

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-093758

09/19/2022

HONORABLE STEPHEN M. HOPKINS

CLERK OF THE COURT
C. Avena
Deputy

SUN VILLAGE COMMUNITY ASSOCIATION CHARLES B SELLERS

v.

EDWARD K WRIGHT, et al.

EDWARD K WRIGHT
14458 W ZUNI TRL
SURPRISE AZ 85374

BETTIE W WRIGHT
14458 W ZUNI TRL
SURPRISE AZ 85374
JUDGE HOPKINS

MINUTE ENTRY

Plaintiff has requested service by publication. The general rule on service by publication is as follows:

Service by publication should be a last resort, and is limited strictly to cases of necessity. It is ordinarily not permissible where personal service is practicable, such as where the defendant's address is ascertainable, even though personal service is difficult to obtain. Otherwise stated, resort to service by publication is authorized only when personal service cannot be made.

72 C.J.S Process § 81.

Accordingly, before service by publication is even entertained as an option there must be a showing of due diligence. *Sprang v. Petersen Lumber, Inc.*, 165 Ariz. 257, 798 P.2d 395 (App.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-093758

09/19/2022

1990). This requires such “pointed measures” as checking phone records, utility company records, and other “record keepers” to locate a defendant. *Id.*

Plaintiff has failed to demonstrate the requisite due diligence to justify service by publication. As stated by our Court of Appeals in *Ruffino v. Lokosky*, 245 Ariz. 165, 170, 425 P.3d 1108, 1113 (App. 2018):

Even if Ruffino had proven that he made reasonably diligent efforts to obtain Lokosky's address or that Lokosky intentionally avoided service, Rule 4.1(l)(1)(B) and due process impose a requirement that service by publication be the best means practicable to provide notice to the interested party. *Master Fin., Inc. v. Woodburn*, 208 Ariz. 70, 73, ¶ 15, 90 P.3d 1236, 1239 (App. 2004) (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950)). Given our present society, we agree with the superior court that modern methods of communication, especially email, were more likely to give Lokosky notice of a suit than publication in a newspaper distributed in a rural area 70 miles from Lokosky's Scottsdale home. *See Ritchie v. Salvatore Gatto Partners, L.P.*, 223 Ariz. 304, 307, ¶ 8, 222 P.3d 920, 923 (App. 2010) (“It is axiomatic that actual notice via publication is less certain...”); *Marks v. LaBerge*, 146 Ariz. 12, 15, 703 P.2d 559, 562 (App. 1985) (citing *Scott v. G.A.C. Finance Corp.*, 107 Ariz. 304, 486 P.2d 786 (1971)) (the purpose of service is to give the other party actual notice of the proceeding). Under these circumstances, the best means practicable to alert Lokosky of the suit and comply with due process was by alternative service. *See Ariz. R. Civ. P. 4.1(k)(1)*.

Availability of alternative means of service is a factor a court must consider when determining if publication was the best means practicable, and a plaintiff serving by publication should be prepared to explain why alternative service would be impracticable. Here, however, Ruffino did not move for leave to serve Lokosky by electronic means, *see Ariz. R. Civ. P. 5(c)(2)(D)*, and, on appeal, he makes no argument that service by publication was in fact the best means to reach Lokosky. In addition, Ruffino did not mail a copy of the summons and complaint to the Hartford address on the date of publication, *see Ariz. R. Civ. P. 4.1(l)(3)*, which is further evidence he did not make a serious effort to apprise Lokosky of the suit before seeking and obtaining a default judgment.

As *Ruffino* requires, “when more practicable channels of communication are available, we hold a serving party should first use those channels to attempt to confirm the other party's address, *or move for alternative service, before service by publication can be considered* the best means practicable under the rule.” *Id.* (emphasis added).

Here, Plaintiff is apparently attempting to serve “known, immediate heirs.” The Court has no idea who meets that criteria in Plaintiff’s view and who, exactly, Plaintiff proposes to

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-093758

09/19/2022

serve via publication. Moreover, if Plaintiff locates and serves the proper heirs or devisees of the decedents there are no "Unknown Heirs and Devisees."

IT IS THEREFORE ORDERED denying the request for service by publication.