SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4639-19

IVY HOLDINGS, LLC,[1]

Plaintiff-Respondent,

v.

KAREEM MUHAMMAD
KANEEF TUCKER and
SHADEERAH YOUNG,

Defendants-Appellants,

and

KARIM TUCKER, KARISMAH TUCKER, KAREEMAH TUCKER, JACK CORREIA, UNION COUNTY BOARD OF SOCIAL SERVICES, LATANIA FOWLER, UNION COUNTY PROBATION SERVICES, NEW CENTURY FINANCIAL SERVICES, INC., TRINITAS HOSPITAL, MIDLAND FUNDING, assignee of FINGERHUT CREDIT ADV, and

[1] Ivy Holdings, LLC, substituted as plaintiff in place of Trystone Capital Assets, LLC.

THE STATE OF NEW JERSEY,

Defendants.

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Argued November 1, 2021 – Decided December 21, 2022

Before Judges Accurso and Rose.

On appeal from the Superior Court of New Jersey, Chancery Division, Union County, Docket No. F-016360-19.

Illya D. Lichtenberg argued the cause for appellants.

Anthony L. Velasquez argued the cause for respondent.

The opinion of the court was delivered by

ACCURSO, J.A.D.

Defendants Kareem Muhammad Kaneef Tucker and Shadeerah Young appeal from an August 28, 2020 order denying their motion to vacate the default judgment entered in this tax sale foreclosure proceeding based on their argument that plaintiff's substituted service on them by publication pursuant to Rule 4:4-5(a)(3) was improper for failure to make diligent inquiry. Because we agree with the trial court that service on Young by publication was appropriate, we affirm the trial court's denial of her Rule 4:50 motion. The court, however, did not make findings pursuant to Rule 1:7-4(a) as to the

reasonableness of plaintiff's diligent inquiry to locate an address for service on Tucker, and our review of the record reveals serious questions as to the adequacy of its inquiry. Accordingly, we vacate the order denying Tucker's motion and remand for reconsideration under Rule 4:50-1(d).

The essential facts are uncontested and easily summarized. Kevin L. Tucker, father of defendant Kareem Muhammad Kaneef Tucker, as well as his siblings, Karim Tucker, Karismah Tucker and Kareemah Tucker, owned the property at 1352-54 Lower Road in Elizabeth. Kevin Tucker died unmarried and without a will on April 6, 2017, leaving his four children as owners of the property he'd owned for nearly eighteen years. At the time of his death, property taxes of $7,293.08 had gone unpaid for two years.

The City offered the tax sale certificate at public auction within two months of Kevin Tucker's death, where it was purchased by plaintiff's predecessor, TWR CST Ebury Fund 1 NJ, LLC at zero percent interest for the sum of $9,041.16, being the unpaid taxes for 2015 and 2016, interest of $1,648.08 and costs of $100. TWR paid a premium of $16,000 for the certificate. It subsequently assigned the certificate to Trystone Capital Assets, LLC, another predecessor, which filed a complaint to foreclose the certificate on October 4, 2019, naming, among others, all four Tucker siblings and

Young, mother of Kareem and Karismah Tucker, who a title search revealed had a nearly twenty-year-old child support judgment recorded against the property.

All defendants were personally served but for Tucker and Young, who were served by publication. In a "certification of inquiry" an assistant to plaintiff's counsel averred "[a] Union County Surrogate document lists an address for Kareem Tucker as 309 Court Street, 1st Floor, Elizabeth, NJ 07206." That document, which was attached to the certification, is an application for administration signed by all four Tucker children averring their father died without a will and the value of his estate would not exceed $240,000. Addresses were provided for each child, with both Kareem and Karismah listed at the Court Street address, and the other two siblings listed at an address on Bond Street in Elizabeth.

Also attached to the certification was a form from a process server advising of an inability to serve Kareem at the Court Street address with a note that the landlord advised that Young had been a tenant for the prior two years but had moved out ten to fifteen days ago "over a family dispute," with the landlord unaware of her current whereabouts. The form also noted the landlord's statement that Kareem was not a tenant. Plaintiff's counsel's

assistant also attached a "TLO.com search" for Kareem, a Whitepages.com search and a Yellowpages.com one, none of which provided a better address for him. Counsel's assistant averred a request for change of address information to the postmaster received no response.

