



Arkansas Association of Defense Counsel

December 19, 2016

Do your clients need to be careful about who signs for certified mail?

Joseph K. Luebke

Despite painstakingly requiring strict compliance on almost every service and summons issue, Arkansas Courts have appeared to liberalize one aspect of service that may actually be dangerous for defendants. After a change made to Arkansas Rule of Civil Procedure Rule 4(d) a little over 10 years ago, it is possible that the signature of any employee of a corporation on a return receipt green card might be sufficient for good service pursuant to Rule 4.

Prior to 2004, Arkansas Rule of Civil Procedure 4(d) required that service on a corporation by certified mail, return receipt requested had to be made with delivery restricted to the addressee, the corporation's registered agent. The strict compliance standard utilized in Rule 4 cases meant that despite a defendant's failure to answer, default judgment would not be appropriate unless there was evidence that the plaintiff had directed the summons and complaint to be mailed with restricted delivery or there was evidence that restricted delivery procedures had been followed. CMS Jonesboro Rehab., Inc. v. Lamb, 306 Ark. 216, 219, 812 S.W.2d 472, 474 (1991); Wilburn v. Keenan Companies, Inc., 298 Ark. 461, 463, 768 S.W.2d 531, 532 (1989). The latter showing could be difficult and time consuming for plaintiffs to make as it required showing that the signature that was obtained was of someone who was authorized to accept restricted delivery service for the corporation as evidenced by signature card on file with the postal service. See CMS Jonesboro Rehab., 306 Ark. at 219, 812 S.W.2d at 474.

In 2004, the Supreme Court changed Rule 4(d) due to concerns over the difficulty of obtaining valid signatures from corporate registered agents like the CT Corporation. Arkansas Rule of Civil Procedure 4(d)(8)(A)(i) now provides that "service of the registered agent of a corporation...may be made by certified mail with a return receipt requested." Ark. R. Civ. P. 4(d)(A)(i). The Reporter's Notes to the 2004 Amendment to Rule 4 note that "[b]ecause delivery need not be restricted, there is no requirement that the addressee be a natural person or that the agent of the addressee be authorized in accordance with postal service regulations." Ark. R. Civ. P. 4, Addition to the Reporter's Notes, 2004 Amendment. Arkansas Courts have interpreted this language broadly holding that "[s]ervice by certified mail, signed by an employee [of a corporation], is sufficient." Affordable Bail Bonds, Inc. v. State, 2014 Ark. App. 657, at 5, 449 S.W.3d 321, 324.

In Advanced Fiberglass, LLC v. Rovnaghi, the Supreme Court of Arkansas denied a petition for a writ of certiorari that asserted that the circuit court lacked jurisdiction due to insufficiency of process and insufficiency of service of process due to an improper person signing for service made by certified mail. 2011 Ark. 516, at 1. In that case, the respondents-plaintiffs, Irag Rovnaghi and Pegah Deheshmand, attempted to serve the registered agent of petitioner-defendant Advance Fiberglass, Bryan S. Jeffrey, by certified mail, return receipt requested with delivery restricted to Mr. Jeffrey. Id. at 1. The opinion noted that "through an error on the part of the U.S. Postal Service, Jeffrey did not sign for the certified mail[;] [i]nstead Joyce Harris, an employee of Jeffrey's, signed the receipt for the certified mail." Id. at 1-2. The Supreme Court rejected Advance Fiberglass's argument that it had not been properly served holding the circuit court "correctly

interpret[ed] Rule 4(d)” when denying Advance’s motion to dismiss for insufficient service. Id. at 6. The Court noted that “Rule 4(d)(8)(A)(i) now does not require restricted delivery when serving the registered agent of a corporation or other organization but merely permits service by certified mail with a return receipt requested [and]...[t]he Reporter’s Notes to the rule clarify that the agent of the addressee who signs for the mail need not be authorized by the regulations of the postal service to accept that mail.” Id. The Court further noted that “the fact the respondents elected to restrict delivery to the registered agent, [although it did not occur], d[id] not render the service on Advance insufficient.” Id.

The breadth with which the 2004 amendment to Rule 4(d) has been interpreted may be somewhat startling to many companies. The opinions analyzing the amendment could be interpreted as being so broad as to allow any employee, including a janitor or secretary, to sign for service of process against the corporation made by certified mail. It is possible that when pressed the Supreme Court may not allow such a broad interpretation, but the very fact that it is possible should give us pause as defense attorneys. In light of these opinions, we must advise our regular corporate clients to develop strict procedures for the handling of certified mail to ensure that only responsible and trusted employees are signing for certified mail. The failure to take such precautions could lead to inadvertent and costly default judgments.

**The thanks of the AADC go out to
Joseph K. Luebke for writing this article.**

(No photo available)

**We welcome your articles and thoughts
for future editions.**

**We Are Better Together: Support The
AADC**