[Cite as *Schumacher v. Schumacher*, 2011-Ohio-581.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

HARVEY L. SCHUMACHER Appellee v. MARY W. SCHUMACHER Appellee and INTEC, INC. Appellant	C.A. No. 25411 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. 1994-08-1846

DECISION AND JOURNAL ENTRY

Dated: February 9, 2011

WHITMORE, Presiding Judge.

{¶1} Appellant, Intec., Inc. ("Intec"), appeals from the judgment of the Summit County Court of Common Pleas, Domestic Relations Division. This Court vacates.

I

{¶2} Plaintiff-Appellee, Harvey Schumacher ("Husband"), and Defendant-Appellee, Mary Schumacher ("Wife"), obtained a divorce on October 31, 1995 by way of a separation agreement. Prior to the parties' divorce, Husband founded Intec along with several other individuals and eventually acquired 65% of Intec's shares. The parties' separation agreement declared that Husband would retain his outstanding shares of Intec stock, free and clear of any claim of Wife. The agreement also provided, however, that Husband would pledge his Intec

shares to Wife as security. The parties later executed a stock pledge agreement whereby Husband pledged his Intec shares as security for his spousal support obligations.

{¶3} On August 15, 2003, Wife filed a motion to enforce and asked the court to order Husband to abide by the terms of the stock pledge agreement. Specifically, Wife sought the transfer of Husband's Intec stock because he could no longer afford his support payments. On January 16, 2004, the trial court held a hearing on Wife's motion as well as a motion from Husband to modify the support orders. On March 11, 2004, the trial court issued a judgment entry granting Wife's motion to enforce and providing that "Husband's stock in Intec[] is hereby transferred to Wife." The court denied Husband's motion to modify the support orders.

{¶4} Husband appealed from the trial court's denial of his motion, and this Court agreed that the trial court erred by refusing to modify the support award based on Husband's change in circumstances. *Schumacher v. Schumacher*, 9th Dist. No. 22050, 2004-Ohio-6745, at ¶8-14. After this Court's remand, the trial court set the matter for an evidentiary hearing on October 14, 2005. Wife then filed several items. Specifically, on September 15, 2005, Wife filed: (1) a motion to add Intec as a party-defendant pursuant to Civ.R. 75(B)(1); (2) an affidavit from her attorney, notifying the court that Intec refused to recognize Wife's property interest in the stock at issue; (3) a motion to enforce the parties' separation and stock pledge agreements against Intec; and (4) a praecipe with the clerk, requesting service of the foregoing filings upon Intec. Essentially, Wife wanted to join Intec as a party for the purpose of obtaining a court order which would require Intec to redeem the stock Husband transferred to her. On September 21, 2005, the court granted Wife leave to add Intec as a party-defendant.

{¶5} On October 14, 2005, Intec filed a notice of appearance, indicating that "this appearance is not in lieu of proper service of process." The court held the scheduled October

14th hearing the same day. Thereafter, Wife did not take any further action for almost three years.

{¶6} On August 1, 2008, Wife filed a motion in which she requested a hearing "to determine the most expeditious type of sale of [the Intec] stock." Wife served her motion upon Intec as well as Husband. Intec also was served with a March 4, 2009 order from the magistrate, scheduling an evidentiary hearing. Thereafter, Wife and Husband agreed to several continuances. Intec was not served with any of the requests or orders regarding the continuances. A hearing took place on August 12, 2009, at which Wife and Husband appeared, but Intec did not. The next item served upon Intec was a copy of the magistrate's decision, ordering Intec to pay Wife $221,794.30, and the trial court's adoption of the same.

{¶7} Intec filed objections to the magistrate's decision. On April 23, 2010, the trial court overruled Intec's objections and ordered Intec to pay Wife $221,794.30.

{¶8} Intec now appeals from the court's judgment and raises four assignments of error for our review.