The assistant's certification as to the inquiry plaintiff's predecessor undertook to locate an address for Young was similar. She averred the TLO search, as well as the searches of Whitepages.com and Yellowpages.com, listed the Court Street address for Young with the process server's note of his conversation with the landlord that she no longer lived there and had left no forwarding address. Counsel's assistant averred a request for change of address information to the postmaster for Young also received no response.

The court thereafter entered an order setting time, place and amount of redemption in the sum of $47,005.12, which included the amount due on the certificate, subsequent taxes and interest, together with interest of $1,812.61, for March 10, 2020. The order also provided that in the event addresses of the defendants were not known, a copy of the order or notice thereof should be published in the Worrall Community Newspapers circulating throughout Union County. When redemption was not made, the court entered final judgment

against defendants on June 29, 2020, vesting title in plaintiff Ivy Holdings, LLC, which had substituted as plaintiff.

Less than two months later, on August 12, 2020, counsel for Kareem and Young filed an application to vacate the judgment, contending it was void under Rule 4:50-1(d) for lack of service. Young submitted a certification in support of the motion averring all four Tucker children had provided her a power of attorney, which she did not attach, to sell the property on their behalf, which she had under contract. She claimed she only became aware of the tax foreclosure when the attorney representing her in the closing advised her of the default judgment on August 6, 2020. She certified neither she nor Kareem were personally served, although they were both living in Elizabeth and easily locatable.

Young explained she moved from the Court Street address to an apartment on Bellevue Street "abruptly because of a shooting." She claimed she had lived all of her life in Elizabeth, never resided anywhere else and could have been located via her public Facebook account "in seconds" through "a standard internet search engine such as Google." She claimed Kareem was also easily locatable "by a simple internet search," as he was then detained in the Union County Jail.

Young argued plaintiff and its predecessors had not diligently attempted to locate her and Kareem, that the property was under contract for $185,000, which would generate sufficient funds to pay plaintiff, as well as the other creditors with liens against the property, and provide funds for each of the children. She claimed permitting the judgment to stand would provide a windfall to plaintiff and deprive the children of their inheritance.

Plaintiff opposed the motion. It presented the certification of its portfolio manager, who, while acknowledging "that sometimes there is a windfall to the lien holders," averred such was neither "inequitable [nor] unfair," but "the reward and incentive to participate — with knowledge that the laws are going to be equally and non-selectively enforced." The manager asserted Ivy's interest after final judgment was "paramount" and the tax lien laws should not "be cast aside simply because there is 'equity' or value that could be lost to an heir . . . especially when those parties had the responsibility to pay the delinquencies and did not do so for many years" and failed "to update the public records with the surrogate court, the tax collector's office or the U.S. Postal Service to allow for more individual service." The manager also averred the third-party buyer was "a commercial contractor who flips houses and is a title raider/heir hunter" engaged in a "back-door deal" in

violation of Simon v. Cronecker, 189 N.J. 304, 311 (2007) (holding "the Tax Sale Law does not prohibit a third-party investor from redeeming a tax sale certificate after the filing of a foreclosure action, provided that the investor timely intervenes in the action and pays the property owner more than nominal consideration for the property").

Plaintiff also presented the certification of its counsel in opposition to the motion, who averred plaintiff used a reputable "skip trace service" in TLO, "relied upon for skip trace services by tens of thousands of attorneys and legal professionals across the country." Counsel certified

> [a] skip trace search through TLO is detailed and specific, and it reveals current and prior addresses (and dates of residence at such addresses), prior names (AKAs), possible relatives, types of licenses held (e.g., driver license, professional license, etc.) and dates of such licenses, voter registration records, and other identifying data (such as date of birth, social security numbers, etc.).

Because Facebook "is not verifiable and does not include addresses/phone numbers of users," counsel claimed it "is not utilized to identify persons or locations within the legal profession and it cannot form part of the required due diligence certification to be submitted under Rule 4:4-4 and/or Rule 4:4-5." Counsel averred "there is nothing in the public record that shows whether a defendant is incarcerated so that plaintiff is required to guess

that a defendant might be incarcerated and thus might perform an inmate search within a given state or county to find a possible service address at a correctional facility." According to plaintiff's counsel, "an 'inmate lookup' search or a Facebook search" is not required as part of any diligent inquiry undertaken pursuant to Rule 4:4-5.

