Circuit Court for Prince George's County
Case No. CAL22-14865

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 679

September Term, 2024

MICHAEL MULLEN

v.

LINDA THORNTON THOMAS

Graeff,
Beachley,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: April 22, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

This appeal arises from a defamation suit brought by Linda Thornton-Thomas, appellee, against Michael Mullen, appellant, in the Circuit Court for Prince George's County. After attempting to serve personal process on Mr. Mullen, Ms. Thornton-Thomas filed a motion to serve Mr. Mullen by electronic means, requesting permission, pursuant to Maryland Rule 2-121(c), to effect service on Mr. Mullen via email. The circuit court granted the motion and eventually entered a Default Judgment against Mr. Mullen. Approximately one year later, Mr. Mullen filed a Motion to Vacate Judgment, which the circuit court denied.

On appeal, Mr. Mullen presents three questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the circuit court err when it authorized email service and issued a default based on email service in a case where (a) there was no showing that appellee made good faith attempts to effect service and (b) email service is not sanctioned by Md. Rule 2-121?

2. Did the circuit court err as a matter of law when it failed to set aside a judgment against appellant, who was not properly served, which resulted in the court having no personal jurisdiction over appellant?

3. Did the circuit court err or abuse its discretion when it failed to set aside a judgment where there was no showing that appellant received service of process?

For the reasons set forth below, we shall vacate the judgment of the circuit court and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

On May 2, 2022, Ms. Thornton-Thomas filed a defamation suit against Mr. Mullen for statements that he made about her in connection with her position as the President of

the Prince George's County Branch of the NAACP. On May 10, 2022, the circuit court issued a summons for Mr. Mullen, requiring that he respond, by pleading or motion, within 30 days of receiving service of the summons. The summons required service within 60 days of it being issued.

I.

Attempts at Service

In an affidavit filed by Jordan D. Howlette, counsel for Ms. Thornton-Thomas, he stated that he hired a process server to personally serve Mr. Mullen at a property on Pine Tree Lane, in Fort Washington, Maryland (the "Fort Washington Property"), which was believed to be Mr. Mullen's residence. He stated that four attempts were made to serve Mr. Mullen, but there was no answer at the residence.[1]

On June 1, 2022, Mr. Howlette hired ABC Legal Inc. ("ABC") to conduct a background investigation to determine Mr. Mullen's principal address to effect service of process. On June 9, 2022, Roberto Jimenez, a process server with ABC, signed a declaration of non-service, stating that he attempted to effectuate personal service on Mr. Mullen at a property in Accokeek, Maryland (the "Accokeek Property") on June 9, 2022,

[1] Paul Waters, a process server with ABC Legal Inc. ("ABC"), stated in a declaration of non-service that there were four service attempts, as follows: May 21, 2022, at 3:42 p.m.; May 23, 2022, at 7:36 p.m.; May 26, 2022, at 3:15 p.m.; and May 27, 2022, at 8:01 a.m. Mr. Waters noted that a light was on inside of the house when he attempted service on May 23, 2022.

at 6:41 p.m.[2] Mr. Jimenez stated that he spoke with an individual who had resided at the property for 20 years but did not know Mr. Mullen. Mr. Jimenez also spoke with a "property manager/landlord," who did not recognize Mr. Mullen's name.

On June 21, 2022, Ms. Thornton-Thomas filed a motion to serve Mr. Mullen by electronic means, requesting permission under Maryland Rule 2-121(c) to effect service on Mr. Mullen via email. Ms. Thornton-Thomas noted her unsuccessful attempts to effect personal service at two different addresses and stated that Mr. Mullen regularly used a specific email address at gmail.com to communicate with other members of the Prince George's County Branch of the NAACP.[3] She noted that Mr. Mullen had emailed her from this address on February 27, 2022, and she attached a copy of the email to her filing with the court. She stated that, because Mr. Mullen regularly used that email address to communicate, effectuating service via email would be reasonably calculated to give actual notice to Mr. Mullen.

[2] Ms. Thornton-Thomas advised the court in her motion to serve Mr. Mullen by electronic means that ABC determined that the Accokeek Property was a servable address based on the address shown on Mr. Mullen's "credit report headers" from January 1988 to June 2022.

