UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2355

September Term, 2013

AARON G. SELTZER

v.

LENNOX CONSULTING GROUP, LTD. ET AL.

Eyler, Deborah S.,
Berger,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: August 6, 2015

In this appeal, we are asked to review the denial of a Motion to Alter, Amend or Revise Judgment and for New Trial filed by appellant, Aaron G. Seltzer.

Seltzer sought to challenge the judgment entered against him in the Circuit Court for Anne Arundel County following that court's resolution of claims for fraud, constructive fraud, and legal malpractice that had been brought against him by Lenox Consulting Group, LTD, ("LCG") and Lee Hymowitz, appellees.

In his timely appeal, Seltzer raises two questions for our consideration, which we have recast for clarity:[1]

> 1. Did the circuit court err by permitting appellees to serve Seltzer by means of alternative service under Md. Rule 2-121(c)?
>
> 2. Did the circuit court err by denying Seltzer's post-trial motions to set aside the judgment?

Discerning neither error nor abuse of discretion, we shall affirm the judgments of the circuit court.

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[1]In his brief, Selter asked:

> I. Did the Circuit Court err when it permitted original service on the Defendant by mail to an address at which he did not live, and by publication in a county in which he did not live, the fact of which was known to the Court and Plaintiffs?
>
> II. Did the Circuit Court err when it denied Defendant's post-trial motions to set aside the judgment where the Court never acquired personal jurisdiction over the Defendant?

FACTUAL and PROCEDURAL HISTORY

On January 11, 2012, appellees filed a civil complaint against Seltzer in the Circuit Court for Anne Arundel County. The complaint alleged two counts each of fraud, constructive fraud, and legal malpractice, and requested compensatory damages in excess of $500,000, as well as punitive damages and attorney's fees.[2]

Appellees employed a process server who made several attempts to serve Seltzer personally with the Complaint and Summons. On February 7, 2102, the process server went to Seltzer's last known residence at 5468 Wellington Drive, Trappe, Maryland, to effect service. Seltzer was not at the residence. There was a for sale sign in front of the residence and the house appeared to be vacant. There was an indication that the property was in the process of being foreclosed upon.

The process server next attempted to serve Seltzer at 16 Eva Court, Middle River, Maryland, the address given as Seltzer's residence in a criminal action brought by the State of Maryland in February 2012. The tenant of 16 Eva Court told the process server that Seltzer no longer lived at that address, and directed him to 1944 Allwood Drive, Bethlehem, Pennsylvania. When the process server went to that address, however, he determined that

[2]The events underlying appellees' Complaint against Seltzer were also incorporated into a criminal action against Seltzer brought by the U.S. Attorney for the District of Maryland on March 14, 2013. Seltzer signed a plea agreement in that case on December 23, 2014, whereby he agreed, *inter alia*, to pay restitution in the amount of $762,242, to fully compensate the victims' losses.

Seltzer did not live there because the occupant of that house did not match Seltzer's description.

On May 23, 2012, the process server next attempted to serve Seltzer at a hearing in a case in which Seltzer was a party in the District Court for Baltimore City. Seltzer did not appear for the hearing.

The process server next attempted to serve Seltzer at 1 E. Chase Street, Unit 1112, Baltimore, Maryland, an address where Seltzer or an associate of Seltzer's was believed to reside and/or conduct business. The process server went to the address, but was not permitted to enter the secured building. He later opined, in an affidavit to the court that, based on experience, appellees had demonstrated due diligence in their numerous attempts to personally serve Seltzer, and that future efforts to personally serve Seltzer were unlikely to be successful.

