

2018 IL App (1st) 162684-U

No. 1-16-2684

Order filed March 30, 2018

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

Fifth Division

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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BILLY NATHAN,

Plaintiff-Appellee,

v.

MICHAEL BITOY,

Defendant-Appellant.

) Appeal from the  
) Circuit Court of  
) Cook County.  
)  
) No. 2016 M1 711669  
)  
) Honorable  
) Edward N. Robles,  
) Judge, presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

**ORDER**

¶ 1 *HELD:* Where defendant failed to provide a transcript from the evidentiary hearing on his motion to quash service of process, we must presume the trial court properly found the requisite statute was satisfied thereby establishing effective service and personal jurisdiction.

¶ 2 Defendant, Michael Bitoy, appeals the order of the trial court denying his motion to quash service of process in the underlying forcible entry and detainer action. Defendant contends

the trial court erred in denying his motion to quash service of process, and proceeding with the forcible entry and detainer claim, where service was not effectuated because the special process server was not a licensed private detective in accordance with the applicable statute. Based on the following, we affirm.

¶ 3

### FACTS

¶ 4 On July 7, 2016, plaintiff, Billy Nathan, filed a complaint for forcible entry and detainer against defendant seeking possession of the property located on West 47th Street in Chicago, Illinois. The complaint alleged defendant<sup>1</sup> unlawfully withheld possession of the subject property from plaintiff. Plaintiff requested possession of the property, along with \$2,000 in rent from July 1, 2016.

¶ 5 The clerk of the circuit court issued an eviction summons for “sheriff service.” On July 13, 2016, the sheriff returned an affidavit of service indicating that defendant was not served because of “no contact.” An alias summons was issued on July 22, 2016.

¶ 6 On the same date, July 22, 2016, plaintiff filed a motion requesting that service of process be made by: “Randy Marcus 102-000232.” Marcus’ address was listed and he was designated as “self-employed.” The form motion included language that Marcus was “a person over 18 years of age and not a party to this action.” No affidavit was filed in support of the motion. The trial court granted the motion and entered an order on July 22, 2016, appointing Marcus “to make service of process.” Three days later, on July 25, 2016, Marcus filed an “Affidavit of Special Process Server” attesting that he served defendant by leaving a copy of the summons and the

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<sup>1</sup>The complaint, and a number of plaintiff’s pleadings, listed defendant’s name as “Michael Bitox.” Defendant’s pleadings, however, spell his surname as “Bitoy.”

complaint with him on July 24, 2016, at the subject property. Marcus listed his license number as “102-000232” on the affidavit.

¶ 7 Defendant filed an appearance, an affidavit, and a motion to quash service of process on August 4, 2016. Then, on August 8, 2016, defendant filed an amended motion to quash the purported service of process, arguing that he was not served with process at the subject property on the alleged service date. Defendant additionally argued that the special process server appointed by the court was not legally authorized to serve process where he did not hold the license listed on plaintiff’s motion requesting Marcus’ appointment. To his amended motion to quash service, defendant attached the results of a license search on the Illinois Department of Financial and Professional Regulation’s website showing no records for “Randy Marcus” and a “corporation file detail report” by the Illinois Secretary of State showing the listed license was assigned to Fidelity Investigative Training Academy, Ltd. (Fidelity). Fidelity was listed as a dissolved corporation as of May 8, 2015. Plaintiff filed a response to defendant’s amended motion to quash. In his response, plaintiff argued, *inter alia*, that service of process was proper because Marcus was 18 years of age and not a party to the proceedings. Following an evidentiary hearing, on August 12, 2016, the trial court entered a written order denying defendant’s amended motion to quash service of process and finding defendant was served on July 24, 2016. No transcript from the hearing appears in the record.

¶ 8 Thereafter, on September 7, 2016, the trial court entered an order for possession in favor of plaintiff and against defendant. The September 7, 2016 order also awarded plaintiff \$6,000 in costs.

¶ 9 This appeal followed.

¶ 10

ANALYSIS

¶ 11 Defendant does not challenge the fact that he received a summons and had notice of the underlying proceedings. Instead, defendant contends his amended motion to quash service of process should have been granted where the special process server appointed by the trial court lacked the requisite statutory license thereby rendering the service defective. Because personal jurisdiction was not properly established, defendant contends the judgment entered against him dispossessing him of the subject property was void.