[3] Mr. Mullen asserted in subsequent pleadings that he and Ms. Thornton-Thomas served on the executive board of the Prince George's County Chapter of the NAACP, where Ms. Thornton-Thomas served as President and Mr. Mullen as Treasurer.

On July 18, 2022, prior to a ruling on her motion to effectuate service by electronic means, Ms. Thornton-Thomas filed a Praecipe,[4] requesting that the court re-issue the writ of summons, which would be served by private process to the Fort Washington Property. The court issued the writ of summons on July 20, 2022, and it docketed the summons as "Returned Unserved" on that same day, July 20, 2022.

On August 1, 2022, the circuit court denied, without prejudice, Ms. Thornton-Thomas' June 21, 2022 motion to serve Mr. Mullen by electronic means. The court denied the motion "for failure to identify efforts to locate [Mr. Mullen's] current residence."

On July 28, 2022, perhaps anticipating the denial of the first motion, Ms. Thornton-Thomas filed a renewed motion to serve Mr. Mullen by electronic means. This time she attached the previously referenced affidavit from her attorney, Mr. Howlette. The affidavit noted Ms. Thornton-Thomas' attempts to effectuate personal service on Mr. Mullen at the Fort Washington Property and the Accokeek Property. Mr. Howlette stated in his affidavit that, after the unsuccessful attempt at the Accokeek Property, he performed a land records search to determine Mr. Mullen's current address, but he was unsuccessful.

The renewed motion stated that Ms. Thornton-Thomas had "made several good faith efforts to try to effect service of process on [Mr.] Mullen," and despite these good faith efforts, she had been "unsuccessful in effecting service" on him. It stated that, "[u]pon

[4] Black's Law Dictionary defines "praecipe" as including: "A written motion or request seeking some court action, esp. a trial setting or an entry of judgment." *Praecipe*, Black's Law Dictionary (12th ed. 2024).

information and belief," Mr. Mullen used a specific email address at gmail.com "to communicate on a regular basis," and therefore, effectuating service via email was reasonably calculated to give actual notice of the action to Mr. Mullen. It stated that, if the court granted the motion, Ms. Thornton-Thomas would "request delivery and read receipts upon emailing the documents to [Mr.] Mullen to confirm that the documents were in fact delivered to [Mr.] Mullen."

On September 13, 2022, the court granted Ms. Thornton-Thomas' July 28, 2022, motion. It found that Ms. Thornton-Thomas had made good faith efforts to serve Mr. Mullen and "mailing a copy of the documents to [Mr. Mullen's] last known address would be impracticable." The court ordered that Ms. Thornton-Thomas be permitted to effect service of process on Mr. Mullen by sending copies of the summons, amended complaint, and all associated documents to Mr. Mullen's email address, mailing copies of the summons and complaint to the Fort Washington Property and Accokeek Property, and leaving copies of those documents at those properties.

Lawrence R. Kroner, a litigation assistant for JD Howlette Law, signed an affidavit of service on September 28, 2022, stating that, on September 23, 2022, he emailed copies of the Amended Complaint, summonses, renewed motion to serve Mr. Mullen by electronic means, and associated documents to Mr. Mullen at mmullenem@gmail.com. He also sent copies of these documents by certified mail to the Fort Washington Property and the

Accokeek Property. Mr. Kroner attached a copy of the sent email, the email delivery receipt, and the receipt for payment for certified mail.[5]

On November 22, 2022, Ms. Thornton-Thomas filed a request for order of default pursuant to Md. Rule 2-613, noting that Mr. Mullen had not filed an answer or response to the complaint and had not sought an extension. She attached the affidavit of service by Mr. Kroner, a copy of the email sent to Mr. Mullen, the email delivery receipt, and the receipt for payment for certified mail. She also attached a declaration of service by Tianee Newby, which stated that, on October 14, 2022, at 12:09 p.m., Ms. Newby affixed a copy of the writ of summons, renewed motion to serve by electronic means, amended complaint, and exhibits "in a conspicuous place" on the Accokeek Property. Ms. Newby noted that she spoke with an individual who indicated that he/she was a resident but did not know Mr. Mullen.

On December 14, 2022, the court denied, without prejudice, the motion for default. In its order, the court identified Ms. Thornton-Thomas' motion as a motion for a default judgment, not a request for an order of default. It denied the motion, stating that "proper service per MD Rule 2-121(a) ha[d] not been established."

