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Opinion No. 01-148

Service of Process/right of process server/ refusal of service

QUESTIONS

1. Does the sheriff or civil process server have the right to enter upon private property to serve any legal writ or process?
2. Does a citizen or person of the State of Tennessee have the right to refuse legal service of process?

OPINIONS

1. Yes, the process server can go to the dwelling house or usual place of abode of the intended recipient of the summons, as mandated in Tenn. R. Civ. P. 4.04. The process server has no right to enter the dwelling itself or the abode itself, absent consent. Of course, if the legal writ in question is a lawfully issued search warrant, then the search can be made, pursuant to the warrant, without consent.
2. No. A citizen or person has no right to refuse legal service of process. Service is considered accomplished in spite of the individual's refusal to accept it as long as the statutory method of making personal service is pursued by the server. This opinion addresses these issues within the scope of civil procedure, not criminal procedure.

ANALYSIS

Tenn. R. Civ. P. 4.04 provides in pertinent part:

The plaintiff shall furnish the person making the service with such copies of the summons and complaint as are necessary. Service shall be made as follows:

- (1) Upon an individual other than an unmarried infant or an incompetent person, by delivering a copy of the

summons and of the complaint to the individual personally, or if he or she evades or attempts to evade service, by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, whose name shall appear on the proof of service, or by delivering the copies to an agent authorized by appointment or by law to receive service on behalf of the individual served.

The statutory method of making personal service is mandatory and must be strictly pursued. *O.H. May Co. v. Gutman's, Inc.*, 1925 WL 1930, 2 Tenn. App. 43 (Tenn. Ct. App. 1925). Service of process of a complaint and summons does not entail entry into the dwelling or usual abode, absent consent of the owner/occupant. *See* Tenn. R. Civ. P. 4.04. Specific statutes may prescribe other means or methods of service for other types of judicial action, *e.g.* Tenn. Code Ann. § 29-18-115 (service of summons in forcible entry and detainer cases). Whenever a special statute dealing with a particular type of judicial action contains specific provisions for process and service, that method, in lieu of the general provisions of Rule 4, is permissible and may be followed. *Tennessee State Bd. of Ed. v. Cobb*, 557 S.W.2d 276 (Tenn. 1977). If the "legal writ" involved is a search warrant in a criminal case, any premises described in the warrant can be entered and searched.

There is no right to refuse service of process. "The avoidance of authorized service of proper process by a wilful act or refusal to act on the part of the defendant would create an intolerable situation and should not be permitted." *Merriott v. Whitsell*, 476 S.W. 2d 230, 231 (Ark. 1972) (citing *Creadick v. Keller*, 35 Del. 169, 160 A. 909 (1932); *Cherry v. Heffernan*, 132 Fla. 386, 182 So. 427 (1938)). A person cannot prevent a court from obtaining jurisdiction by refusing service of process that is tendered by hand. *Calabrese v. Trujillo*, No. 41786-0-1, 1999 WL 18412 (Wash. Ct. App. Jan. 19, 1999) (copy attached). Where a defendant is in close proximity to a process server under such circumstances that a reasonable person would be convinced that personal service of a summons is being attempted, the service is complete even though the defendant refuses physically to accept the summons. *Nielsen v. Braland*, 264 Minn. 481, 119 N.W.2d 737 (1963). In *Nielsen*, the court noted that the summons had been left in a place easily accessible to the person being served. Under the circumstances, his refusal to pick it up or to accept it did not prevent service from being completed.

When service is effected by certified mail or registered letter as provided by statute, the courts are virtually unanimous in holding that service of process is not defeated by the defendant's refusal to accept a certified or registered letter. *Patel v. Southern Brokers, Ltd.*, 277 S.C. 490, 289 S.E.2d 642 (S.C. 1982).

A person may not deny personal service on the grounds of lack of delivery where the delivery was deliberately prevented by the action of the person

to be served. . . . Where a statute provides for service by registered or certified mail, the addressee cannot assert failure of service when he wilfully disregards a notice of certified mail delivered to his address under circumstances where it can be reasonably inferred that the addressee was aware of the nature of the correspondence.

Hankla v. Governing Board of Roseland Sch. Dist., 46 Cal. App. 3d 644, 120 Cal. Rptr. 827, 834 (Cal. Ct. App. 1975).

Refusal of service of process by a defendant in an action can result in entry of a default judgment against that defendant. *Huffer v. Cicero*, 107 Ohio App. 3d 65, 667 N.E. 2d 1031 (Ohio Ct. App. 1995) (default judgment properly entered against attorney in legal malpractice action who repeatedly refused service of process and ignored mandates of rules of civil procedure, answered untimely and stated no grounds for excusable neglect).

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