United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-7184 **September Term, 2019**

FILED ON: MARCH 20, 2020

CONNIE CORNELIA RESHARD, ESQUIRE,
APPELLANT

v.

BARBARA J. STEVENSON,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:18-cv-00775)

Before: GRIFFITH and MILLETT, *Circuit Judges*, and WILLIAMS, *Senior Circuit Judge.*

J U D G M E N T

This case was considered on the record from the United States District Court for the District of Columbia and the briefs of the parties and court-appointed *amici curiae*. The Court has accorded the issues full consideration and has determined that they do not warrant a published opinion. See D.C. Cir. R. 36(d). For the reasons set out below, it is

ORDERED and **ADJUDGED** that the judgment of the District Court be affirmed.

Appellant Connie Reshard makes two claims on appeal: one, that the district court erred when it found that Reshard had not completed service of process on her former landlord, Barbara Stevenson, and two, that the district court abused its discretion when it declined to grant a second extension of time for Reshard to complete service. Neither claim has merit.

We review *de novo* the district court's determination that Reshard failed to complete service of process. *Freedom Watch, Inc. v. Org. of the Petroleum Exporting*

Countries, 766 F.3d 74, 78 (D.C. Cir. 2014). Rule 4 of the Federal Rules of Civil Procedure provides for the service of an individual defendant by "delivering a copy of the summons and of the complaint to the individual personally," or by "delivering a copy of [the summons and complaint] to an agent authorized by appointment or by law to receive service of process." Fed. R. Civ. P. 4(e)(2)(A), (C). Reshard does not assert that Stevenson ever received a copy of the summons and the complaint, and nothing in the record suggests that Stevenson ever did. Moreover, to the extent that Stevenson was a non-resident landlord for whom the Director of the Department of Consumer and Regulatory Affairs would be an agent authorized by law to receive service pursuant to D.C. Code 42-903(b)(2) and 14 D.C.M.R. § 203.5, Reshard confirmed in her briefs before us and again at oral argument that she served a different person, the D.C. Rent Administrator. Finally, Reshard argues that serving Stevenson's lawyer was sufficient to effectuate service, [Blue 16], but it clearly is not. There is no evidence that Stevenson appointed her lawyer to be her agent for accepting service, nor does the law make a person's lawyer their agent for such purposes. See *Christensson v. Hogdal*, 199 F.2d 402, 405 n.3 (D.C. Cir. 1952). Reshard's citation to *Fifth Third Bank v. Malone*, No. 09-CV-6578, 2010 WL 183344, at *2 (N.D. Ill. Jan. 20, 2010), is wholly inapposite. There, a district court judge, applying Illinois state law, authorized service on a defendant's attorney "as a last resort," where there was evidence that the defendant was intentionally evading service. *Id.* at *4. Here, the district court specifically found that Reshard "has not presented persuasive evidence that Ms. Stevenson has intentionally evaded service," Order (Oct. 5, 2018) at 2, and of course, even if Reshard could have sought an equivalent authorizing order from the district court in this case, she did not. In fact, quite the opposite: the district court specifically clarified in a Minute Order that she could not make service on the defendant's attorney. Appendix at 4. Accordingly, Reshard cannot find relief in an authorization she never sought or received.

We review for abuse of discretion Reshard's second claim, challenging the district court's refusal to grant a second extension of time. We find no such abuse. Rule 4(m) of the Federal Rules of Civil Procedure provides that if defendant is not served within 90 days, the court shall either (1) "on motion or on its own after notice to the plaintiff . . . dismiss the action without prejudice . . . or order that service be made within a specified time" or (2) "if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period." After Reshard failed to complete service of process within the requisite 90 days, the district court granted a 60-day extension and notified Reshard that no additional extensions would be granted. When those 60 days were up, service still had not been effectuated despite an available statutory mechanism for service, so the district court dismissed the complaint without prejudice. At the time of dismissal, none of Reshard's claims was time-barred, so she likely could have refiled and completed service if she wanted to. Instead, she filed a motion for reconsideration only as to the district court's finding that Stevenson had not been properly served. In sum, Reshard, who is an attorney filing *pro se*, neither requested a second extension, nor objected to the court's decision not to grant one. On appeal to this court, Reshard did not contend that good cause existed for her failure to serve. While the district court arguably erred in foreclosing further extensions in its first order and then in failing to provide additional advance notice to Reshard before dismissing her action, Reshard raised neither of those

claims on appeal. Accordingly, on this record, the district court was solidly in bounds when it dismissed the case.

Finally, *amici curiae* offer a slight variation on Reshard's second claim: that the district court abused its discretion when it failed to conclude that there was good cause for Reshard's delay, which under Rule 4(m), they argue, triggered a mandatory, rather than discretionary, extension.[1] Amici Br. 24–31. The district court, however, explained its reasons for dismissing the case: Reshard already received a two-month-long extension of time, Order (Oct. 5, 2018) at 1, she offered no persuasive evidence of intentional evasion of service, *id.* at 2, and she would not be unduly prejudiced because she could "re-file her suit if and when she is better positioned to serve Ms. Stevenson," *id.* One could add to this list the fact, discussed above, that Reshard never asked for a second extension, *cf.* Wright & Miller, § 1137 ("a plaintiff's failure to move for a Rule 6(b) extension may be construed as an absence of good cause"), and that no "outside factor" prevented service on the Director of the Department of Consumer and Regulatory Affairs, during the period for which Stevenson was a non-resident landlord, see *Mann v. Castiel*, 681 F.3d 368, 374 (D.C. Cir. 2012) ("Good cause exists 'when some outside factor . . . rather than inadvertence or negligence, prevented service." (quoting *Lepone-Dempsey v. Carroll Cnty. Comm'rs*, 476 F.3d 1277, 1281 (11th Cir. 2007))). These are as much reasons for a finding of no good cause to trigger a mandatory extension as they are reasons for not granting a wholly discretionary extension. Moreover, it's not clear from the text of Rule 4(m) that a second or subsequent extension would be mandatory even upon a showing of good cause. At any rate, the district court sufficiently justified its decision to dismiss the complaint, and did so in terms that parallel a finding of no good cause.

Accordingly, we affirm the order dismissing the case without prejudice.

Pursuant to Rule 36 of this Court, this disposition will not be published. The clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing or petition for rehearing *en banc*. See FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

[1] The court thanks court-appointed *amici curiae*, Ephraim A. McDowell and Anton Metlitsky of O'Melveny & Myers, for their excellent service to the court.