That same day, December 14, 2022, Ms. Thornton-Thomas filed a renewed motion for order of default. She asserted that, pursuant to the court's order permitting service

[5] Mr. Kroner's affidavit of service was filed with the court on September 30, 2022, and on October 5, 2022. Attached was a copy of the email sent to Mr. Mullen, the email delivery receipt, and the receipt for payment for certified mail.

under Rule 2-121(c), personal service had been affected on Mr. Mullen under Rule 2-121(c), not under Rule 2-121(a). The motion also noted that the court incorrectly referred to Ms. Thornton-Thomas' motion as a motion for a default judgment rather than a motion for an order of default.

On April 26, 2023, the court granted the motion for reconsideration and entered an order of default against Mr. Mullen. The clerk of the court sent a notice of default to Mr. Mullen at the Fort Washington Property,[6] pursuant to Md. Rule 2-613.[7] The court also sent Mr. Mullen and Ms. Thornton-Thomas notice of a virtual hearing date for an *ex parte* hearing. On May 9, 2023, the court docketed the return of undeliverable mail to Mr. Mullen

[6] Ms. Thornton-Thomas states in her brief that the court sent a copy of the Order to Mr. Mullen's email address, citing to an email, dated July 25, 2022, sent by Judge Serrette's Executive Administrative Assistant ("EAA") to Mr. Howlette and Mr. Mullen, stating "[p]lease see the signed attached order for the above captioned case." Mr. Howlette replied, asking that the order be resent because he "did not receive the attachment." The EAA responded and attached a file entitled "CAL22-14865.pdf." On September 8, 2022, the EAA sent an email to Mr. Howlette and Mr. Mullen, stating "[p]lease see the signed attached order for the above captioned case." The attachment was entitled "CAL22-14865a.pdf." The dates of this email correspondence do not support Ms. Thornton-Thomas' assertion that the court sent a copy of the Order for Default, which was entered on April 26, 2023, to Mr. Mullen's email address.

[7] Maryland Rule 2-613(c) states, in relevant part, that:

> Promptly upon entry of an order of default, the clerk shall issue a notice informing the defendant that the order of default has been entered and that the defendant may move to vacate the order within 30 days after its entry. The notice shall be mailed to the defendant at the address stated in the request and to the defendant's attorney of record, if any. The court may provide for additional notice to the defendant.

at the Fort Washington Property. The returned mail included: the Notice of Default Order, a copy of the Notice of Default Order stamped with a seal, and the Order.

On June 28, 2023, the court held an *ex parte* hearing on damages. On July 6, 2023, the court entered judgment in favor of Ms. Thornton-Thomas for $75,000, plus costs. The clerk of the court sent the Notice of Recorded Judgment to Mr. Mullen.[8]

On July 15, 2023, and July 21, 2023, the court docketed the return of undeliverable mail to Mr. Mullen at the Fort Washington Property. The July 15, 2023 returned mail contained the Assignment of Virtual Hearing Date. The July 21, 2023 returned mail contained the Notice of Recorded Judgment.

II.

Motions to Vacate and Set Aside Default Judgment

On March 4, 2024, Mr. Mullen filed a motion to vacate judgment. He asked that, pursuant to Md. Rule 2-535(b),[9] the court strike the judgment based on improper service of process, resulting in a lack of personal jurisdiction over him. He asserted that Ms. Thornton-Thomas had attempted service at incorrect addresses, stating that, since March 30, 2021, his correct physical address was on Livingston Road in Ft. Washington, Maryland, and during COVID, he resided for extended periods in Norfolk, Virginia before

[8] It appears that the notice was sent to Mr. Mullen's Fort Washington address.

[9] Maryland Rule 2-535(b) provides that: "On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity."

returning to Atlanta, Georgia on July 1, 2023. Mr. Mullen attached an affidavit by Dr. Tarin T.D. Hampton in support of his residence claims.[10]

Mr. Mullen stated that he did not receive email service from Ms. Thornton-Thomas. He identified several possible reasons for the lack of service, including: (1) possible filtration into Spam or Junk mail due to virus protection settings; (2) the possibility of emails with large attachments having been blocked by his "Internet provider (Xfinity) virus protection;" (3) "rules for mailbox folders may have caused the email to be sent to a folder instead of" his inbox; and (4) his "Outlook email client may have been offline due to intermittent issues with . . . internet connection, necessitating the exchange of routers several times."