On June 21, 2012, appellees petitioned the court to allow alternative service by means of mail and publication, pursuant to Maryland Rule 2-121(c). In accordance with the Rule, appellees attached the process server's memorandum and affidavit to demonstrate the numerous good faith attempts they made for personal service. On September 24, 2012, the circuit court granted appellee's motion in an Order for Alternate Service, filed on October 1, 2012. The Order required the Clerk of Court to "cause the attached notice to be **published** at least once a week in each of three successive weeks in one or more newspapers of general circulation published in this county/city, and shall also mail the notice to the

Plaintiff's/Defendant's last known address."[3] The Notice was published in the Anne Arundel County newspaper, The Capital Gazette, a newspaper of general circulation, on October 9, 16, and 23, 2012. The Clerk of Court also mailed a copy of the notice of publication to Seltzer's last known address, 5468 Wellington Drive, Trappe, Maryland. Appellees also mailed copies of all of the relevant filings, motions, and orders to Seltzer at 5468 Wellington Drive. All were returned as undeliverable. Seltzer did not file an answer, or any other response to appellees' Complaint.

On June 7, 2013, appellees filed a Motion for Summary Judgment, which was granted by the circuit court on July 30, 2013. Judgments totaling $527,915.99 were entered against Seltzer. On August 8, 2013, Seltzer filed a Motion to Alter, Amend or Revise Judgment and for New Trial. Following a hearing on November 6, 2013, the circuit court entered an Order denying Seltzer's motion on November 12, 2013.[4] Seltzer filed the instant appeal on December 12, 2013.

[3]The circuit court's Order did not specify Seltzer's "last known address."

[4]On November 12, 2013, Seltzer filed a suggestion of bankruptcy indicating that all debts arising prior to August 29, 2011, including those in the instant case, had been discharged, and requesting that this case be stayed pending resolution of a claim in the U.S. Bankruptcy Court. The circuit court never ruled on Seltzer's motion to stay. Pursuant to Md. Rule 8-131(a), this Court generally declines to decide any issue that was not decided by the trial court. Therefore, we decline to consider Seltzer's arguments premised upon his contention that any judgments arising from the claims in the instant case were discharged in bankruptcy.

ANALYSIS

1. Alternative service of process

Before the circuit court, and now in his appeal, Seltzer asserts that he never received notice of the appellees' suit against him, either by mail or by viewing the notice published in The Capital Gazette, until the day that judgment was entered – July 30, 2013. Seltzer contends that he has not lived at 5468 Wellington Drive since January 2011, and therefore, at the time that appellees attempted to serve him, he was not living at that address.[5] Seltzer suggests that appellees and the court knew that, as recently as February 2012, Seltzer was residing at 16 Eva Court, Middle River, Baltimore County. Seltzer contends that the method of service employed by the appellees, "publish[ing] a notice in a newspaper having a circulation in a county in which Mr. Seltzer did not reside and sen[ding] mail to an address at which they knew he did not live[,]" was not reasonably calculated to provide actual notice of the proceedings against him and, therefore, violated his due process rights afforded him by the Fourteenth Amendment to the United States Constitution.

The Fourteenth Amendment prohibits States from depriving "any person of life, liberty, or property, without due process of law." It is axiomatic that an individual is entitled to notice and opportunity for a hearing prior to being deprived of his property. *See, e.g., Pickett v. Sears, Roebuck & Company*, 365 Md. 67, 81-83 (2001) (discussing cases).

[5]Seltzer asserts that 5468 Wellington Drive is located in Anne Arundel County, Maryland. Land records indicate, however, that the property is located in Talbot County, Maryland.

Properly serving a defendant with a Complaint and Writ of Summons is, therefore, a critical step in the litigation process. *Miserandino v. Resort Properties, Inc.*, 345 Md. 43, 52 (1997).

The general service of process rule, contained in Md. Rule 2-121(a) authorizes service of process "by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it," or "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.'" Md. Rule 2-121(a).

In situations where an individual evades service of process, Rule 3-121(b) provides that:

> 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.

Maryland's alternative service rule provides:

> 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.

Md. Rule 2-121(c). Thus, while personal service is the preferred method, Md. Rule 2-121(c) allows circuit courts to customize a method of service in situations where good faith attempts at personal service have been made unsuccessfully, and prove futile. In weighing the alternative methods of service of process, however, a court ordering service under Md. Rule

2-121(c) must be careful that the method prescribed in the court order "is not substantially less likely to bring home notice than other of the feasible and customary substitutes." *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 315 (1950).