II

Assignment of Error Number One

> "THE TRIAL COURT ERRED BY RULING THAT IT HAD JURISDICTION OVER INTEC, INC. WHERE INTEC, INC. WAS NEVER SERVED WITH A SUMMONS AS PROVIDED IN CIVIL RULE 4."

{¶9} In its first assignment of error, Intec argues that the trial court erred by concluding that it had jurisdiction over Intec. Specifically, Intec argues that it was never properly joined as a party to the litigation. We agree.

{¶10} Jurisdiction is a question of law, which this Court reviews de novo. *CommuniCare Health Servs., Inc. v. Murvine*, 9th Dist. No. 23557, 2007-Ohio-4651, at ¶13. "A

de novo review requires an independent review of the trial court's decision without any deference to the trial court's determination." *State v. Consilio*, 9th Dist. No. 22761, 2006-Ohio-649, at ¶4.

{¶11} "It is rudimentary that in order to render a valid personal judgment, a court must have personal jurisdiction over the defendant." *Maryhew v. Yova* (1984), 11 Ohio St.3d 154, 156. Civ.R. 75(B)(1) allows for the joinder of a "corporation having possession of, or claiming an interest in property, whether real, personal, or mixed, out of which a party seeks a division of marital property, a distributive award, or an award of spousal support or other support[.]" Such joinder is accomplished in conformance with the rules for the service of process set forth in Civ.R. 4 through Civ.R. 4.6. See Civ.R. 75(J); *Kvinta v. Kvinta*, 5th Dist. No. 08CA40, 2009-Ohio-828, at ¶74-93; *Steffen v. Steffen* (June 7, 2002), 2d Dist. No. 2001-CA-117, at *5-6. In the absence of proper service of process, personal jurisdiction may be obtained through "the voluntary appearance of the party or his legal representative or by actions of the party or his legal representative that constitute an involuntary submission to the jurisdiction of the court." *In re S.S.*, 9th Dist. No. 10CA0010, 2010-Ohio-6374, at ¶43.

{¶12} Wife only ever served Intec with copies of her motion to enforce and the related affidavit and her motion requesting leave from the trial court to add Intec as a party-defendant. The trial court's order responding to Wife's request for leave merely granted Wife "leave to add Intec as a Party Defendant to this action." Wife never took any further action to join Intec. Indeed, Wife did not file anything with the court for almost three years after she received leave to add Intec. Wife never served Intec with a summons. See Civ.R. 4. Moreover, none of Wife's filings notified Intec of the scheduled October 14, 2005 hearing, the time within which it had to respond to her motions, or that it could be held in default if it failed to do so. See Civ.R. 4(B).

Wife has not argued on appeal that she properly joined Intec in conformance with the rules for the service of process, and we must conclude from our review of the record that Wife, in fact, did not properly serve Intec so as to join it as a party defendant. See *Steffen*, at *6 (concluding that individual was not properly joined as a party defendant pursuant to Civ.R. 75(B)(1) where she was not served in conformance with the rules for service of process). The remaining question is whether the trial court obtained personal jurisdiction over Intec by other means. "In order for a judgment to be rendered against a defendant when he is not served with process, there must be a showing upon the record that the defendant has voluntarily submitted himself to the court's jurisdiction or committed other acts which constitute a waiver of the jurisdictional defense." *Kennedy v. Kennedy*, 9th Dist. No. 09CA009645, 2010-Ohio-404, at ¶9, quoting *Maryhew*, 11 Ohio St.3d at 156-57.

{¶13} Wife argues on appeal that Intec waived service of process by voluntarily submitting to the trial court's jurisdiction. Specifically, Wife argues that Intec's first appearance in this matter was at "the October 13, 2005 hearing." Because Intec never requested a transcript of that hearing, Wife argues, this Court should presume regularity and conclude that Intec voluntarily submitted to the trial court's jurisdiction at the hearing. According to the trial court record, however, the hearing to which Wife is referring took place on October 14, 2005, not October 13th. Moreover, the record reflects that the magistrate scheduled the hearing for 1:00 p.m. Intec filed its notice of appearance, which provided that "this appearance is not in lieu of proper service of process," at 12:57 p.m. on October 14, 2005. Accordingly, Intec raised the issue of defective service of process in its first appearance before the court. Wife's argument that Intec waived service of process lacks merit.