Mr. Mullen stated that he learned about the judgment against him after Ms. Thornton-Thomas advised a colleague that Mr. Mullen owed her money, and that colleague alerted him to the statements and the default judgment. That discovery is what prompted Mr. Mullen to file his motion.

On March 27, 2024, the court denied the motion as not timely filed. On May 3, 2024, Mr. Mullen filed a motion to set aside judgment pursuant to Md. Rule 2-535 and Md. Code Ann., Cts. & Jud. Proc. ("CJ") § 6-408 (2024 Supp.). He argued that Maryland case

[10] Dr. Hampton stated that: from March 30, 2021, to July 2, 2023, she and Mr. Mullen cohabitated at an apartment in Norfolk, Virginia; during March 2021, Mr. Mullen moved from the Fort Washington Property and put his "excess clothes and furnishings" in storage units located in Clinton, Maryland; and from June 15, 2023, to July 3, 2023, Mr. Mullen helped Dr. Hampton pack up her apartment and drive from Norfolk to Atlanta, Georgia.

law "is clear that insufficient service of process and the resulting failure to obtain jurisdiction over a defendant is an example of the kind of mistake that the rule and the statute are designed to address." He asserted that, because Ms. Thornton-Thomas never served Mr. Mullen with any process, the court should set aside the judgment since it never obtained personal jurisdiction over him.

On May 17, 2024, Ms. Thornton-Thomas filed an opposition to Mr. Mullen's motion.[11] She asserted that she complied with the court's order granting alternative service of process under Rule 2-121(c), and therefore, the court had personal jurisdiction over Mr. Mullen. She contended that Mr. Mullen's motion should be denied because he failed to establish, by clear and convincing evidence, fraud, mistake, or irregularity under Md. Rule 2- 535(b).

On May 21, 2024, the court issued an order denying Mr. Mullen's motion to set aside judgment.

This appeal followed.

[11] Ms. Thornton-Thomas attached several exhibits to her motion, including a declaration of service by Ms. Newby which stated that, on October 14, 2022, at 5:44 p.m., Ms. Newby affixed a copy of the writ of summons and amended complaint "in a conspicuous place" on the Fort Washington Property. The following documents were also attached as exhibits: the declaration of non-service by Mr. Waters; a log of status updates and activity prepared by ABC; the declaration of non-service by Mr. Jimenez; email correspondence between Mr. Howlette and Judge Serette's EAA; an email sent by Judge Serette's EAA to Mr. Howlette and Mr. Mullen on July 25, 2022; an email sent by Judge Serette's EAA to Mr. Howlette and Mr. Mullen on September 8, 2022; a declaration of service by Ms. Newby for the Accokeek property; the affidavit of service by Mr. Kroner, attached email to Mr. Mullen with delivery receipt, and a copy of the receipt for payment for certified mail.

DISCUSSION

Mr. Mullen contends that the circuit court erred or abused its discretion in denying his motion to vacate the default judgment because he was never served with process, and therefore, the court did not obtain jurisdiction over him. His ultimate contention raises issues regarding: (1) when and under what circumstances it is appropriate for the circuit court to grant alternative service pursuant to Maryland Rule 2-121(c); (2) whether the circuit court erred in authorizing or accepting service by email; and (3) even if alternative service was appropriate, whether the circuit court erred or abused its discretion in failing to vacate the judgment based on evidence that he never received service in the case. We will address these issues, in turn.

I.

Service of Process

"The Fourteenth Amendment of the United States Constitution prohibits States from depriving 'any person of life, liberty, or property, without due process of law.'" *Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 77 (2001). Procedural due process requires notice of proceedings and an opportunity to be heard. *Id.* at 81. In assessing the level of procedural due process that is required, the court must balance the interests of all parties. *Id.* at 78.

