[Cite as *Sears v. Sears*, 2022-Ohio-2898.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PIKE COUNTY

Joseph and Krissy Sears,	:	Case No. 22CA914
Plaintiffs-Appellees,	:	
v.	:	DECISION AND JUDGMENT ENTRY
Cheyenne Kuhn and River Sears,	:	
Defendants-Appellants.	:	**RELEASED 8/16/2022**

APPEARANCES:

Chase B. Bunstine, Chillicothe, Ohio, for appellant Cheyenne Kuhn.[1]

Jason M. Miller, Villarreal Law Firm, Chillicothe, Ohio, for appellees.

Hess, J.

{¶1} Cheyenne Kuhn appeals from a judgment of the Pike County Common Pleas Court, Juvenile Division, denying her motion to vacate or set aside a judgment entry granting legal custody of her child to the child's paternal grandparents. In her sole assignment of error, she asserts the trial court did not have jurisdiction to grant legal custody because there was never proper service on her, and even if there was service in compliance with the applicable rules, it did not comply with due process because the service was not made to an address where it would be reasonably calculated to reach her. For the reasons that follow, we overrule the assignment of error and affirm the trial court's judgment.

[1] Rivers Sears did not file an appellate brief and has not otherwise entered an appearance in this appeal.

I. FACTS AND PROCEDURAL HISTORY

{¶2} Cheyenne Kuhn ("Mother") and River Sears ("Father") are the biological parents of B.S., who was born on January 16, 2018. Mother and Father married in September 2018, but Mother did not legally change her last name to "Sears." On June 22, 2020, the child's paternal grandparents, Joseph and Krissy Sears ("Grandparents"), filed a complaint against Mother, listing her name as "Cheyenne Sears," and Father for legal custody of the child. The complaint alleged that Mother and Father had become totally incapable of supporting or caring for the child and that it would be detrimental to the child to be in the custody of his parents. The caption of the complaint gave the same address for Mother and Father: 2212 Denver Road, Waverly, Ohio 45690. The Grandparents also filed a motion for temporary custody during the pendency of the action and an affidavit in support of the motion. Grandmother averred that the child had been in the custody of Grandparents since August 2019 due to "drinking, fighting, & neglect," that Father was "mentally abusive," that Mother was "physically abusive," and that Father had talked about committing suicide. The trial court granted Grandparents emergency temporary custody the day they filed the complaint.

{¶3} The record contains certified mail return receipts which indicate that on July 1, 2020, Father signed for certified mail directed to Mother and Father at the Denver Road address. However, Krissy Sears ("Grandmother") was the only party to appear at the hearings the trial court conducted in this matter. On July 27, 2020, the trial court conducted a hearing on the emergency order and stated that it would give Grandparents temporary custody of the child. Afterwards, the court issued an entry designating Grandparents residential parents and legal custodians of the child. On October 20, 2020,

the court conducted a review hearing. Subsequently, the court issued an entry stating that "temporary custody shall remain with" Grandparents. On April 19, 2021, the court conducted the final hearing on legal custody and issued a judgment entry granting legal custody to Grandparents.

{¶4} On May 3, 2021, Mother filed a motion to vacate or set aside the April 19, 2021 entry asserting the trial court lacked subject matter jurisdiction over the legal custody proceeding and lacked personal jurisdiction over her because she did not receive service and the service method used by Grandparents was not reasonably calculated to reach her. The trial court conducted a hearing on the motion at which Mother testified that on June 4, 2020, she left Father and moved from the Denver Road address to 190 Loop Road, Piketon, Ohio. On the day Grandparents filed the legal custody complaint, Mother was living at the Loop Road address but her mailing address was still the Denver Road address. Mother admitted she was still receiving mail at the Denver Road address as of July 1, 2020. However, Mother testified that she did not receive notice of the legal custody case via certified mail even though she received other mail sent to the Denver Road address—an electric bill that was in her name, her "check," and "some medical bills." Mother claimed she did not learn of the legal custody case until April 21, 2021—two days after the final hearing.

