

Circuit Court for Worcester County
Case No. C-23-CV-20-000287

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 883

September Term, 2021

M. SCOTT HEISE, ET AL

v.

OCEAN AERIAL ADS, INC.

Leahy,
Shaw,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: April 20, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is an appeal from an order of the Circuit Court for Worcester County granting summary judgment in favor of appellee and denying appellants’ motion to vacate the judgment and an order authorizing alternative service. Appellants present the following question for our review:

1. Did the Circuit Court commit reversible error by approving alternative service as it did below; by granting summary judgment as it did based on purported alternative service; and by subsequently denying the Motion to Vacate filed by Appellants?

For reasons explained below, we affirm.

BACKGROUND

On November 10, 2020, appellee, Ocean Aerial Ads, Inc., filed a Complaint against appellants, The Heise Corporation, Inc., t/a Pizza Tugos, and M. Scott Heise, for breach of contract as a result of nonpayment for services rendered. Appellee filed a Motion for Summary Judgment concurrently with the complaint. Summonses for Mr. Heise, as the resident agent of THC and individually, were issued on November 12, 2020. A deputy sheriff attempted to serve THC through Mr. Heise as the resident agent on December 7, 2020 by leaving it with the “manager in charge” at 11623 Coastal Highway, Ocean City, Maryland, one of THC’s business locations. The return of summons states that the individual “refused to give [his] name.” On December 11, 2020, a deputy sheriff attempted to serve Mr. Heise, in his individual capacity, at that address but was “unable to locate” him.

Summonses for Heise as the resident agent of the corporation and in his individual capacity at the Coastal Highway address were reissued on February 17, 2021. A private

process server was hired and attempted to serve both summonses on numerous occasions at the 11623 Coastal Highway address. The process server noted in an email to appellee, following an attempt at service, that he kept getting the “same run around.” He further noted in his affidavit of service that he could not obtain “accurate information as to when Mr. Heise might be available at his place of business.” He concluded that appellants were “acting to evade service.” Appellee filed a motion for alternative service, and the Circuit Court granted the motion on April 27, 2021, stating, “Plaintiff may make service by ordinary mail upon Defendant, Mr. Heise.”

On April 28, 2021, appellee requested that the summonses be reissued to Heise at 11623 Coastal Highway and 10607 Shifting Sands Drive, Ocean City, Maryland. The court granted the request and issued the new summonses. On April 29, 2021, Ocean Aerial served appellants at both addresses by mail and filed an affidavit of service on May 25, 2021. The court subsequently granted summary judgment in favor of appellee, in the amount of \$30,050.00 with \$3,469.05 interest and costs on June 22, 2021.¹ Appellants filed a motion to vacate the orders granting alternative service and summary judgment on June 30, 2021. The court denied the motions on August 10, 2021. This timely appeal followed.

¹ On March 29, 2021, appellants made a payment to Ocean Aerial in the amount of \$10,000.00.

DISCUSSION

I. The Circuit Court did not err in granting the motion for alternative service.

We review a lower court’s application of the Maryland Rules that govern alternative methods of service *de novo*. *Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 77 (2001) (citation omitted).

Maryland Rule 2-121(a) provides that service can be made:

(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.”

Maryland Rule 2-124(b) states that service is made on an individual “by serving the individual or an agent authorized by appointment or by law to receive service of process for the individual.” According to Maryland Rule 2-124(d), service on a corporation is complete:

by serving its resident agent, president, secretary, or treasurer. If the corporation . . . has no resident agent or if a good faith attempt to serve the resident agent, president, secretary, or treasurer has failed, service may be made by serving the manager, any director, vice president, assistant secretary, assistant treasurer, or other person expressly or impliedly authorized to receive service of process.

Appellants argue the court erred in granting alternative service. Appellants assert that appellees initially did not attempt proper service. Appellants contend appellee did not deliver the complaint and associated documents to the resident agent or owner, did not attempt service upon any other officer of the corporation, never attempted to serve THC

by certified mail, and never attempted to serve the resident agent at any location besides 11623 Coastal Highway. As a result, they contend appellee failed to establish that appellants were evading service.