In Maryland, service of process is governed by Maryland Rule 2-121. That rule provides:

> (a) **Generally. —** Service of process may be made within this State or, when authorized by the law of this State, outside of this State (1) by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it; (2) if the person to be served is an individual, by leaving

> a copy of the summons, complaint, and all other papers filed with it at the individual's dwelling house or usual place of abode with a resident of suitable age and discretion; or (3) by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail requesting: "Restricted Delivery—show to whom, date, address of delivery."
>
> * * *
>
> (b) **Evasion of service. —** When proof is made by affidavit that a defendant has acted to evade service, the court may order that service be made by mailing a copy of the summons, complaint, and all other papers filed with it to the defendant at the defendant's last known residence and delivering a copy of each to a person of suitable age and discretion at the place of business of the defendant.
>
> (c) **By order of court. —** When proof is made by affidavit that good faith efforts to serve the defendant pursuant to section (a) of this Rule have not succeeded and that service pursuant to section (b) of this Rule is inapplicable or impracticable, the court may order any other means of service that it deems appropriate in the circumstances and reasonably calculated to give actual notice.
>
> (d) **Methods not exclusive. —** The methods of service provided in this Rule are in addition to and not exclusive of any other means of service that may be provided by statute or rule for obtaining jurisdiction over a defendant.

Here, the circuit court granted Ms. Thornton-Thomas' request for alternative means of service pursuant to Md. Rule 2-121(c). Pursuant to Md. Rule 2-121(c), before granting alternative service, the court must find that the plaintiff has proven two things: (1) that she has made good faith efforts to serve the defendant pursuant to Rule 2-121(a); and (2) that service under Rule 2-121(b) would be "inapplicable or impracticable." *Pickett*, 365 Md. at 80-81. If such a showing is made, "the court is free to customize a method of service based on the facts and circumstances restricted only by the need to be 'reasonably calculated to give actual notice' to the defendant." *Id.* at 81.

A.

Email as Proper Alternative

Before addressing Mr. Mullen's contention that Ms. Thornton-Thomas did not establish grounds for alternative service, we address his contention that the circuit court erred when it authorized email as an alternative means of service because "email service is not sanctioned" by Md. Rule 2-121. Mr. Mullen asserts, without support, that "[t]he Maryland Rules do not provide for email service in cases such as this one, when the potential defendant is not a government agency."[12]

Ms. Thornton-Thomas responds that the court did not err in granting alternative service by email. She contends that the rule's authorization of "any other means of service" that the court deems appropriate and is "reasonably calculated to give actual notice" places no "artificial constraints on the methods available to the court." Rather, the rule "emphasizes the court's discretion to craft service methods appropriate to the circumstances of each case." She asserts that this "broad grant of authority reflects the General Assembly's intent to provide courts with flexibility to ensure effective service in an evolving technological landscape," and the court's order "combining email service with traditional physical delivery methods demonstrates a carefully calibrated approach designed to maximize the likelihood of actual notice while satisfying due process requirements."

[12] At oral argument, counsel stepped back from her comments in the brief, stating that email was not always prohibited, but it was in this case.

Although the parties do not cite, and we have not found, a reported decision in Maryland addressing the issue whether email is a proper means of alternative service, we note that Rule 2-121(c) provides that the "court may order any other means of service that it deems appropriate in the circumstances and reasonably calculated to give actual notice." We conclude that this language permits service by email in appropriate circumstances.

Other courts similarly have determined that email is a proper method of alternative service where conventional methods have failed and the plaintiff has shown that email is reasonably calculated to give the defendant notice. In *Safadjou v. Mohammadi*, 964 N.Y.S.2d 801, 802-03 (N.Y. App. Div. 2013), the court upheld the lower court's determination that regular service of process was impractical where the plaintiff submitted evidence that the "defendant left the United States with the parties' child and declared her intention to remain in Iran with her family," and Iran was not a signatory to the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters. *Id.* at 803. The court noted that, when impracticability was satisfied, "due process requires that the method of service be 'reasonably calculated, under all the circumstances, to apprise' the defendant of the action." *Id.* (quoting *Contimortgage Corp. v. Isler*, 853 N.Y.S.2d 162, 164 (N.Y. App. Div. 2008)). The court noted that New York courts and federal courts had authorized email "service of process as an appropriate alternative method when the statutory methods have proven ineffective." *Id.* at 804 (quoting *Alfred E. Mann Living Trust v. ETIRC Aviation S.A.R.L.*, 910 N.Y.S.2d 418, 422 (2010)). It held that the plaintiff made the requisite showing that service by email was

reasonably calculated to give the defendant notice, and therefore, had satisfied due process, based on the showing that, for several months prior to plaintiff's application for alternative service, the parties "had been communicating via email at the two email addresses subsequently used for service." *Id.* "Although defendant claimed that she did not receive either of the emails, she acknowledged receipt of a subsequent email from plaintiff's attorney sent to the same two email addresses." *Id.* Accordingly, the court upheld the lower court's determination that service by email was an appropriate form of service. *Id.*