{¶5} Mother testified that she visited with B.S. during the pendency of the case but thought B.S. was with Grandparents under a temporary custody agreement. Evidently, on October 2, 2019, a "Power of Attorney for Grandparents Rights" which Mother and Father gave Grandparents was filed in the trial court, and Mother executed

the document under the name "Cheyenne Sears."[2] Mother testified that there had been a domestic violence case against Father, and Grandmother brought papers to Mother and Father and said that if they did not "sign over emergency custody or temporary custody" the child would be "brought into the court case, and put into the system in foster care for six months." Grandmother said Mother and Father could get B.S. back if they got their "ducks in a row" and got "stable vehicles" and took parenting classes. Mother was 19 years old at the time and "scared to death," and she signed the papers. Mother testified that she and Father took parenting classes in August 2020 and that she had a "stable vehicle" and "stable income" from working two jobs.

{¶6} Grandmother testified that she previously asked Mother and Father to sign B.S. over to Grandparents "temporarily" because she had spoken to an attorney and was concerned about what impact the domestic violence case against Father would have on B.S. Grandmother admitted that she knew Mother was not staying at the Denver Road address but testified that Mother was still "going back" and "was getting her mail there." Grandmother testified that Mother and Father are "in and out of each other's life so much it isn't funny," that Mother "still has stuff" at the Denver Road address, and that she "goes out there and stays with [Father] now even though she's decided to do the dissolution." Grandmother testified that during the pendency of the legal custody case, she communicated with Mother about some of the hearings. After the first hearing, Grandmother told Mother that the Grandparents "still have temporary custody."

[2] The transcript from the May 24, 2021 hearing on the motion to vacate or set aside reflects that Grandmother brought a copy of this document to the hearing, but it was not admitted into evidence. The title of the document, filing date, and information about how Mother executed the document are taken from page 4 of the trial court's December 8, 2021 decision and entry. We observe that the trial court referred to the document as both a "Power of Attorney for Grandparents Rights" and a "Power of Attorney for Grandparent's Rights." Because the document is not in the record, it is unclear whether the title includes an apostrophe within the word "Grandparents."

Grandmother and Mother spoke the day before the second hearing, and Mother "was crying saying that it made her nervous." Grandmother testified that Mother texted her later and asked, "How did court go?" Grandmother responded, "Everything is still the same. We still have temporary custody." Grandmother testified that she did not speak to Mother after the final hearing.

{¶7} Father testified that he lives at the Denver Road address. Mother and Father separated around June 4, 2020, because Father found out Mother was cheating on him. Mother stopped living at the Denver Road address though she "still had some stuff there" and occasionally stayed there. She resided "with her mom and dad for a while [sic]" and "would also stay at other places too." Father testified that on or about July 1, 2020, he signed for the certified mail with the summons and notice of proceedings in this case and that Mother was still receiving mail at the Denver Road address at that time. Father testified that he "honestly cannot remember" whether he gave Mother the certified mail though he was "wanting to say yes." Father testified that he spoke to Mother about the legal custody case while it was pending even though Father did not really understand the paperwork he signed for or that his parents were seeking "permanent legal custody." Mother told him about conversations with Grandmother regarding the proceedings, and Mother and Father "would talk about how court went." Father testified that Mother had asked him to testify that "she had no knowledge of any of the court proceedings" in exchange for a "50/50 custody" arrangement.

{¶8} Later, Mother's attorney asked Father whether he ever gave or showed a copy of the paperwork he signed for to Mother, and Father testified, "No." Mother's attorney asked, "To your knowledge, she never saw the paperwork?" Father testified,

"No." Mother's attorney asked whether Father had conversations with Mother about "this case." Father said, "About this case today?" Counsel said, "Yeah." Father said, "Yes," and then testified that the conversations happened "[t]he "past few days" and that he did not have a conversation with Mother prior to "April 19th." The court expressed confusion and asked follow-up questions. Father clarified that he might have given Mother the certified mail but could not recall doing so. He also clarified that between June 2020 and April 2021, he had spoken to Mother "a few times" about the court proceedings—not the grandparent power of attorney. They talked about "how the days at court went" and "what was said at them court days [sic]." Mother's attorney then asked Father whether it was his "idea all along this was a temporary custody [sic]?" Father testified, "Yes." Mother's attorney asked, "So, any conversations you could have had with [Mother] would have been about temporary custody?" Father said, "Yes."