The trial judge denied the motion, attaching a written statement of reasons to the order. After recounting the facts set forth here and identifying the law governing the reopening of judgments, the judge found plaintiff undertook "a diligent inquiry of Young's location, which was unsuccessful" and concluded service "was proper" without further explanation. The judge also found Young "failed to satisfy any of the six reasons for which relief from final judgment is warranted," and while noting she'd "entered into an agreement to sell the property," found she "failed to certify that this transaction was done at arms-length," and the purchaser had not filed a motion to intervene. The judge did not make any findings as to Tucker.

Defendants appeal, contending "service by publication was ineffective and invalid," making the judgment void as against them. They also argue the court erred in failing to reopen the judgment under Rule 4:50-1(a) based on their excusable neglect and under Rule 4:50-1(f), the "catch-all" category, as

failure to reopen the judgment "would inequitably and unconscionably wipe away the entire inheritance for the children/heirs from their father's estate and result in a windfall for the plaintiff." Finally, in an argument not raised below, defendants contend plaintiff failed to satisfy Rule 4:64-7(d), which requires "posting as a jurisdictional requirement."[2]

A decision on a motion to vacate a judgment under Rule 4:50 is one committed to the sound discretion of the trial court, guided by general equitable principles, Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994), which we will not disturb absent "clear abuse of discretion," Carrington Mortg. Servs., LLC v. Moore, 464 N.J. Super. 59, 67 (App. Div. 2020) (quoting Little, 135 N.J. at 283). Although the three-month period for reopening a tax sale judgment under the Tax Sale Law, N.J.S.A. 54:5-87, which we note was satisfied here, reflects the Legislature's intent "to impose stricter limits upon the time and the grounds for vacating a judgment of foreclosure than would apply generally under Rule 4:50," Town of Phillipsburg v. Block 1508, Lot 12, 380 N.J. Super. 159, 166 (App. Div. 2005),

[2] Defendants are incorrect. Rule 4:64-7 implements the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-104.29 to -104.75. This action was not brought under that Act. Accordingly, plaintiff was not required to comply with the strictures of Rule 4:64-7.

the law is long-since settled that Rule 4:50, not the statute, controls motions to reopen tax foreclosure judgments, New Shrewsbury v. Block 115, Lot 4, Assessed to Hathaway, 74 N.J. Super. 1, 8-9 (App. Div. 1962).

Defendants moved to reopen the judgment here primarily under Rule 4:50-1(d), that "the judgment or order is void." "A default judgment will be considered void when a substantial deviation from service of process rules has occurred, casting reasonable doubt on proper notice." Jameson v. Great Atl. & Pac. Tea Co., 363 N.J. Super. 419, 425 (App. Div. 2003). "If defective service renders the judgment void, a meritorious defense is not required to vacate the judgment under Rule 4:50-1(d)." Ibid. Although defendants bore the burden of establishing their failure to appear and defend was excusable, Resol. Tr. Corp. v. Associated Gulf Contractors, Inc., 263 N.J. Super. 332, 340 (App. Div. 1993), they were entitled to have their application viewed indulgently. Davis v. DND/Fidoreo, Inc., 317 N.J. Super. 92, 100 (App. Div. 1998); Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div. 1964).

And in that regard, we have been especially solicitous of defendants entitled to redeem in tax sale actions "where there is substituted service, as well as a tremendous disparity between the amount due on the tax certificates and the value of the property subject to foreclosure." M & D Assocs. v.

Mandara, 366 N.J. Super. 341, 354 (App. Div. 2004). In those circumstances, we have held the Chancery judge should give careful scrutiny to the plaintiff's affidavit of inquiry "demand[ing] more than cursory inquiries or recitals not only as a matter of due process, but also of fundamental fairness." Ibid. (citing Bron v. Weintraub, 42 N.J. 87, 93-96 (1964)). Here, as between Tucker and Young, only Tucker had a right to redeem as an heir of the owner of the property. See N.J.S.A. 54:5-54. Young was made a defendant by virtue of her child support judgment, which was a lien against the property. As a judgment creditor, she has no right of redemption. Caput Mortuum, L.L.C. v. S & S Crown Servs., Ltd., 366 N.J. Super. 323, 333 (App. Div. 2004).