{¶14} Similarly, the trial court's conclusion that Intec waived service of process is incorrect. The trial court held that "[e]ven if Intec is correct that there was not proper service of process, Intec waived the defect by not properly asserting it in a responsive pleading or by motion" in accordance with Civ.R. 12(B). The only items that Intec ever filed with the trial court were Intec's notice of appearance, raising the issue of defective service, and Intec's objections to the magistrate's decision, challenging the court's personal jurisdiction due to invalid service of process. Intec was not required to file a Civ.R. 12(B) motion or a responsive pleading because it was never made a party to the action. "Inaction upon the part of a defendant who is not served with process, even though he might be aware of the filing of the action, does not dispense with the necessity of service." *Maryhew*, 11 Ohio St.3d at 157. "The obligation is upon plaintiffs to perfect service of process; defendants have no duty to assist them in fulfilling this obligation." *Gliozzo v. Univ. Urologists of Cleveland, Inc.*, 114 Ohio St.3d 141, 2007-Ohio-3762, at ¶16. Intec did not waive its argument. See id. at ¶13 ("The only way in which a party can voluntarily submit to a court's jurisdiction *** is by failing to raise the defense of insufficiency of service of process in a responsive pleading or by filing certain motions before any pleading."). Intec placed the service of process issue squarely before the court in both of the items it filed.

{¶15} Intec never received valid service of process and did not voluntarily submit itself to the court's jurisdiction or waive its defective service argument. We agree with Intec that the trial court did not acquire personal jurisdiction over it. Because the trial court had no jurisdiction over Intec, its judgment is void. See *In re S.S.* at ¶51; *Maryhew*, 11 Ohio St.3d at 156. Intec's first assignment of error is sustained.

Assignment of Error Number Two

"THE TRIAL COURT ERRED IN RENDERING A JUDGMENT AGAINST INTEC WITHOUT GIVING NOTICE OF HEARING ON DEFAULT WHILE

ALSO RULING THAT INTEC, INC., HAD FAILED TO PLEAD OR OTHERWISE DEFEND AND GRANTING JUDGMENT DIFFERENT IN KIND AND AMOUNT THAN REQUESTED."

Assignment of Error Number Three

"THE TRIAL COURT EXCEEDED ITS JURISDICTIONAL AUTHORITY WHEN IT CONTINUED TO EXERCISE JURISDICTION OVER CLAIMS THAT AROSE AFTER MARY SCHUMACHER ACQUIRED INTEC STOCK AND ORDERED THE CORPORATION TO REDEEM THE STOCK."

Assignment of Error Number Four

"THE TRIAL COURT ERRED WHEN IT PROCEEDED TO ISSUE A MAGISTRATE'S DECISION ON NOVEMBER 5, 2009, AFTER ORDERING A CONTINUANCE TO DECEMBER 4, 2009."

{¶16} Based on this Court's resolution of Intec's first assignment of error, Intec's remaining assignments of error are moot and we need not address them. App.R. 12(A)(1)(c).

III

{¶17} Intec's first assignment of error is sustained and its remaining assignments of error are moot. Because the trial court lacked personal jurisdiction over Intec, its judgment is void. The judgment of the Summit County Court of Common Pleas, Domestic Relations Division, is vacated.

Judgment vacated.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the

period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

MOORE, J.
DICKINSON, J.
CONCUR

APPEARANCES:

JOHN W. MYGRANT, Attorney at Law, for Appellant.

CHARLES E. GRISI, Attorney at Law, for Appellee.

DAVID H. FERGUSON, Attorney at Law, for Appellee.