{¶9} Mary Kuhn—Mother's mother—testified that Mother has lived with her at the Loop Road address since leaving Father on June 4, 2020. Mary Kuhn testified that prior to the end of April 2021, Mother gave no indication that she knew Grandparents had filed for "[f]ull custody" of the child or that Mother was aware of any court dates.

{¶10} The trial court denied Mother's motion to vacate or set aside the April 19, 2021 entry. The court explained that notice of the July 27, 2020 hearing "was included in the Summons and Complaint to be served upon the defendants in accordance with the request for service filed by the [p]laintiffs. In conformity with the request for service, certified mail was sent to 2212 Denver Road, Waverly, Ohio 45690 to both [d]efendants, River Sears and Cheyenne Sears. A return receipt of certified mail was provided to the Court. The date of delivery for the certified mail indicates that it was delivered on July 1,

2020." The court found that "a rebuttable presumption of proper service arose because pursuant to Civ.R. 4.1(A)(1)(a), Cheyenne Kuhn was served via certified mail at the address in the caption of the Complaint and in the Request for Service" and "[a] return receipt of certified mail was provided by the Postal Service and received July 27, 2020, reflecting completion of certified mail delivery."

{¶11} The court found Mother failed to rebut the presumption of proper service and failed to establish that service at the Denver Road address was not reasonably calculated to reach her. The court found that service was proper even though the certified mail was addressed to "Cheyenne Sears" instead of "Cheyenne Kuhn" because Mother and Father are married, Mother used "the Sears name and executed her signature under the Sears name in the Power of Attorney for Grandparents Rights filed with the Court," and it was "clear that she utilized the Sears name in important legal documents and used the Sears name as her own." The court also explained that even though Mother testified that she vacated the Denver Road residence before the certified mail was delivered, she admitted that she continued to receive mail at that address, and her "receipt of mail at the Denver Road address was confirmed by all parties." The court found that Mother's testimony that she "was not made aware of the proceedings regarding custody in this Court" was not "credible or persuasive under the circumstances." The court stated:

> Certainly, [Mother] testified that she did not receive the certified mail from the Court, and although [Father] indicated that he typically gave [Mother] her mail that he received, [Father] could not specifically recall whether he gave the certified mail to [Mother] after signing for it. However, both [Father] and [Grandmother] testified of their conversations with [Mother] regarding the custody matter pending in the Court. In addition, [Father] testified that [Mother] had contacted him prior to the hearing in May 2021 and asked him to be untruthful about her knowledge of the pending custody proceedings.

> It is also interesting to note that the custody proceedings were pending from June 22, 2020, until the final order on April 19, 2021. During that time, [Mother] admitted that she was only exercising visitation type parenting time with the child, and that the Plaintiffs had the primary responsibility for the custody, care, and control of the child. In response to these facts, [Mother] points to the Power of Attorney for Grandparent's Rights, instead of the temporary custody order of the Court, to explain her lack of primary care and control. The Court does not find this argument to be credible. Instead, it shows that [Mother] was aware and accepting of these custody proceedings and decided not to object to them until a final entry and order had been put in place approximately 10 months after the matter had been commenced.

[*Id.*] The court also concluded it had subject matter jurisdiction over the legal custody proceeding under R.C. 2151.23.

II. ASSIGNMENT OF ERROR

{¶12} Mother presents one assignment of error: "The trial court did not have jurisdiction to grant the plaintiffs' [sic] legal custody of the minor child."

III. LAW AND ANALYSIS

{¶13} In her sole assignment of error, Mother contends that the trial court lacked jurisdiction to grant Grandparents legal custody of the child. Mother asserts that there is "overwhelming" evidence "that there was never proper service upon" her and that even if service complied with the applicable rules, it "did not comply with due process requirements" because it was not made to an address where it would be reasonably calculated to reach her. Mother asserts that Grandmother instructed the clerk to serve Mother at the Denver Road address even though Grandmother knew that Mother was residing with her parents on Loop Road, that Mother had not resided at the Denver Road address "for at least a number of weeks," and that Mother and Father's relationship "had ended due to domestic violence" which included Father "physically striking" Mother. Mother also asserts that her receipt of "expected work checks" at the Denver Road