Because both Young and Tucker were served under Rule 4:4-5(a)(3) by substituted service of publication, which we've acknowledged is "the mode of service least calculated and least likely to result in notice to a party," Modan v. Modan, 327 N.J. Super. 44, 48 (App. Div. 2000) (quoting Camden Cnty. Bd. of Soc. Servs. v. Yocavitch, 251 N.J. Super. 24, 29 (Ch. Div. 1991)), plaintiff was required to provide a certification averring "a diligent inquiry has been made and that the defendant is not available for service within the State." M & D Assocs., 366 N.J. Super. at 353; see also Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 794-800 (1983).

Having reviewed the record, we agree with the trial judge's decision that plaintiff's efforts to locate Young were sufficiently diligent, and that the judgment as to her was not void. She has not suggested she could have been located by the traditional methods of checking phone directories, voter registration records, motor vehicle records and the tax rolls following her admittedly abrupt departure from the apartment where she had lived for the last two years without leaving a forwarding address with the landlord or changing her address with the post office. While a Facebook or other social media search might well be an additional useful method for locating a person within the State given how many New Jersey citizens appear to maintain such accounts, our Rules do not require a plaintiff to attempt every conceivable method of locating an individual for personal service before resorting to service by publication. See Modan, 327 N.J. Super. at 48. We are satisfied the inquiry made by plaintiff prior to publication was sufficient to warrant its method of service for a judgment creditor such as Young. See M & D Assocs., 366 N.J. Super. at 352-54.

In addition to finding Young not entitled to relief under Rule 4:50-1(d), we are also satisfied she did not establish the judgment should be set aside under either Rule 4:50-1(a) or Rule 4:50-1(f), both of which require the

defendant to show a meritorious defense to reopen a judgment. See Romero v. Gold Star Distrib., LLC, 468 N.J. Super. 274, 294-95 (App. Div. 2021) ("The meritorious defense requirement is only waived upon proof that the default was obtained through defective service of process.").

As we've already noted, Young is a judgment creditor without right of redemption. As we've explained in other circumstances, "the granting of Rule 4:50 relief would be a futile exercise if plaintiff remained entitled to judgment as a matter of law." Ridge at Back Brook, LLC v. Klenert, 437 N.J. Super. 90, 100 (App. Div. 2014). As the Supreme Court has underscored, "[i]t would create a rather anomalous situation if a judgment were to be vacated on the ground of mistake, accident, surprise or excusable neglect, only to discover later that the defendant had no meritorious defense. . . . The time of the courts, counsel and litigants should not be taken up by such a futile proceeding." US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 469 (2012) (quoting Schulwitz v. Shuster, 27 N.J. Super. 554, 561 (App. Div. 1953)). Because, as to Young, there is no "'possibility that the outcome' after restoration 'will be contrary to the result achieved by the default,'" there is no cause to reopen this tax foreclosure judgment on her behalf. See BV001 REO Blocker, LLC v. 53 W. Somerset St. Props., LLC, 467 N.J. Super. 117, 125 n.3 (App. Div. 2021)

(quoting 10A Charles A. Wright et al., Federal Practice & Procedure § 2697 (4th ed. 2020)).

Tucker, however, stands on different footing; he is an heir and thus an owner with right of redemption. In addition, because there was substituted service and a substantial disparity between the amount due on the certificate and the value of the property, demonstrated by the zero percent interest rate and the $16,000 premium plaintiff's predecessor paid for the certificate, the Chancery judge was required to give careful scrutiny to plaintiff's affidavit of diligent inquiry and not accept "cursory inquiries or recitals." See M & D Assocs., 366 N.J. Super. at 354.

In its opposition to the motion to vacate the judgment, plaintiff's attorney claimed "there is nothing in the public record that shows whether a defendant is incarcerated so that plaintiff is required to guess that a defendant might be incarcerated and thus might perform an inmate search within a given state or county to find a possible service address at a correctional facility." Counsel's statement appears demonstrably incorrect as to the public record. More accurate is defendants' assertion that Tucker was easily locatable "by a simple internet search."

