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Opinion No. 05-035

Service by Publication of Habitual Motor Vehicle Petition

QUESTION

May service under Tenn. Code Ann. § 55-10-609 of a habitual motor vehicle petition be effected by publication pursuant to Tenn. Code Ann. § 21-1-203 and Tenn. Code Ann. § 21-1-204?

OPINION

No. Service of a habitual motor vehicle petition may not be effected by publication alone. The language of Tenn. Code Ann. § 55-10-609 indicates that service shall be “upon” the defendant. There is no mention that any other method of service is acceptable. Furthermore, Tenn. Code Ann § 21-1-203 and Tenn. Code Ann § 21-1-204 do not apply to circuit court or criminal court. These statutes are for use in chancery court only.

ANALYSIS

The Motor Vehicle Habitual Offenders Act, codified at Tenn. Code Ann. §§ 55-10-601, et seq., requires the department of safety to furnish the district attorney general, in the district where the individual resides or can be found, with records of the accumulated convictions that seem to justify proceedings under this statute against an individual. It is the duty of the district attorney general to file a petition against that individual in the court of general criminal jurisdiction for the county where the individual resides or can be found. Upon filing of the petition, the court shall issue an order directing the individual to appear before the court to show cause why the defendant should not be barred from operating a motor vehicle.

Tenn. Code Ann. § 55-10-609 dictates, “A copy of both the order of the court and of the petition shall be served upon the defendant.” The language of this statute indicates that the service shall be “upon” the defendant. A strict interpretation of this language will not allow for service to be effected in any manner other than personal service.

Tenn. Code Ann. § 21-1-203 lists several exceptions to the requirement of personal service for actions in chancery court, and Tenn. Code Ann. § 21-1-204 specifically outlines how service by publication can be accomplished. Under Tenn. Code Ann. § 21-1-203(a), “Tennessee state law dispenses with personal service in a court of chancery when, among other reasons, the defendant is

a non-resident, he cannot be found, his residence is unknown, or, if the defendant is a domestic corporation, it has ceased to do business and has no officers or agents on whom service may be had.” *Pigrum v. Jordan*, No. 01-1361, 2002 WL 1477204, slip op. at *3 (W.D. Tenn. July 3, 2002) (Todd, J.). However, these statutes by their terms are not applicable over actions in circuit court, including petitions to declare someone a habitual motor vehicle offender. They apply only in chancery court proceedings.

Tenn. Code Ann. § 55-10-609 and the classification of an individual as an habitual motor vehicle offender require a personal judgment against the defendant. “In actions purely personal, [the defendant] is entitled to personal service on himself, or someone standing before the law as his proper representative.” *Id.* The court in *Pigrum* opined that even if Tenn. Code Ann. § 21-1-203 could be applied in circuit court, it would offend due process to authorize entry of a personal judgment against the defendant in a civil action where service was by publication only. Service by publication is especially insufficient to comply with due process when the person’s name and address are known. *Id.*

Service by publication would also be incompatible with Tenn. Code Ann. § 55-10-608(b), which requires the court to set a date not earlier than 30 days after the date of service upon the defendant when the defendant should appear before the court. If service were made by publication, it is unclear what the date of service on the defendant would be. The statute however, clearly contemplates service on a date certain, i.e., the date of personal service.

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