Maryland Rule 2-121(c) contains no provision which prevents a court from designing an order for substituted service to convey *in personam* jurisdiction by using publication and mailing as a means of providing notice. As the Court of Appeals has previously opined:

> Once a litigant has filed an affidavit showing good faith efforts to serve the defendant pursuant to [2]-121(a) and that service under [2]-121(b) would be "inapplicable or impracticable," 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.

Pickett v. Sears, Roebuck & Company, 365 Md. 67, 80-81 (2001) (considering Md. Rule 3-121, the parallel provision regarding service of process in actions arising in a District Court).

In our review of a trial court's decision to allow alternative service under Md. Rule 2-121(c), we apply a *de novo* standard of review. *See id*. at 77 (noting that questions of jurisdiction require the court to interpret and apply the applicable rules, and that the accuracy of the court's determinations in such cases are considered as questions of law (citing *Calomiris v. Woods*, 353 Md. 425, 434 (1999))). Whether a method of alternative service employed by a plaintiff is constitutionally adequate, *i.e*., reasonably likely to provide actual notice, is case specific. *See Miserandino*, 345 Md. at 52 ("No particular procedure is required in all cases.... Procedures adequate under one set of facts may not be sufficient in

a different situation." (citing *Department of Transportation v. Armacost*, 299 Md. 392, 416 (1984))).

The record before us demonstrates that appellees made multiple good faith attempts to personally serve Seltzer pursuant to the requirements of Md. Rule 2-121(a). As proof of their efforts, and of the impractical nature of attempting service under Rule 2-121(b), appellees filed the memorandum and affidavit of their process server in support of their motion for alternative service. As a matter of public record, Seltzer has made a practice of being difficult to serve in the numerous cases in which he was a defendant or respondent over the course of the last several years.[6] We are persuaded that the efforts of appellees to serve Seltzer personally with notice of their action against him were unsuccessful as a result of his

[6] *See Attorney Grievance Com'n of Maryland v. Seltzer*, 424 Md. 94, 99 n.7 (2011) (indicating that Seltzer was served by alternative service after Bar Counsel's multiple attempts at personal service were unsuccessful). Maryland Judiciary Case Search records indicate that Plaintiffs have also had trouble serving Seltzer in other actions including: *Kristine D. Brown, et al. v. Aaron G. Seltzer*, Circuit Court for Talbot County, Case No. 20C14008916, filed October 16, 2014 (foreclosure action, service by posting and first-class mail); *Assad U. Sadat, et al. v. Aaron G. Seltzer, et al.*, Circuit Court for Anne Arundel County, Case No. 02-C-11-164416, filed September 29, 2011 (professional malpractice action, service by publication and posting); *2008 County Holdings LLC v. Seltzer, et al.*, Circuit Court for Baltimore County, Case No. 03C09012824, filed December 3, 2008 (tax sale, service by publication and posting); *Meyers v. Death Star LLC, et al.*, Circuit Court for Baltimore County, Case No. 03C10009391, filed July 29, 2010 (contract case dismissed for failure of service of process); *Chesapeake Medical Solutions PA v. Seltzer*, District Court for Talbot County, Case No. 030500005502011, filed April 25, 2011 (contract case dismissed for failure of service of process); *Feigelson, et al. v. Seltzer, et al.*, Circuit Court for Baltimore County, Case No. 03C10005499, filed May 5, 2010 (foreclosure case dismissed for failure of service of process).

evasive actions. Under all the circumstances, we conclude that the circuit court did not err in concluding that the usual and customary methods of service would not suffice.

In its Order granting appellees' motion for alternative service, the circuit court authorized appellees to serve Seltzer with notice by publication and mailing. Seltzer challenges the adequacy of these alternative methods of service. He contends that in order to effect service by publication, the circuit court "should have ordered that the notice be published in a newspaper having a circulation throughout the State of Maryland or in Baltimore County[.]" Seltzer also asserts that mailing notice to a address where he clearly was not residing was insufficient. Central to Seltzer's arguments is his assertion that his "last known address" was 16 Eva Court, Middle River, Maryland.

