SUMMARY
November 3, 2022

2022COA129

No. 21CA1241, *Home Improvement, Inc. v. Villar* — Civil Procedure — Process — Service by Mail — Service by Publication — Address — Last Known Address

A division of the court of appeals defines for the first time "address" and "last known address" as those terms are used for purposes of service of process by mail or publication.

COLORADO COURT OF APPEALS

Court of Appeals No. 21CA1241
Adams County District Court No. 19CV31524
Honorable Kyle Seedorf, Judge

Home Improvement, Inc. and Pauline W. O'Neil Intervivos Trust, dated 5-24-1967 and amended 7-3-2002, a Colorado trust, owner,

Plaintiffs-Appellees,

v.

Jose Villar,

Defendant-Appellant.

ORDERS REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division III
Opinion by JUDGE TOW
Fox and Yun, JJ., concur

Announced November 3, 2022

Stephan Johnson, Authorized Representative, Denver, Colorado, of Home Improvement, Inc.

Webb Law Group, LLC, Joseph G. Webb, Denver, Colorado, for Plaintiff-Appellee Pauline W. O'Neil Intervivos Trust

RVM Law, LLC, Rolf von Merveldt, Denver, Colorado, for Defendant-Appellant

¶ 1 Defendant, Jose Villar, appeals the district court's order denying, in part, his motion, pursuant to C.R.C.P. 60(b), to set aside the in rem default judgment and subsequent foreclosure sale of his residence and the order granting possession of the residence to plaintiff Pauline W. O'Neil Intervivos Trust (Trust). This appeal requires us to define, apparently for the first time, the terms "address" and "last known address" for purposes of service of process by mail or publication. In doing so, we conclude that plaintiff Home Improvement, Inc. failed to use Villar's last known address when attempting to obtain service. Thus, we reverse the orders and remand for further proceedings.[1]

I. Background

¶ 2 Villar contracted with Home Improvement for repair work to the residence on his property. As provided in the contract, Home Improvement worked with Villar's insurance company to determine the scope of work. After some delays, Home Improvement told Villar that it had completed the repairs. Home Improvement then

---

[1] At the conclusion of his opening brief, Villar requested oral argument. This request is denied as having been inappropriately filed. *See* C.A.R. 34(a) ("A request for oral argument must be made in a separate document entitled 'request for oral argument.'").

requested that Villar's insurance company send Villar the last insurance check to his post office box (P.O. box). Home Improvement told Villar's wife that it had learned from the insurance company that a check had been mailed to Villar's P.O. box. Villar's wife later told Home Improvement that they had not checked the P.O. box for three weeks and had not gotten the check. Home Improvement then tried multiple times to collect the outstanding amount owed to it — $5,374.69.[2]

¶ 3 In April 2019, Home Improvement texted Villar's wife a screenshot of a notice of intent to file a mechanic's lien, and Villar's wife responded, "I see there was a lien on the house." In June 2019, when the Villars still had not paid, Home Improvement sent Villar the notice of intent to file the mechanic's lien via certified mail to the property. Although the notice was sent "return receipt requested," it was returned as undeliverable, with a handwritten notation on the envelope saying, "UAA P[.]O. Box."[3] In addition to

---

[2] This total included the amount of the final insurance check and Villar's $2,000 deductible.

[3] The record does not reflect whether the notation was added by a postal service worker, Villar, or someone else.

mailing the notice, Home Improvement again texted it, along with a letter from its counsel, to Villar's wife.

¶ 4 Several months later, Home Improvement filed a complaint against Villar, to recover the outstanding balance. A process server unsuccessfully tried to serve Villar five times at the property over nine days. During one of the attempts, the process server saw someone staring out the second-story window, but no one answered the door. On another attempt, the process server heard voices inside the house, but no one answered the door. And on three attempts there were cars parked in the driveway but, again, no one answered the door.

¶ 5 Home Improvement filed a verified motion requesting permission to proceed against the property in rem. Home Improvement requested permission to serve by mail and by publication. The district court authorized service by mail and by publication and provided that service by mail would be complete upon mailing "together with such return receipt attached thereto signed by such addressee." As to service by publication, the order provided that service would be complete on the day of the last publication.

¶ 6 Home Improvement sent a copy of the process via certified mail, return receipt requested, to the property. Again, the mail was returned undeliverable. Home Improvement also published the process in a newspaper in the county in which the action was pending, once a week for five consecutive weeks. Finally, it had the process server attach a copy of the complaint and other process to the front door of the house at the property.