¶ 12 We note that plaintiff has not filed an appellee brief in this matter. We, however, will address the merits of this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 13 In order to enter a valid judgment, a court must have personal jurisdiction over the parties. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. A judgment entered by a court without jurisdiction over the parties is void and subject to attack at any time. *Id.* This court has provided the applicable standard of review:

“because the trial court in this case held an evidentiary hearing on the issue of personal jurisdiction and made factual findings, we will review any of its relevant factual findings deferentially under the manifest weight of the evidence standard. However, the trial court’s legal conclusions—including its conclusions regarding the legal effect of its own factual findings and its ultimate resolution of the issue of personal jurisdiction—will be reviewed *de novo*.” *Madison Miracle Productions, LLC v. MGM Distribution Co.*, 2012 IL App (1st) 112334, ¶ 39.

¶ 14 Personal jurisdiction may be established either by a party's voluntary submission to the court's jurisdiction or by service of process in compliance with the statutory requirements. *Id.*

¶ 18. Section 2-202 of the Code of Civil Procedure (Code) (735 ILCS 5/2-202 (West 2016)) governs who may serve process in Illinois. Subsection (a) of the statute provides that “[p]rocess shall be served by a sheriff.” 735 ILCS 5/2-202(a) (West 2016). In the alternative, a licensed or registered private detective is authorized to serve process without court appointment in counties with populations of less than two million. 735 ILCS 5/2-202(a) (West 2016). However, in counties such as Cook County, with a population of more than two million, subsection (a-5) provides:

“[u]pon motion and in its discretion, the court may appoint as a special process server a private detective agency certified under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004. Under the appointment, any employee of the private detective agency who is registered under that Act may serve the process. The motion and the order of appointment must contain the number of the certificate issued to the private detective agency by the Department of Professional Regulation \*\*\*.” 735 ILCS 5/2-202(a-5) (West 2016).

In addition, subsection (a) provides that “[t]he court may, in its discretion upon motion, order service to be made by a private person over 18 years of age and not a party to the action.” 735 ILCS 5/2-202(a) (West 2016).

¶ 15 Defendant argues that Marcus was not legally authorized to serve process as a special process server because he was not a licensed private detective or an employee of a licensed private detective agency. Defendant explains that the license number listed on the motion

requesting service of process and the affidavit attesting that service had been completed provided a number linked to an unrelated entity not qualified as a private detective agency.

¶ 16 The law compels strict compliance with the statutes governing the service of process before a court will acquire personal jurisdiction over the person served. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 109 (2002). Defects in the service of process are neither technical nor insubstantial. *West Suburban Bank v. Advantage Financial Partners, LLC*, 2014 IL App (2d) 121146, ¶ 20.

¶ 17 As stated, plaintiff submitted a motion requesting service of process by Marcus, who was self-employed, with the number “102-000232” next to his name. The motion was granted and Marcus was appointed to make service of process. Records from the Illinois Secretary of State and the Illinois Department of Financial and Professional Regulation, however, established that Marcus was not a registered employee of a private detective agency. The license number listed on the motion and the affidavit establishing service was not linked to a registered private detective agency. *Vulcan Materials Co. v. Bee Construction*, 96 Ill. 2d 159, 166 (1983) (courts may take judicial notice of facts proved by “immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy”). Notwithstanding, the motion appointing Marcus to serve process included form language that he was “a person over 18 years of age and not a party to this action.” In addition, the motion listed Marcus as “self-employed.” It did not connect Marcus to a detective agency. Section 2-202(a) of the Code provides that “[t]he court may, in its discretion upon motion, order service to be made by a private person over 18 years of age and not a party to the action.” 735 ILCS 5/2-202(a) (West 2016).

¶ 18 Defendant challenges the trial court's finding that service was properly effectuated; however, he failed to provide a transcript from the evidentiary hearing on his amended motion to quash service. The law is clear that it was defendant's burden, as the appellant, to provide a sufficiently complete record, and, in the absence of such a record, this court presumes the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Without a transcript from the evidentiary hearing, we cannot know what transpired. We cannot know whether the trial court clarified that its appointment of Marcus to serve process was based on his eligibility as an 18-year-old disinterested party. Without a sufficient record, we must presume the trial court properly applied the requisite statute. *Id.* We, therefore, must presume service of process was properly effectuated on defendant and personal jurisdiction over him was established.

¶ 19 In sum, we conclude the trial court did not err in denying defendant's motion to quash service of process.

¶ 20 CONCLUSION

¶ 21 We affirm the judgment of the trial court.

¶ 22 Affirmed.