In *Rio Properties, Inc. v. Rio International Interlink*, 284 F.3d 1007, 1013-16 (9th Cir. 2002), the United States Court of Appeals for the Ninth Circuit upheld the district court's order, pursuant to Federal Rule of Civil Procedure 4(f)(3), for service of process through email.[13] It held that service by email was constitutionally acceptable because it was reasonably calculated to apprise the defendant of the pendency of the action, afforded the defendant the chance to respond, and moreover, "it was the method of service most likely to reach" the defendant. *Id.* at 1017. Specifically, the Court noted that the defendant had structured its business "such that it could be contacted *only* via its email address," and given that the defendant had neither an "office nor a door," but only a computer terminal, the court concluded that email was the "method of communication which [the defendant] utilize[d] and prefer[red]." *Id.* at 1018.

[13] Rule 4(f) of the Federal Rule of Civil Procedure governs service of process on an individual in a foreign country. Rule 4(f)(3) states, in relevant part, that: "Unless federal law provides otherwise, an individual" may be served outside of the United States "by other means not prohibited by international agreement, as the court orders."

The Court did, however, note limitations of service of process by email. *Id.* It stated that it may be difficult to "confirm receipt of an email message," and "system compatibility problems may lead to controversies over whether an exhibit or attachment was actually received." *Id.* Because alternative service could only be permitted by court order, however, the district court had the discretion "to balance the limitations of email service against its benefits in any particular case." *Id.*

We agree with the reasoning of these cases and hold that a court has discretion to authorize alternative service of process by email under Md. Rule 2-121(c) in the appropriate case. We turn next to appellant's arguments that this was not an appropriate case.

B.

Good Faith Efforts

Mr. Mullen contends that the circuit court erred when it authorized email as an alternative means of service in this case because Ms. Thornton-Thomas failed to show that she made reasonable, good-faith attempts to effect service. He asserts that the evidence did "not even support cursory efforts to obtain a correct mailing and or physical address at which to serve Mr. Mullen." He notes that the affidavit for the address in Accokeek shows that the resident who lived there had lived there for 20 years and did not know him, asserting that this was "clearly not an address that can be realistically assumed to be a proper address for [him]." Mr. Mullen argues that the evidence presented by Ms. Thornton-Thomas failed to demonstrate "a good-faith effort to find someone, particularly when that

someone is known to the [plaintiff], they share colleagues, they are a part of the same professional organization, and the person is a known business owner whose whereabouts and contact information is listed on the internet."

Ms. Thornton-Thomas contends that the circuit court properly exercised its discretionary authority to authorize alternative service considering her "documented attempts at conventional service." She asserts that she undertook an investigation to identify Mr. Mullen's principal residence, and she notes that there were multiple attempts of service at two different addresses.

As indicated, Rule 2-121(c) provides that, to authorize alternative service, there must be proof of "good faith" efforts to serve the defendant. The Supreme Court of Maryland has considered what efforts a plaintiff must make to reach "the level of 'good faith' that is required by Rule 2-121(c)." *Lohman v. Lohman*, 331 Md. 113, 133 (1993). In *Lohman*, a divorce case, plaintiff moved for alternative service pursuant to Rule 2-121(c) because she was unable to effect personal service on the defendant. *Id.* at 117. In her affidavit to the court, she recounted her attempts to locate and serve the defendant, including that she believed the defendant "had gone to live with his sister in Alamosa, Colorado, but that the attempted service by certified mail to [the defendant's] sister's address with restricted delivery to [the defendant] was returned and marked 'unclaimed.'" *Id.* She noted that telephone directories and motor vehicle associations in Maryland, Virginia, and the District of Columbia "provided no assistance in locating" the defendant,

and Mr. Lohman refused to disclose his whereabouts to his adult children. *Id.* The circuit court granted leave for the plaintiff to proceed with service by publication. *Id.*

The Supreme Court of Maryland held that the plaintiff's efforts failed to meet the requirements set forth in Rule 2-121(c). *Id.* at 133. The Court noted that the record failed to demonstrate that the plaintiff had made inquiries with the defendant's siblings to determine his location, stating that, after 35 "years of marriage, good faith requires at least that much effort." *Id.* It noted that "what amounts to good faith efforts to serve the defendant will vary based on the circumstances," but in that case, plaintiff made a "single blind attempt at service" in Colorado, and that, in conjunction with a "failure to diligently determine [the defendant's] whereabouts," was a failure "to meet the requirement of 'good faith efforts to serve the defendant.'" *Id.* at 134.