¶ 7 Because Villar never appeared in the case, Home Improvement moved for entry of a default judgment on the mechanic's lien claim, including for its attorney fees and costs, and for a decree of foreclosure. The district court entered both the default judgment and decree of foreclosure.

¶ 8 The sheriff mailed the notice of foreclosure sale to the property. It was returned. The notice of foreclosure sale was also published in a county newspaper for five consecutive weeks. The sheriff auctioned off the property, and the Trust bought it.

¶ 9 After Villar's wife was served with a notice to quit at the property, Villar retained counsel, who moved to set aside the default judgment and foreclosure sale pursuant to C.R.C.P. 60(b)(3) and 60(b)(5). Concluding that Villar's last known address was the

property address, the district court rejected the bulk of Villar's attacks on the judgment. The sole exception was that the court agreed with Villar that, because he had not separately signed the portion of the contract acknowledging the terms and conditions on the reverse side of the contract form, he had not agreed to the attorney fee provision included there. The district court concluded that Home Improvement was thus not entitled to attorney fees and revised that part of the default judgment pursuant to C.R.C.P. 60(b)(5), but it otherwise left the judgment intact.[4]

¶ 10 The district court also consolidated a separate forcible entry and detainer action, brought by the Trust against Villar, with the mechanic's lien case. Then, after a possession hearing, the district court entered an order granting possession of the property to the Trust and dismissing Villar's counterclaims.

II. Analysis

¶ 11 Although Villar asserts several different bases for concluding that the judgment is void, we agree that the district court lacked in

[4] Home Improvement did not appeal the district court's ruling in this regard.

rem jurisdiction due to ineffective service of process and thus restrict our discussion to that claim.

A. Standard of Review

¶ 12 We review de novo matters requiring interpretation of the rules of civil procedure. *Walker Com., Inc. v. Brown*, 2021 COA 60, ¶ 16 (*cert. granted* Jan. 24, 2022). In doing so, "we apply well-settled principles of statutory construction." *Id.* at ¶ 17. We give the words their plain and ordinary meanings, construe them as a whole, and give consistent, harmonious, and sensible effect to all parts of the rule. *Hiner v. Johnson*, 2012 COA 164, ¶ 13. "We also consider the language in its proper context, in addition to 'the reason and necessity of the rule and the objective that it seeks to accomplish,' in order to ascertain the intent of the supreme court in promulgating the rule." *BSLNI, Inc. v. Russ T. Diamonds, Inc.*, 2012 COA 214, ¶ 9 (quoting *Siener v. Zeff*, 194 P.3d 467, 470 (Colo. App. 2008)). And we avoid interpretations that "render any words or phrases superfluous or lead to illogical or absurd results." *Walker*, ¶ 17. "[I]f the language of the rules is clear and unambiguous, we need not look further to determine their meaning." *Crawford v. Melby*, 89 P.3d 451, 453 (Colo. App. 2003).

B. Applicable Law

1. C.R.C.P. 60(b)

¶ 13 C.R.C.P. 60(b) permits a district court to set aside a judgment under certain circumstances. A party seeking relief under Rule 60(b) has the burden of establishing the grounds for relief by "clear, strong, and satisfactory proof." *Sharma v. Vigil*, 967 P.2d 197, 199 (Colo. App. 1998).

¶ 14 C.R.C.P. 60(b)(3) provides an avenue for relief from void judgments. *Murray v. Bum Soo Kim*, 2019 COA 163, ¶ 17. "A void judgment is one rendered without subject matter or personal jurisdiction." *Id.* We review de novo a district court's ruling on a C.R.C.P. 60(b)(3) motion for relief from judgment. *Teran v. Reg'l Transp. Dist.*, 2020 COA 151, ¶ 10.

2. Service Under C.R.C.P. 4(g)

¶ 15 In actions affecting specific property, Rule 4(g) permits service by mail or publication under certain circumstances. A verified motion seeking service by mail or publication must state "the address, or last known address" of the person to be served. C.R.C.P. 4(g). For service by mail, a copy of the process must be sent by registered or certified mail to such address and a signed

return receipt is required before service is complete. C.R.C.P. 4(g)(1). For service by publication, "[w]ithin 14 days after the order the party shall mail a copy of the process to each person whose address or last known address has been stated in the motion and file proof thereof." C.R.C.P. 4(g)(2).