Appellants also challenge the sufficiency of the alternative service, asserting the court's order did not specify the manner in which service could be effectuated and there was no proof of the "last known address" of Mr. Heise. Appellants contend the order did not make clear what papers needed to be served, and it did not direct appellee to deliver a copy of papers to be served "to a person of suitable age and discretion at the place of business of the defendant" per Maryland Rule 2-121(b).

Prior to requesting alternative service, appellee made the following service attempts:

- December 7, 2020: A deputy sheriff attempted to serve the resident agent at 11623 Coastal Highway.
- December 11, 2020: A deputy sheriff attempted to serve Mr. Heise at 11623 Coastal Highway.
- February 20, 2021: A private process server attempted to serve THC and Mr. Heise at 11623 Coastal Highway.
- February 28, 2021: A second attempt was made by a private process server at 11623 Coastal Highway.
- March 15, 2021: A third attempt was made by a private process server at 11623 Coastal Highway.
- March 16, 2021: A fourth attempt was made by a private process server at 11623 Coastal Highway.
- March 19, 2021: A fifth attempt was made by a private process server at 11623 Coastal Highway.

- March 20, 2021: A sixth attempt was made by a private process server at 11623 Coastal Highway.
- March 23, 2021: A seventh attempt was made by a private process server at 11623 Coastal Highway.

On April 27, 2021, the court authorized service “by ordinary mail.” Service was effectuated on appellants after appellee served Mr. Heise at the two known addresses by mail.

According to Maryland Rule 2-121:

(b):

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):

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.

As we see it, there was ample evidence of good faith attempts by appellee to effectuate service and there was also evidence of evasion. Service was attempted over a five-month period on multiple occasions by both sheriffs and a privately retained process server without success. No person at the business location would accept the court documents on the previous attempts or acknowledge when Heise would be present to receive service. Under the circumstances, we hold the judge did not err in ordering that service could be made by “ordinary mail.” Rule 2-121(c) expressly provides that a court

may order any other means of service “that it deems appropriate . . . and [is] reasonably calculated to give actual notice.” The alternative method of service was appropriate and did provide appellants with actual notice of the civil complaint filed.

II. The Circuit Court did not err in granting the motion for summary judgment.

Maryland Rule 2-501(f) provides that summary judgment shall be granted “if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.” A trial court’s grant of a motion for summary judgment is reviewed by this Court *de novo*. *Dashiell v. Meeks*, 396 Md. 149, 163 (2006) (citations omitted). We consider whether there *was* any genuine dispute of material facts, resolving any factual dispute in favor of the non-movant. *Id.* (citations omitted) (emphasis added). If there *is* no such dispute of a material fact, we then determine if the trial court was legally correct. *Id.* (citations omitted) (emphasis added).

Appellants argue that because there was no clear proof that service was made, the court’s grant of summary judgment was improper. As discussed *supra*, the court’s order granting alternative service was proper, and appellee filed an affidavit of service that appellants had been served by mail at the two known addresses. Appellants do not dispute the factual allegations or the amounts owed. We hold, therefore, that the court did not err as there was no dispute of fact and appellee was entitled to judgment as a matter of law.

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0883s21cn.pdf>

III. The Circuit Court did not abuse its discretion in denying the motion to vacate the order granting alternative service and the judgment.

Denials of a motion to alter, amend, or reconsider a judgment are reviewed for an abuse of discretion. *Miller v. Mathias*, 428 Md. 419, 438 (2012) (citations omitted). However, trial courts do not have discretion to apply inappropriate legal standards. *Id.* (citations omitted). “In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.” Md. Rule 2-534.

Appellants argue that its motion to vacate was properly filed and contend the lower court abused its discretion in denying the motion to vacate judgment and the order authorizing alternative service. We hold the lower court did not err or abuse its discretion. Appellants were properly served in accordance with Maryland Rule 2-121(c), and, while the Rules clearly provide that a court may amend or revise its judgment, there is no basis in law or fact for revision by the court here.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCESTER COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANTS.**