

COA Opinion: “When notice is a person’s due, process which is a mere gesture is not due process”; such requires diligent inquiry to ascertain the correct address

17. August 2011 By Gaetan Gerville-Reache

In *Bullington v. Corbell*, No. 297665, the Court of Appeals vacated the default judgment against various defendants and remanded for further proceedings because service of process was insufficient to inform defendants that they had been sued. Citing a series of procedural defects in plaintiff’s service methods at the wrong address, lack of knowledge by defendants that they had been sued, a failure by plaintiff to show he could not ascertain the correct address, and the existence of meritorious defenses, the Court ruled that the trial court abused its discretion in refusing to set aside the default judgment under MCR 2.612.

Bullington filed a complaint in late 2009 against various defendants alleging he had suffered serious injuries when he exited the rear door of his rental home and fell from a staircase that defendant owners had allowed to fall into disrepair. After plaintiff attempted service via certified mail to a W. Pemberton address and by tacking the complaint to the door, the trial court entered a default judgment against defendants. When defendants appeared the next month to set aside the judgment, the trial court denied their motion for lack of a meritorious defense.

According to the Court of Appeals, the record in this case was in as much disrepair as the staircase, with essential documents missing, such as the summonses issued to the defendants. Nonetheless, the Court was able to determine that the failure of plaintiffs to use proper methods for service of process and the failure of the trial court to require plaintiff to show that he could not ascertain the correct address before authorizing substitute service, resulted in a complete failure to put defendants on notice that they had been sued.

The Court further noted that if plaintiff had conducted the requisite “diligent inquiry to ascertain” the defendants’ address, even the inadequate record on appeal revealed that plaintiff would have discovered defendants’ correct address on Telegraph Road on the Department of Labor and Economic Growth’s public website, or on the lease agreement which plaintiff signed, or on the various City of Livonia documents regarding code violations.

Finally, the Court held that defendants did satisfy the meritorious defense requirement for setting aside a default judgment under MCR 2.612(B). As the trial court itself observed, photographs showed that the staircase appeared to be propped up, potentially offering an “open and obvious” defense. Corbell denied ownership, another meritorious defense. And defendants averred that the door to the staircase had been blocked to prevent its use.