There was substantial evidence before the circuit court, however, indicating that 5468 Wellington Drive, Trappe, Talbot County, was Seltzer's "last known address." Seltzer is known to have previously resided at 5468 Wellington Drive. The records of the State Department of Assessments and Taxation ("SDAT") and of Talbot County establish that Seltzer has continuously owned 5468 Wellington Drive since February 2006. SDAT records further indicate that though the property is not Seltzer's primary residence, mail to Seltzer should be addressed to 5468 Wellington Drive. Some of Seltzer's business interests were conducted in whole or in part at 5468 Wellington Drive. The Court of Appeals listed Seltzer's known address as 5468 Wellington Drive in the published opinion issued on December 22, 2011, formalizing his disbarment. *Seltzer*, 424 Md. at 100.

Seltzer was known to regularly conduct business in Anne Arundel County. *Id*. at 100-01. Even after he was decertified from the practice of law due to non-payment of Client Protection Fund dues in April 2010, Seltzer continued to practice as an attorney in Anne Arundel County, presumably until he was disbarred on October 7, 2011. *Id*. at 112. Seltzer had also continued to participate in business endeavors as the managing member of Village Green Title, LLC; Death Star, LLC; First Class Real Estate, LLC; and as a partner at Advance Realty Anne Arundel Inc., all of which were located in Anne Arundel County. *Id*. at 97 n.1., 100-01. Indeed, the actions underlying appellees' action against Seltzer all occurred in Anne Arundel County. Seltzer's frequent contacts with Anne Arundel County was a basis for appellees', who are primarily located in New York City, choice of venue.

To the contrary, Seltzer suggests that appellees knew or should have known, based on the research of their process server, that from July 2004 to March 2012, his address was 16 Eva Court, Middle River, Maryland. The SDAT record for 16 Eva Court indicates that Seltzer has owned the property, jointly with his wife, since October 2004, but indicates that 16 Eva Court is not Seltzer's principal residence and lists Seltzer's mailing address as 5468 Wellington Drive. When appellees' process server attempted to personally serve Seltzer at 16 Eva Court, the resident tenant informed him that Seltzer did not live there and provided the Bethlehem, Pennsylvania address, which was also subsequently investigated and dismissed as Seltzer's residence.

As a former practicing attorney who was the subject of numerous lawsuits and investigations, Seltzer knew or should have known that legal notices were often published in local newspapers. As such, Seltzer is more than an ordinary "local resident" who would not be expected to read the "advertisement[s] in small type inserted in the back pages of a newspaper." *Mullane*, 339 U.S. at 315. Instead, his legal training and business experience creates in Seltzer a sophisticated understanding of the legal system, and how to inform himself about pending litigation.[7]

We are persuaded that there was abundant evidence to support the circuit court's determination that Seltzer's last known address was 5468 Wellington Drive. Therefore, the court's finding was not clearly erroneous.[8] Confronted with the facts in the record, the circuit court struck a constitutionally sufficient balance between the interests of appellees – in obtaining a judgment against Seltzer for the losses they sustained as a result of the fraud perpetrated against them – and Seltzer's right to receive notice and be heard on the issue, by ordering service of process by publication and mailing notice to Seltzer's last known address. *See Pickett*, 365 Md. at 85 (citing *Golden Sands Club Condominium, Inc. v. Waller*, 313 Md. 484, 496 (1988)).

[7]Indeed, in his motion to alter or amend, Seltzer acknowledges that he has accessed the docket entries for this case, and presumably for all of the other cases pending against him, via the Maryland Case Search System, which is available to the general public.

[8]Nor, on the basis of this record, would the circuit court have erred had it determined that Seltzer's last known address was 16 Eva Court, as there was substantial evidence to support that finding, as well.

