

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

MATTHEW BOWER and	:	
MATTHEW BOWER	:	
TRUCKING, INC.,	:	
Plaintiffs	:	NO. CV-20-0024
	:	
vs.	:	
	:	
PENELOPE BOWER,	:	MOTION FOR SPECIAL SERVICE
Defendant	:	

OPINION

I. Relevant Factual History

This civil action was initiated by Complaint on January 7, 2020. Plaintiffs filed a Motion for Special Service on February 24, 2020 claiming that the Defendant is purposefully evading service of original process. They state that the Sheriff attempted service on the Defendant at her known residence six times in less than one month. Defendant’s truck, the identity of which was confirmed by deputies, was present in the Defendant’s driveway during some of those service attempts. During one attempt, the Defendant was allegedly standing in her driveway and, upon seeing the Sheriff drive onto the property, immediately went inside her house and refused to answer the door for the deputy. Plaintiffs further allege that Defendant has a history of evading service in a prior action and even attempted to run over a process server. Plaintiffs are asking the Court to allow them to “make service of the Complaint by an adult who is not a party” to this action.

II. Discussion

“The basic purpose of the rules as to service . . . [is] to assure that the defendant will receive actual notice of the commencement of the action against [her] and [her] duty to defend” *Castel v. Mitchell*, 423 A.2d 1375, 1377 (Pa.Cmwlth. 1981), citing *Branch v. Foort*, 152 A.2d 703 (Pa. 1959). When a Plaintiff is unable to serve a Defendant pursuant to the applicable Rule of Civil Procedure, Rule 430 provides an alternative option and states, in pertinent part:

If service cannot be made under the applicable rule the plaintiff may move the court for a special order directing the method of service. The motion shall be accompanied by an affidavit stating the nature and extent of the investigation which has been made to determine the whereabouts of the defendant and the reasons why service cannot be made Pa.R.C.P. No. 430(a).

Failing to attach a separate affidavit describing Plaintiffs’ good-faith effort to perfect service and stating the reasons why Defendant could not be served, however, is not automatically fatal. For example, the Commonwealth Court has accepted and considered a motion for special service detailing Plaintiff’s efforts to serve Defendant when it was coupled with a signed verification “subject to the criminal penalties for unsworn falsifications to authorities.” *City of Philadelphia Water Revenue Bureau v. Towanda Properties, Inc.*, 976 A.2d 1244, 1249 (Pa.Cmwlth.Ct. 2009).

Here, we first note the Plaintiffs failed to attach an Affidavit or signed verification to their Motion. They did, however, attach the Sheriff’s Return of Service which details the attempts made to serve the Defendant and also corroborates the fact that Defendant’s vehicle was sometimes present at the

residence and that Defendant was standing in the driveway and refused to answer her door.

“To obtain leave for alternate service of process under Pennsylvania law, plaintiff must: (1) show good faith effort to locate person on which service is to be made; (2) undertake practical efforts to serve defendant under circumstances; and (3) if first two steps are satisfied, show that proposed alternate method of service is reasonably calculated to provide defendant with notice of proceedings against him.” *Calabro v. Leiner*, 464 F. Supp. 2d 470 (E.D. Pa. 2006). Regarding the second element, courts have held that “half-hearted attempts at service will not do.” *Id.* at 473. In *Calabro*, the Plaintiff attempted service through the U.S. Marshal three times, two of which were on the same day of the week and took place at the same time of day. *Id.* “Aside from the fact that the U.S. Marshal knocked on the door three times (presumably with some force) and received no answer, **there is no evidence that defendants are attempting to evade service; nor is there any other indication why future attempts at service, at different times or on different days, would be futile.** Plaintiff has, therefore, failed to meet her burden of showing that she has undertaken practical efforts to serve the defendants under the circumstances.” *Id.* (emphasis added).

The issue here is not that the Plaintiffs cannot physically locate the Defendant, but that she will not allow the Sheriff to serve her personally. Plaintiffs have set forth their attempts to serve the Defendant and clearly established that any future attempts are not only futile but also pose a potential threat to the deputies. According to the Sheriff’s Return of Service, there were six service

attempts: one on a Monday, two on a Tuesday, and three on a Thursday in both the mornings and afternoons. Defendant's truck was present at the residence four of those six attempts and Defendant herself was present on the property at least once. It is also obvious that the Defendant has attempted to evade and has successfully evaded service on more than one occasion. Plaintiffs request that the Court allow them to serve the Defendant by utilizing an adult individual who is not a party to the action. It is evident that the presence of a Sheriff's vehicle triggers Defendant's evasion. In addition, even if Defendant continues to be evasive, posting a copy of the Notice to Defendant and Complaint to Defendant's property, such as her front door, will provide her with actual notice of the lawsuit. The Court is satisfied that these methods of service are reasonably calculated to provide defendant with notice of the proceedings against her.

ORDER

AND NOW, this 27th day of **March, 2020**, upon consideration of Plaintiffs' Motion for Special Service, it is hereby Ordered that Plaintiffs' Motion is **GRANTED**. Plaintiffs shall make service of the Notice to Defend and Complaint by an adult who is not a party to this action. Upon service being made on Defendant, Plaintiffs are required to file an Affidavit of Service signed by the person executing service, which details the date, time, place of service, and the steps taken to confirm the Defendant's identity. The individual serving the

Defendant is also required to post the Notice to Defend and Complaint on Defendant's property where it is visible and noticeable, such as the front door.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

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