C. Analysis

¶ 16 The Colorado Rules of Civil Procedure do not define "address" or "last known address." To discern the plain and ordinary meaning of a term that is not defined, we may consult recognized dictionaries. *Ybarra v. Greenberg & Sada, P.C.*, 2016 COA 116, ¶¶ 9-10. Merriam-Webster Dictionary defines "last" as "following all the rest" or "most recent." Merriam-Webster Dictionary, https://perma.cc/P7DP-7KTK. It defines "known" as "generally recognized." Merriam-Webster Dictionary, https://perma.cc/B4NA-QBMK. It defines "address" as "a place where a person or organization may be communicated with." Merriam-Webster Dictionary, https://perma.cc/JE2Q-43PS. Black's Law Dictionary defines "address" as "[t]he place where mail or other communication is sent." Black's Law Dictionary 48 (11th ed. 2019).

¶ 17 Given these definitions, "address" is the place at which a party generally recognizes that another party can be communicated with, and "last known address" is the most recent such place. This definition comports with due process. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (notice must be "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").

¶ 18 The district court observed that Home Improvement "was given the [property] address at the outset of the contract, and nowhere in the record does it reflect that [Villar] instructed otherwise."[5] Quoting *Devore v. Industrial Commission*, 129 Colo. 10, 13, 266 P.2d 774, 775 (1954), the district court concluded that "it was not only reasonable but natural for [Home Improvement] to infer that [Villar's] 'address is the place of his domicile and residence' and for

[5] The contract identified the property address under "address," and it listed the job location as "same." Contrary to the district court's conclusion, Villar was not obligated to tell Home Improvement to use the P.O. box for legal matters because by the time that would have been necessary, Home Improvement was already aware of the P.O. box and aware that mail would not be delivered to the property.

purposes of receiving mail or notice, his address in the contract 'is the designation of the place where delivery is desired.'" The court further noted that the mere fact that Home Improvement was aware that Villar *also* used a P.O. box did not make use of the property address improper.[6]

¶ 19 The court's conclusion, while accurate to a point, ignores a significant change in circumstance: in July 2019, the notice of intent to file the mechanic's lien was returned to Home Improvement "not deliverable as addressed." At this point, Home Improvement's inference that the property address was an appropriate address to use for mailing ceased to be "natural" or "reasonable." Home Improvement became aware that mail would not be delivered to the property address but could be delivered to Villar's P.O. box.[7] In other words, the property address ceased to be a "known" address, while the P.O. box remained one; indeed, it became the only — and thus last — known address.

---

[6] For these reasons, we reject Villar's contention that the initial notice of intent to file the mechanic's lien, mailed to the property, was improper.

[7] Significantly, the record reflects that, at least as of March 2019, Home Improvement was aware of Villar's P.O. box number.

¶ 20 Although the district court found, with record support, that Villar had actual notice of the lien, this is not a substitute for proper service. *See Weber v. Williams*, 137 Colo. 269, 277, 324 P.2d 365, 369 (1958) ("[W]e find no authority holding that knowledge of the pendency of an action can be substituted for service of process. Courts acquire jurisdiction in actions in rem . . . by lawful service of lawful process or by voluntary appearance.").[8]

¶ 21 Because neither the service by mail nor the service by publication used Villar's P.O. box (i.e., his last known address), the district court never obtained in rem jurisdiction over the property. Without jurisdiction, the judgment is void. And, of course, in the absence of a judgment, the foreclosure and any resulting orders cannot stand. *See C & C Invs., LP v. Hummel*, 2022 COA 42, ¶ 51 (concluding that the trial court did not have adequate jurisdiction,

---

[8] The record reflects that a copy of the complaint and other process (but not notice of the foreclosure sale) was posted on the door of the residence. Notwithstanding this evidence, however, the district court made no finding that Villar had actual notice of the lawsuit. And Home Improvement does not argue that Villar had such knowledge and thereby waived any challenge to personal jurisdiction based on insufficiency of service of process. *See Garcia v. Puerto Vallarta Sports Bar, LLC*, 2022 COA 17, ¶ 28.

and the default judgment and resulting sheriff's sale and confirmation deed were void and properly vacated).

III. Disposition

¶ 22 The order denying the motion to set aside the default judgment and the order of possession are reversed. The case is remanded for further proceedings consistent with this opinion.

JUDGE FOX and JUDGE YUN concur.