

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2011-000050-001 DT

05/19/2011

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT

T. Melius

Deputy

STATE OF ARIZONA

CARON L CLOSE

v.

STACY M R FREEMAN (001)

MICHAEL KIELSKY

REMAND DESK-LCA-CCC

SCOTTSDALE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

**Lower Court Case No.: PR2009021309**

Defendant-Appellant Stacy M. R. Freeman (Defendant) was convicted in Scottsdale Municipal Court of driving at an unreasonable and imprudent speed. Defendant contends she was not properly served with process. For the reasons stated below, this Court vacates the judgment and sentence imposed.

**I. FACTUAL BACKGROUND.**

On June 29, 2009, a photo radar installment captured the speed of a vehicle driven by Defendant traveling 56 mph in a zone marked 45 mph, a violation of A.R.S. § 28-701(A) (speed not reasonable and prudent). After Defendant failed to appear for the August 21, 2009, hearing, the State was directed to effectuate personal service. In the Certificate of Service, the process server declared that he served a female at Defendant's residence who refused to give her true name. Once again, Defendant failed to appear for the scheduled hearing. Accordingly, the trial court entered a default judgment against Defendant. On September 1, 2010, Defendant filed a Motion To See Judge, which the trial court deemed a Motion To Set Aside Default Judgment. The trial court set the matter for a determination hearing, which was held on September 24, 2010. In this hearing, the trial court found that, although Defendant had not lived at the residence since June 2008, and did not receive notice of the Complaint and Summons, service was proper because Defendant failed to update her address with the Motor Vehicle Division ("MVD").<sup>1</sup> On October 8, 2010, Defendant filed a timely notice of appeal.

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<sup>1</sup> Audio recording of the September 24, 2010, determination hearing, 9:09-31.

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II. ISSUE: DID THE TRIAL COURT ACQUIRE PERSONAL JURISDICTION OVER DEFENDANT WHEN DEFENDANT DID NOT HAVE NOTICE OF THE COMPLAINT AND SUMMONS.

In the present case, the trial court specifically found that Defendant did not have notice of the proceedings against her. However, the trial court held that, because Defendant failed to update her address with the MVD, it would deny Defendant's Motion To Set Aside Default Judgment. The purpose of process is to give the party actual notice of the proceedings against her and that she is answerable to the claim of the plaintiff/State. *Scott v. G.A.C. Finance Corp.*, 107 Ariz. 304, 305, 486 P.2d 786, 787 (1971). Defendant had no notice of the Complaint and Summons. Accordingly, service was not proper. If a defendant is not properly served with process, any resulting judgment is void and must be vacated upon request. *Hilgeman v. American Mortgage Securities, Inc.*, 196 Ariz. 215, 994 P.2d 1030, ¶ 8 (Ct. App. 2000). A court does not acquire personal jurisdiction over a person who is not properly served with the summons and complaint, and any resulting default judgment is void. *Sprang v. Petersen Lumber, Inc.*, 165 Ariz. 257, 262, 789 P.2d 395, 400 (Ct. App. 1990); *Martin v. Martin*, 182 Ariz. 11, 15, 893 P.2d 11, 15 (Ct. App. 1994). When a judgment is void the court has no discretion and must vacate the judgment. *Martin*, 182 Ariz. at 14, 893 P.2d at 14. See also *Barlage v. Valentine*, 210 Ariz. 270, 272, 110 P.3d 371, 373 (App. 2005). Rule 4(1)(d), Ariz. R. Civ. P. provides as follows:

Service of Summons Upon Individuals. Service upon an individual from whom a waiver has not been obtained and filed, other than those specified in paragraphs (e), (f) and (g) of this Rule 4.1, shall be effected by delivering a copy of the summons and of the pleading to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the pleading to an agent authorized by appointment or by law to receive service of process.

The record shows the residence where service was made was not Defendant's dwelling house or usual place of abode. Had the State been authorized for alternative service of process, then serving Defendant by mailing a copy of the Complaint and Summon to her last known address likely would have been valid. Rule 4(1)(m), Ariz. R. Civ. P., provides as follows:

Alternative or Substituted Service. If service by one of the means set forth in the preceding paragraphs of this Rule 4.1 proves impracticable, then service may be accomplished in such manner, other than by publication, as the court, upon motion and without notice, may direct. Whenever the court allows an alternate or substitute form of service pursuant to this subpart, reasonable efforts shall be undertaken by the party making service to assure that actual notice of the commencement of the action is provided to the person to be served and, in any event, the summons and the pleading to be served, as well as any order of the court authorizing an alternative method of service, shall be mailed to the last known business or residence address of the person to be served. Service by pub-

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lication may be employed only under the circumstances, and in accordance with the procedures, specified in Rules 4.1(n), 4.1(o), 4.2(f) and 4.2(g) of these Rules.

In the instant matter, the State did serve Defendant through an alternative method.

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court did not acquire personal jurisdiction over Defendant, for she was not properly served with the Summons and Complaint.

**IT IS THEREFORE ORDERED** vacating the judgment and sentence of the Scottsdale Municipal Court.

**IT IS FURTHER ORDERED** remanding this matter to the Scottsdale Municipal Court for all further proceedings consistent with this ruling.

**IT IS FURTHER ORDERED** signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen  
THE HON. CRANE MCCLENNEN  
JUDGE OF THE SUPERIOR COURT

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