

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2024-000143-001 DT

05/27/2025

HONORABLE JULIE A. LAFAVE

CLERK OF THE COURT
J. Eaton
Deputy

PALM VALLEY COMMUNITY ASSOCIATION TREVOR L ASH

v.

CYNTHIA A MCALISTER (001)
MARK A MCALISTER (001)

WILLIAM R RICHARDSON

COMM. LAFAVE
REMAND DESK-LCA-CCC
WHITE TANK JUSTICE COURT

RULING

White Tank Justice Court Case No: CC2015095536RC

On May 15, 2024, this Court entered its Record Appeal Ruling (“Ruling 1”) vacating the default judgment entered by the trial court on the grounds that Appellant Mark A. McAlister was not properly served under Arizona Rules of Civil Procedure 4.1¹. This Court erroneously applied the most current version of Rule 4.1, Arizona Rules of Civil Procedure and determined that service by publication was improper because Appellee Palm Valley Community Association did not first seek leave from the trial court prior to service via publication. *See* Ruling 1.

On May 24, 2024, Palm Valley filed its Motion for Reconsideration. It argued that the version of Rule 4.1 in effect at the time of the litigation (2015-2016) (“old version”) did not require leave from the court prior to service by publication, only an affidavit of same subsequent to that action. *See* Motion for Rehearing. On June 11, 2024, McAlister filed his Response, arguing that even application of the 2016 version of Rule 4.1 would not lead to proper service under governing law, specifically *Ruffino v. Lokosky*, 245 Ariz. 165 (App. 2018); *rev. denied* (Dec. 13, 2018). *See* Appellant’s Response to Motion for Rehearing/Reconsideration.

¹ All reference to Rule 4.1 are to this rule.
Docket Code 513

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On June 21, 2024, this Court granted the Motion for Reconsideration and, applying the old version of Rule 4.1, found that service was proper and that the trial court had properly denied the Motion to Set Aside Default. *See* Motion to Reconsider granted, June 21, 2024 (“Ruling 2”). Ruling 2 noted that under the old version, even if service by publication was proper without first seeking leave, a Plaintiff was required to mail a copy of the summons and complaint to the last known address unless “the residence of the party being served is unknown, and for that reason no mailing was made, the affidavit shall so state”. *See* Ruling 2. However, Ruling 2 did not address whether that requirement had been met by Palm Valley. Ruling 2 also declined to consider *Ruffino* as it was issued after the pending litigation was filed. *Id.*

McAlister filed a Special Action to the Arizona Court of Appeals. The Court of Appeals issued its Mandate on December 24, 2024, and remanded the matter to this Court on February 6, 2025.² The Court of Appeals took no position on the merits of the questions presented in *Ruffino* but found this Court erred in refusing to consider it. The Court of Appeals directed this Court to consider whether service was proper under the standards set by *Ruffino*.

On remand, this Court has reviewed *Ruffino* and the record on appeal. The Complaint was filed on May 26, 2025. Attached to same was Exhibit “A” which contained ledgers of the alleged debt and indicated as of October 13, 2013, at least, Palm Valley believed McAlister resided at a house on Windsor.³ *See* Complaint. The Summons, however, listed his mailing address as El Nido. *See* Summons, dated May 28, 2015.

On September 8, 2015, Palm Valley sought an extension of time to serve McAlister. *See* Rule 113(i) Motion for Extension of Service Deadlines. Palm Valley supported the request by stating that McAlister was “unknown” at the El Nido address and that a skip trace to find other possible addresses had not been successful. *Id.* It argued it was evaluating the possibility of serving McAlister via publication. *Id.* The trial court granted that extension and ordered McAlister served on or before December 14, 2015. *See* Order Granting Extension of Service of Process Deadline, filed September 14, 2015. The service deadline was extended again when Palm Valley argued it needed until December 5, 2015, to finalize service by publication. *See* Order Granting Extension of Service of Process Deadline filed December 4, 2015.

On December 22, 2015, Palm Valley filed its Notice of Filing Affidavit of Publication for Mark. A. McAlister and Cynthia A. McAlister (“Affidavit”). The affidavit stated only that service was attempted at an address on Hubbell one time. It said no other records were successful

² There was an administrative error in the receipt of the mandate and letter. This Court did not receive notification of same until May 22, 2025, when counsel for the parties contacted the division to inquire about a ruling.

³ For ease of reference, privacy and because the actual physical addresses are immaterial to this review, each address will only be identified by its coordinating street name.

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regarding other addresses from the skip trace. *Id.* The Affidavit neglected to attest that the Summons and Complaint were mailed to the last known address and instead appeared to suggest that mailing requirement was unnecessary as Palm Valley did not have a last known address for McAlister. On February 22, 2016, the Entry of Default was filed. On July 12, 2016, the Default Judgment was entered in the amount of \$6,241.16.

