

Landrum v. Verg Enters., LLC

State Court of Georgia, Fulton County

September 24, 2024, Decided; September 24, 2024, Filed

NO. 24EV002714

Reporter

2024 Ga. State LEXIS 4558 *

MORGAN LANDRUM, Plaintiff, v. VERG ENTERPRISES, LLC and STEVEN GRAHAM, Defendants.

Judges: [*1] Diane E. Bessen, Judge, State Court of Fulton County.

Opinion by: Diane E. Bessen

Opinion

**ORDER ON MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION TO OPEN
DEFAULT**

The above-styled case concerns injuries allegedly sustained in an automobile collision on January 13, 2023. The defendants are Verg Enterprises, LLC and its principal officer Steven Graham, who was driving the car that struck Plaintiff's car.

On May 28, 2024 the Court granted Plaintiff's motion for service by publication, finding that neither defendant could be located in the State, and that service upon the Mayor of the District of Columbia, where the corporate defendant is located, was disallowed. These findings were based on the following:

Party	Date	Address	Proof
Verg	10/04/2023	230 Trowbridge Rd, Atlanta, GA 30350 ("no service, no callbacks")	No return attached, but testified to in affidavit
Verg	10/20/2023	Certified mail service attempted. Letter never delivered.	No return attached, but testified to in affidavit
Verg	01/17/2024	6811 Ashley's Crossing Ct, Temple Hills, MD 20748	No return attached, but testified to in affidavit
Graham	04/04/2024	210 Brinkley Rd, Temple Hills, MD 20748	Return attached but not testified to in affidavit
Graham	04/05/2024	811 Ashley's [*2] Crossing Ct. Temple Hills, MD	

Party	Date	Address	Proof
		20748	Return attached but not testified to in affidavit
Verg	04/11/2024	30 Trowbridge Rd, Atlanta, GA 303350	Return attached but not testified to in affidavit
Verg	04/23/2024	100 4th St SW, Washington DC, 20024	Return attached and testified to in affidavit

Further review shows that contrary to the Court's understanding when it ruled on the motion for service by publication, all of these service efforts took place in a prior-filed case, *Landrum v. Verge Enterprises, LLC and Steven Graham*, CAFN 23EV005880. The Court can find no personal service efforts made in the instant case.

Defendants have moved to open the default or to dismiss for want of prosecution, arguing that Plaintiff's service efforts were insufficient to support the grant of the motion for publication. Like the Court, Defendants based their motion on returns filed in this case, but which were for the prior case. In the alternative Defendants move to dismiss the case for lack of service.

Upon review the Court finds that the order for publication was issued in error. A court is obligated to determine whether a party has exercised proper diligence in the case wherein he wishes to publish. [Hobbs v. Arthur, 264 Ga. 359, 360-01 \(1994\)](#) ("procedural prerequisites [*3] of filing the renewed complaint and service of process must be met anew [and] diligence in perfecting service of process in an action properly refiled under [OCGA § 9-2-61\(a\)](#) must be measured from the time of filing the renewed suit"). After all, service must be calculated to apprise a defendant of the claims in the case in which he is served, not of claims raised in a prior matter. For published service in particular, our Supreme Court has pointed out that

regardless of whether a proceeding is in rem or in personam, due process requires that a chosen method of service be reasonably certain to give actual notice of the pendency of a proceeding to those parties whose liberty or property interests may be adversely affected by the proceeding. The Court observed further that [b]ecause notice by publication is a notoriously unreliable means of actually informing interested parties about pending suits, the constitutional prerequisite for allowing such service when the addresses of those parties are unknown is a showing that reasonable diligence has been exercised in attempting to ascertain their whereabouts.

[Floyd v. Gore, 251 Ga. App. 803, 805 \(2001\)](#) (citations and punctuation omitted). Accordingly, because the Court misapprehended the context of [*4] the service efforts, the order granting Plaintiff's motion for publication was entered in error and is hereby VACATED.

Defendants' motion to open default is GRANTED. No showing under [OCGA § 9-11-55](#) is required, as service in this case did not properly occur.

The Court DENIES Defendants' motion to dismiss. Plaintiff was travelling under the misapprehension that the Court's order for publication was appropriate and reasonably ceased service efforts. Plaintiff is

ORDERED to commence service efforts anew in the instant case. Defendants may move again to dismiss the case should Plaintiff fail to exercise proper diligence.

This 24th day of September, 2024.

/s/ Diane E. Bessen

Judge Diane E. Bessen

State Court of Fulton County

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