We conclude, therefore, that the circuit court's order for substituted service of process by publication in The Capital Gazette, and by first-class mail to 5468 Wellington Drive, was reasonably calculated to apprise Seltzer of the action brought against him by appellees. *See Pickett*, 365 Md. at 85 (citing *Miserandino*, 345 Md. at 53; *Golden Sands Club*, 313 Md. at 495-96 (quoting *Mullane*, 339 U.S. at 314)). Notice having been published and the necessary documents having been mailed in accordance with the court's Order, the circuit court properly obtained *in personam* jurisdiction over Seltzer.

2. Denial of Seltzer's Post-trial Motions

Seltzer next claims that the circuit court, having been informed by the additional information provided in his motion to alter or amend, should have concluded that service in this case was not adequate, vacated the judgments entered against him, and granted him a new trial.

In the sworn affidavit attached as an exhibit in support of his motion to alter or amend, Seltzer concedes that he resided at 5468 Wellington Drive until January 2011, when that property purportedly sustained extensive water damage. Seltzer further attests that he has

resided at 16 Eva Court since March 2011.[9] Seltzer contends that he received no actual notice of the appellees' Complaint until July 30, 2013.

Seltzer also brought his bankruptcy filings to the attention of the circuit court. It is notable that in each of his three petitions for bankruptcy protection, including the most recent one filed on January 19, 2011, Seltzer lists his home address as 5468 Wellington Drive. Moreover, in a bankruptcy filing on February 4, 2011, Seltzer claimed a homestead exemption for the value of the 5468 Wellington Drive property.

Demonstrating his knowledge of the Maryland legal system, in his motion to alter or amend, Seltzer acknowledges that he has accessed the docket entries for this case via the Maryland Case Search System, which is available to the general public. Brief examination of the records available in the Maryland Case Search System reveals a number of actions pending against Seltzer at the time the instant case was filed, and that additional cases were filed during the time that this case was in process.

We review a trial court's denial of a party's motion to alter or amend or a motion for a new trial for abuse of discretion. *See, e.g., Miller v. Mathias*, 428 Md. 419, 438 (2012) (motion to alter or amend); *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673

[9]As we know from the SDAT records, Seltzer has been the owner of the property at 16 Eva Court since July 2004. In emails attached as exhibits to his motion to alter or amend, however, Seltzer refers to an individual named "Manny" as the owner of 16 Eva Court, and inquires of the relocation specialist from Disaster Services, Inc., when "Manny" will begin receiving his rental payments which were presumably paid by Seltzer's insurance company.

(2010) (motion to alter or amend); *Washington v. State*, 424 Md. 632, 667–68 (2012) (motion for a new trial); *Gray v. State*, 388 Md. 366, 382–83 (2005) (motion for a new trial); *I.O.A. Leasing v. Merle Thomas Corp.*, 260 Md. 243, 249 (1971) (motion for a new trial). Abuse of discretion is the exercise of discretion that is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006) (quoting *Jenkins v. City of College Park*, 379 Md. 142, 165 (2003)); *see also Gray*, 388 Md. at 383 (stating that a decision to reopen a post-conviction proceeding is discretionary, and an appellate court is not to disturb the decision unless it is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable" (quoting *Dehn v. Edgecombe*, 384 Md. 606, 628 (2005))).

The additional documents and information that were added to the record after judgment was entered could be taken to support Seltzer's assertion that the methods of alternative service ordered by the circuit court were not successful in providing him with actual notice. Based on our review of the documents, however, we are persuaded that those filings also contain information that supports the circuit court's determinations that 5648 Wellington Drive was Seltzer's last known address and that service by publication and mailing was reasonably likely to provide actual notice.

Furthermore, to the extent the circuit court's denial of Seltzer's motion was based on the court's assessment of Seltzer's credibility and its tendency, as a result of that assessment

to conclude that Seltzer's protestations of ignorance were not credible, we defer to those findings.

Discerning no error or abuse of discretion in the circuit court's decision to deny Seltzer's motion to alter or amend or for a new trial, we affirm.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.