On November 3, 2023, McAlister filed his Motion to Set Aside Default and Default Judgment. (“Motion”) He argued that not only had Palm Valley not mailed the Summons and Complaint to his last known address pursuant to Rule 4.1(k)(2), but also that it made no reasonable efforts under Rule 4.1(l)(1) to effect personal service. The Motion alleged the following: Palm Valley knew McAlister had moved from Hubbel in September 2008. *Id.* at 5:3-5. In 2010, Palm Valley secured and recorded a judgment against him and filed an information sheet avowing it knew McAlister lived at the Windsor address. *Id.* at 5:5-7. McAlister also noted that he had a family court matter in 2015 which a cursory review would have shown him listed with an address on Palm Lane. *Id.* at 5:8-13.⁴ He noted Palm Valley tried to serve him only once and at the Hubbell address; seven years after he lived there and many years after he lived at addresses known to Palm Valley. *Id.* at 5:13-14.

Attached to the Motion was a Declaration of McAlister listing his addresses as follows:

2002-June 2006	Windsor
June 2006-September 2008	Hubbell
September 2008-2010	Windsor
2010-approx. November 2013	El Nido
Approx. November 2013-2016	Palm Lane

As proof of Palm Valley’s knowledge of McAlister’s residences during the time periods in his Declaration, he also attached documents that included a Judgment entered against him in CC2009-408660 in which Palm Valley was the Plaintiff (represented by the same law firm) listing his last known address on Windsor. *See* Information Sheet. He provided his change of address from his family court documents dated November 25, 2013, which indicated he had moved from El Nido to Palm Lane. *Id.* He also attached the information sheet filed with the Judgment entered in this case on December 7, 2016. Palm Valley had listed McAlister’s address as the Palm Lane one for purposes of collection. In essence, McAlister avowed he lived at Palm Lane and Palm Valley knew it.

⁴ This argument is less compelling as while it was a public document easily obtainable, the other information was directly in the possession of Palm Valley.

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In Plaintiff's Response to Defendant Mark A. McAlister's Motion to Set Aside ("Response"), Palm Valley indicated for the first time that it had mailed demand correspondence pre-litigation to the El Nido address. Response at 2:14-19. It did not indicate those mailings were returned. It also stated for the first time that it attempted service at El Nido on June 6, 2015, and was told no one by that name resided there. *Id.* at 2:20-23. Palm Valley next did the skip trace it referenced in its Affidavit and stated the Hubbell, Windsor and Palm Lane addresses were discovered. *Id.* at 3:1-6.

Palm Valley attempted service at Palm Lane five times between June 11, 2015, and June 20, 2015. *Id.* at 3:7-13. Each time, there were vehicles in the driveway and individuals could be seen in the house but did not answer the door. *Id.* Neighbors said one of the residents was named Gage McAlister. *Id.* This was the first time the record indicated any service attempts at the address McAlister avowed was his.

Palm Valley then made one attempt at Hubbell. *Id.* Inexplicably, the only information contained in the Affidavit was that one service attempt was made at Hubbell and that the representation in support of service by publication was not that McAlister was evading service, as it appears he may have been on Palm Lane, but rather that Palm Valley did not know where he was. *Id.*

Palm Valley never left copies of the Summons and Complaint at any of the three addresses it now represented it had attempted to serve, nor did it mail them to the Palm Lane address where it believed McAlister was avoiding service. The trial court denied the Motion without comment. *See* Ruling on Motion December 18, 2023.

These facts are relevant to this Court's review of *Ruffino* and its application to this case. As a threshold matter, the Court notes that because it appears Palm Valley had at least three addresses for McAlister, and it represented as early as December 7, 2015 that Palm Lane was his "last known", it may well be that it failed to comply with the old version of Rule 4.1 by not attempting to mail copies of the Summons and Complaint to that address and instead representing in its Affidavit that it did not have any possible last known addresses. As a matter of law then, service by publication may well have been improper under either version of the Rules.

Palm Valley had no less than three addresses it believed McAlister had been associated with. It was able to confirm he no longer resided at the Hubbell or El Nido addresses. Palm Valley believed McAlister was living at the Palm Lane address. It sent a process server to that home five times. It had reason to believe he was evading service at that address. McAlister admitted he was residing at that address during the time Palm Valley was attempting service. The question under *Ruffino* is whether, in light of these facts, Palm Valley made reasonable efforts at alternative service for McAlister. The Court finds it did not.

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In *Ruffino*, as here, Plaintiff made attempts to serve Defendant at three addresses. *Ruffino*, 245 Ariz. at 167. At the first, Lokosky [Defendant]'s mother said she did not live there. At the second, a tenant stated that Defendant did not live there. *Id.* The third house appeared unoccupied. *Id.* Ruffino sought permission for alternative service by posting the complaint on the doors of the two properties which appeared occupied and mailing a copy of the summons and to those addresses. *Id.* In the alternative, Ruffino sought service by publication. *Id.*

The court denied the motion. It stated only one attempt at each of the occupied locations had been attempted and that was during the holidays. *Id.* Despite the denial, Ruffino made only one more attempt at one address then served via publication. *Id.* Once done, a default judgment was entered. *Id.* Defendant became aware of the judgment and filed a motion to set it aside. *Id.* at 168.