In *Sisson v. Stanley*, 109 A.3d 265, 269 (Pa. Super. Ct. 2015), an action to quiet title, the Superior Court of Pennsylvania addressed a similar rule, Pa.R.C.P. 430(a), which provides for motions for service by special order, including service by publication.[14] The court pointed out that the note accompanying Pa.R.C.P. 430(a) provides:

> An illustration of a good faith effort to locate the defendant includes (1) inquiries of postal authorities including inquiries pursuant to the Freedom of

[14] The Pennsylvania rule states, in relevant part, that:

> 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. 430(a).

> Information Act [...], (2) inquiries of relatives, neighbors, friends, and employers of the defendant, and (3) examinations of local telephone directories, voter registration records, local tax records, and motor vehicle records.

Id. at 269-70 (alteration in original) (quoting Pa.R.C.P. 430(a) note). The court stated that, although the note was not exhaustive, it was "at least indicative of the types of procedures contemplated by the legislature when enacting Rule 430," and it provides, in essence, "**that more than a mere paper search is required before resort can be had to**" alternative methods of service. *Id.* at 270 (quoting *Deer Park Lumber, Inc. v. Major*, 559 A.2d 941, 946 (Pa. Super. Ct. 1989)). The court stated that "constitutional due process requires that service of process be reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," and Pa.R.C.P. 430(a) applied "only where **service cannot be made** in the normal fashion." *Id.* at 270-71 (cleaned up).

The court then addressed the efforts detailed in the affidavit requesting alternative service. *Id.* at 271. It noted that, although the plaintiff stated that he searched for the defendants in records located in the Recorder of Deeds Office of Susquehanna County, he did not search the records at the Register of Wills office, and a "good faith search for heirs should have included at least this basic research." *Id.* The court noted that the plaintiff failed to search other records, such as obituaries, which it characterized as a "logical search" for an action to quiet title, given the age of the deed and the fact that "all heirs" were named as defendants. *Id.* at 272. Finally, although the plaintiff stated in his affidavit that he checked "various internet sites for the names and possible locations of the named

Defendants," *id.* at 268, the court stated that, "[g]iven the ease of identifying and using sophisticated Internet services to trace ancestry and family history, it is inconceivable that counsel, employing good faith efforts, was unable to locate a single . . . heir." *Id.* at 272. The court held that, in light of the affidavit's "sparse information" and the "seeming ease with which" the named defendants could have been located, the plaintiff failed to comply with Pa.R.C.P. 430(a). *Id.* at 273. The affidavit submitted to the court demonstrated a "complete lack of due diligence and good faith to locate any of the named defendants to [the] action." *Id.* at 271.

Similarly, here, although Ms. Thornton-Thomas attached affidavits detailing attempts to serve Mr. Mullen at two different addresses, the resident at one of the addresses did not know Mr. Mullen and had lived at the residence for 20 years. That information suggests that the investigation to determine Mr. Mullen's residence was less than thorough. Moreover, the evidence indicated that Ms. Thornton-Thomas had other avenues to find out his address or attempt to serve him. As Mr. Mullen noted in his Motion to Vacate Judgment, and as both parties note in their briefs, Mr. Mullen and Ms. Thornton-Thomas both served on the executive board of a professional organization. Ms. Thornton-Thomas served as President and Mr. Mullen as Treasurer. Although Ms. Thornton-Thomas notes in her brief that their "professional connection . . . should have facilitated straightforward service," there is nothing in the record to indicate that Ms. Thornton-Thomas made efforts to use her professional connection to Mr. Mullen to aid in her efforts of service of process. Mr. Mullen states in his brief that members of the professional organization were aware

that Mr. Mullen owns a tax preparation business, the business has a resident agent, and a search on the Maryland State Department of Assessments and Taxation reveals the office address and the registered agent information. He asserts that an internet search using the terms "Michael Mullen tax" also reveals his business information.

