incorrect address to the sheriff’s office, and the writ was returned not served. The Sheriff filed a Return of Service and mailed a copy to Plaintiffs’ counsel but, due to having moved and trouble receiving mail, counsel did not receive the return until nearly five months later. He then sought to re-issue the writ, but by then the statute of limitations had expired. The Court entered summary judgment in favor of the defendants, finding that counsel did not make a good faith effort to effectuate service where he did not take any action to

ascertain whether service had been made, and further, that defendants had not been provided actual notice of the litigation within the limitations period.

In the instant case, Plaintiff's counsel admitted to having received a copy of the sheriff's return of service indicating that service of the writ had not been made, but could provide no explanation as to why there was no follow-up attempts at service, including a timely re-issuance of the writ,<sup>1</sup> except to say that he thought the envelope from the sheriff contained only a refund of his deposit, that he did not see the return since it was the third of the three-page document. The Court finds in this a lack of good faith effort. Further, the statute of limitations expired on May 10, 2008, and thus no actual notice of the litigation was provided to Appellee prior to the statute's expiration.

Accordingly, the Court sustained the preliminary objections to jurisdiction over the person, and dismissed the Complaint.

Dated: January 26, 2010

Respectfully Submitted,

Dudley N. Anderson, Judge

cc: Andrew Ostrowski, Esquire  
4311 North Sixth Street, Harrisburg, PA 17110  
Gary Weber, Esq.  
Hon. Dudley Anderson

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<sup>1</sup> It is noted that the writ expired before the Return of Service was filed by the sheriff.