During the evidentiary hearing, the superior court made oral findings of fact as follows:

- (1) the process server did not identify herself to Lokosky's mother when she attempted service at the Hartford address;**
 - (2) the process server left no documentation at the Hartford address regarding the suit;**
 - (3) Lokosky was not evading service;**
 - (4) Ruffino could have communicated with Lokosky about service through several online channels;**
 - (5) Ruffino did not use any of those channels to let Lokosky know of the suit.**
- After the hearing, the court granted Lokosky's motion and vacated the judgment based on insufficient service.**

Id. at 168.

In this case, there is no evidence that the process server tried to identify himself through the door, but the record is clear he was unable to speak to anyone at the Palm Lane address. The process server left no documentation at the Palm Lane address. However, there was evidence in the Response that McAlister may have been evading service.

The subject matter of *Ruffino* involved social media/the internet. Thus, it was important perhaps to note the ease of which communication could have been had using internet capabilities. Here, the record does not contain any references to how the parties communicated with one another or whether Palm Valley had current phone number or email addresses for McAlister. There is no evidence in the record on that issue, so the Court cannot assume, as McAlister requests, that contact via those mediums was the best method simply because most

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people communicate that way these days. That may be a correct general statement, but it is not factually supported in this record.

Under Rule 4.1(l), service by publication may be made “only if” (1) “the serving party, despite reasonably diligent efforts, has been unable to ascertain the person's current address,” or (2) “the person to be served has intentionally avoided service of process,” and (3) “service by publication is the best means practicable in the circumstances for providing the person with notice.” Ariz. R. Civ. P. 4.1(l); see also Ariz. R. Civ. P. 4.1(k)(3) (“A party may serve by publication only if the requirements of Rule 4.1(l) ... are met....”). Further, if the serving party knows the person's address, the serving party must mail the summons and complaint to the person “on or before the date of first publication.” Ariz. R. Civ. P. 4.1(l)(3).

Ruffino, 245 Ariz. at 169.

In its *de novo* review, the three-prong analysis of *Ruffino* here, is slightly different than what was presented to the trial court, although the conclusion is the same. The focus with the trial court was under prong one. Palm Valley argues it made reasonable efforts to locate McAlister, who argued it did not. Palm Valley did establish, although it did not argue this point initially, that under prong two, McAlister appeared to be evading service at the Palm Lane address. In *Ruffino*, the court found the opposite: that *Ruffino* had not established the defendant was evading service as only two attempts at service were made, the process server did not identify herself to defendant's mother who answered the door the first time, and no one answered the second time. “Without more we cannot hold *Lokosky* was evading service under the rule”. *Id.* In this case, there was more.

There were five attempts at service at Palm Lane, an address McAlister admits residing at during the time of the attempted service. There were people in the home each time who it appears refused to come to the door. Neighbors said there was a person with the same last name living there. McAlister later admitted that was his address at the time Palm Valley was attempting service. It would be reasonable to assume McAlister was evading service. This Court finds a *de novo* review of the record provide sufficient evidence Palm Valley would have met prong two had it made that argument in its Affidavit, and did make it in its Response. The Court must then consider whether publication was the best practical means under the circumstances for prong three. Here it was not.

Palm Valley could have posted copies of the Summons on the Palm Lane door. It could have mailed them to McAlister at the Palm Lane address. While *Ruffino* did not make reasonable efforts to find the defendant, the fact McAlister was likely at the Palm Lane address

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suggests serving him by alternative means, at that address, would have been a better means of service than publication:

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. ... 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.

Our holding does not require a party serving by publication to search out every channel possible to communicate with the other party before serving by publication. However, 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. Accordingly, we affirm the superior court order vacating the default judgment as void for lack of service.

Ruffino, 245 Ariz. at 170.

The court has considered the *Ruffino* factors and the old version of Rule 4.1. While *Ruffino* was decided under prong one, and the facts of this case fall more squarely under prong two, the conclusion is the same. Service by publication is not an efficient way to provide notice of litigation. Where possible, other means of alternative service should be attempted. Palm Valley showed no evidence, either in its Affidavit or in its Response to the Motion to Set Aside many years later, that it attempted anything other than personal service and then publication. In order to meet prong three, “service by publication is the best means practicable in the circumstances for providing the person with notice” Rule 4.1, and *Ruffino* require more. Palm Valley’s “jump” from personal service to publication, without some other alternative means, did not establish service was proper.

This Court has now considered the holding of *Ruffino* in light, the old version of Rule 4.1, and the record in this case.

Accordingly,

IT IS ORDERED vacating the Judgment of the White Tanks Justice Court.

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IT IS FURTHER ORDERED remanding this matter to the White Tanks Justice Court.

IT IS FURTHER ORDERED signing this minute entry as a formal order of the Court.

IT IS FURTHER ORDERED that no further matters remain pending between the parties and this ruling constitutes this Court's final decision for purposes of Ariz.R.Civ.P 54(c) and Sup.Ct.R. App. P.-Civil R. 12(d).



THE HON. JULIE A. LAFAVE
Judicial Officer of the Superior Court

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