A search conducted of Tucker's name through Promis/Gavel on the NJ Courts website as well as the website for the New Jersey Department of Corrections by this court readily revealed Tucker's incarceration in October 2019, when plaintiff undertook to locate him for service. Moreover, both Whitepages.com and TLO.com, the search services plaintiff claims it employed, advertise criminal searches with TLO advertising a "Social Media Comprehensive Report" as well.[3]

In its brief to this court, plaintiff contends its own "search of the NJ State Inmate Locator on the NJ Department of Corrections website," apparently conducted in connection with the preparation of its appellate brief, "shows for Kareem a 'date of admission' and 'date in custody' of June 10, 2020," asserting the record demonstrated "Kareem was not in custody until

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[3] WhitePages, https:/www.whitepages.com/ (last visited Dec. 12, 2022); About TLOxp, TLOxp, https://www.tlo.com/about-tloxp (last visited Dec. 12, 2022).

Further, it would appear these services were likewise available in 2019:

Internet Archive Wayback Mach., Results of Search for "https://www.whitepages.com/," https://web.archive.org/web/20191201045245/https://www.whitepages.com/ (last visited Dec. 12, 2022); Internet Archive Wayback Mach., Results of Search for "https://www.tlo.com/searches-and-reports," https://web.archive.org/web/20190107173430/https:/www.tlo.com/searches-and-reports (last visited Dec. 12, 2022); Internet Archive Wayback Mach., Results for "https://www.tlo.com/," https://web.archive.org/web/20191210132130/https:/www.tlo.com/ (last visited Dec. 12, 2022).

after service of process." Defendants in their reply brief counter that Tucker's order of commitment, available on either E Courts or Promis/Gavel, "which the plaintiff could have checked before serving the complaint," reveals he was detained in the Union County jail from April 15, 2019 to June 9, 2020, "at which point he was turned over to the NJDOC with 422-days [jail] credit."

Although it is obvious plaintiff could not have "checked" Tucker's judgment of conviction at the time it conducted its inquiry for service of the tax foreclosure complaint, as that inquiry apparently pre-dated Tucker's conviction, it seems readily apparent that any reasonably diligent search of New Jersey criminal public records at the time plaintiff was attempting to locate Tucker for service would have revealed he was in the Union County jail in Elizabeth where he could have been personally served. Because a review of criminal records appears no more difficult from our vantage than routine searches of motor vehicle records or voter rolls, we think it incumbent on the Chancery judge to have scrutinized plaintiff's failure to undertake such a simple search likely to have led to an address for personal service on Tucker in accord with our opinion in M & D Associates v. Mandara, 366 N.J. Super. 341, 354 (App. Div. 2004), where we held "careful scrutiny of the affidavit of

inquiry requires the Chancery Judge to demand more than cursory inquiries or recitals not only as a matter of due process, but also of fundamental fairness."

The United States Supreme Court in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 315 (1950), issued more than seventy years ago, admonished that "when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." Considering those words here, we cannot help but be struck by the difference between the cursory efforts plaintiff's predecessor undertook to locate Tucker for service and its portfolio manager's significantly more robust efforts to unmask the buyer Young had under contract for the purpose of proving to the court it was a title raider attempting "back-door deals" without intervention in the cause in violation of Cronecker. It is clear to us Tucker was owed the same zeal plaintiff brought to fending off a competitor to informing him of his opportunity to redeem by personal service of the foreclosure complaint.

Because the trial judge made no findings on the issue of diligent inquiry as to Tucker, we conclude the judge abused his discretion in denying defendants' motion to reopen the final judgment barring him from redemption. See Carrington Mortg. Servs., 464 N.J. Super. at 67. We affirm the denial of

defendants' motion to reopen the final judgment as to Young.[4] Accordingly, we remand for reconsideration of the motion as to Tucker under Rule 4:50-1(d), which the court should review in accordance with our opinion in M & D Associates. We express no opinion on the outcome of the motion or whether Young's buyer was required to timely intervene in the action in accordance with Cronecker, which was not relevant to the service issue before the court. We do not retain jurisdiction.

Affirmed in part, reversed in part and remanded.

[4] Of course, reopening the judgment as to Tucker, should the judge decide such is appropriate, will require the reopening of the entire judgment. See M & D Assocs., 366 N.J. Super. at 356-57; I.E.'s, L.L.C. v. Simmons, 392 N.J. Super. 520, 536 (Law Div. 2006) ("Where service on even one of multiple title owners is defective, operation of the tax sale law requires that the entire judgment be vacated.").