Given the parties' professional connection, and the relative ease of an internet search, we do not think Ms. Thornton-Thomas' efforts to serve process on Mr. Mullen rise to the level of good faith required in Maryland. We hold that the circuit court erred in finding that Ms. Thornton-Thomas made good faith efforts to serve Mr. Mullen.

C.

Inapplicability or Impracticability

Moreover, as indicated, Rule 2-121(c) provides that a court may grant alternative service if the plaintiff proves by affidavit that service pursuant to Rule 2-121(b), i.e., "mailing a copy of the summons, complaint, and all other papers filed with it to the defendant at the defendant's last known residence *and* delivering a copy of each to a person of suitable age and discretion at the place of business of the defendant," is either "inapplicable or impracticable." (Emphasis added). Ms. Thornton-Thomas failed to prove that the two methods of service identified in Rule 2-121(b) were inapplicable or impracticable.

Here, Ms. Thornton-Thomas' affidavits did not state that service by first-class mail and delivery to a person of suitable age and responsibility at Mr. Mullen's place of business would be "inapplicable or impracticable," as provided in Md. Rule 2-121(b). Although the

court determined that mailing a "copy of the documents to [Mr. Mullen's] last known address would be impracticable," the court did not determine whether service made by delivering copies "to a person of suitable age and discretion at the place of business of the defendant" was either impracticable or inapplicable as is required by the plain language of Rule 2-121(c). There is nothing in the record to suggest that serving Mr. Mullen at his place of business was impracticable or inapplicable.

Under the facts of this case, we conclude that the circuit court erred in granting alternative service pursuant to Rule 2-121(c) because Ms. Thornton-Thomas did not meet the two requirements set forth in Rule 2-121(c).

II.

Jurisdiction

Mr. Mullen next contends that the lower court erred when it failed to set aside the judgment rendered against him given that he was not served. He asserts that, because service was not proper, the court did not have personal jurisdiction over him. We agree.

"It is fundamental that before a court may impose upon a defendant a personal liability or obligation in favor of the plaintiff or may extinguish a personal right of the defendant it must have first obtained jurisdiction over the person of the defendant." *Md. Dep't of Health v. Myers*, 260 Md. App. 565, 610 (quoting *Flanagan v. Dep't of Hum. Res.*, 412 Md. 616, 623-24 (2010)), *cert. denied sub nom. Sanders v. Md. Dep't of Health*, 487 Md. 267 (2024). A court cannot render judgment against a defendant "unless the defendant has been notified of the proceeding by proper summons, for the court has no jurisdiction

over him until such service is properly accomplished, or is waived by a voluntary appearance by the defendant, either personally or through a duly authorized attorney." *Id.* (quoting *Flanagan*, 412 Md. at 624).

For the court to have jurisdiction over a defendant, the defendant generally must have received notice via service of process. *Conwell L. LLC v. Tung*, 221 Md. App. 481, 498 (2015) ("A court obtains *in personam* jurisdiction over a defendant when that defendant is 'notified of the proceedings by proper summons.'") (quoting *Flanagan*, 412 Md. at 624). "A party's failure to comply with the Maryland Rules governing service of process 'constitutes a jurisdictional defect that prevents a court from exercising personal jurisdiction over the defendant.'" *Id.* (quoting *Flanagan*, 412 Md. at 624). If alternative service is properly authorized and effectuated, however, the court obtains jurisdiction over a defendant even if the defendant had no "actual receipt of notice." *Golden Sands Club Condo., Inc. v. Waller*, 313 Md. 484, 500 (1988) ("[T]he constitutionality of a particular notice mechanism is not to be judged by its actual success—whether an individual or group is in fact notified—but turns instead on whether the chosen method is 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'") (quoting Laurence Tribe, *American Constitutional Law* § 10-15 at 732-33 (2d ed. 1988)).

Here, as discussed *supra*, the court's order permitting alternative service pursuant to Rule 2-121(c) was not proper. Accordingly, the court did not obtain personal jurisdiction over Mr. Mullen.

VACATE THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AND REMAND FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.