address is immaterial because she had no reason to anticipate receiving mail about a legal custody proceeding. Mother observes that Father gave contradictory testimony and emphasizes the parts of his testimony which favor her position—that he did not give Mother the certified mail, that he was not aware of her seeing the paperwork, and that he did not speak to her about the legal custody case. Mother opines that the "most likely scenario" is that Father "threw the paperwork away" because he was going through "many personal issues" related to alcohol use. Mother asserts Father "was probably the worst person to be served" to give her notice of the case because of his alcohol issues and the domestic violence. She also asserts that if Father did have conversations with her, they "could not have been about legal custody because the Father never thought legal custody was even an option." Mother states that if Father had understood the paperwork, he would have had "a personal motive" to not tell Mother about the legal custody proceeding "because the Plaintiffs are his parents."

{¶14} " 'It is rudimentary that in order to render a valid personal judgment, a court must have personal jurisdiction over the defendant.' " *State ex rel. Doe v. Capper*, 132 Ohio St.3d 365, 2012-Ohio-2686, 972 N.E.2d 553, ¶ 13, quoting *Maryhew v. Yova*, 11 Ohio St.3d 154, 156, 464 N.E.2d 538 (1984). " 'It is axiomatic that for a court to acquire jurisdiction there must be a proper service of summons or an entry of appearance, and a judgment rendered without proper service or entry of appearance is a nullity and void.' " *State ex rel. Ballard v. O'Donnell*, 50 Ohio St.3d 182, 183, 553 N.E.2d 650 (1990), quoting *Lincoln Tavern, Inc. v. Snader*, 165 Ohio St. 61, 64, 133 N.E.2d 606 (1956). "A court possesses inherent power to vacate a void judgment." *Detty v. Yates*, 4th Dist. Ross No. 13CA3390, 2014-Ohio-1935, ¶ 11.

{¶15} "An appellate court reviews a trial court's determination of whether personal jurisdiction over a party exists under a de novo standard of review." *State ex rel. Athens Cty. Dept. of Job & Family Servs. v. Martin*, 4th Dist. Athens No. 07CA11, 2008-Ohio-1849, ¶ 13. "However, '[a] reviewing court will not disturb a trial court's finding regarding whether service was proper unless the trial court abused its discretion.' " *Britton v. Britton*, 4th Dist. Washington No. 18CA10, 2019-Ohio-2179, ¶ 13, quoting *Beaver v. Beaver*, 4th Dist. Pickaway No. 18CA5, 2018-Ohio-4460, ¶ 8. "An abuse of discretion occurs when a decision is unreasonable, arbitrary, or unconscionable." *State ex rel. Wegman v. Ohio Police & Fire Pension Fund*, 155 Ohio St.3d 223, 2018-Ohio-4243, 120 N.E.3d 786, ¶ 15.

{¶16} "The plaintiff bears the burden of obtaining proper service on a defendant." *Beaver* at ¶ 9. " ' "A [rebuttable] presumption of proper service arises when the record reflects that a party has followed the Civil Rules pertaining to service of process." ' " (Bracketed material added in *Hendrickson*.) *Id.* at ¶ 10, quoting *Hendrickson v. Grider*, 2016-Ohio-8474, 70 N.E.3d 604, ¶ 32 (4th Dist.), quoting *Poorman v. Ohio Adult Parole Auth.*, 4th Dist. Pickaway No. 01CA16, 2002 WL 398721, *2 (Mar. 6, 2002). To rebut the presumption of proper service, " 'the other party must produce evidentiary-quality information demonstrating that he or she did not receive service.' " *Hendrickson* at ¶ 32, quoting *McWilliams v. Schumacher*, 8th Dist. Cuyahoga Nos. 98188, 98288, 98390, 98423, 2013-Ohio-29, ¶ 51. "In general, '[i]n determining whether a defendant has sufficiently rebutted the presumption of valid service, a trial court may assess the credibility and competency of the submitted evidence demonstrating non-service.' " *Boggs v. Denmead*, 2018-Ohio-2408, 115 N.E.3d 35, ¶ 31 (10th Dist.), quoting *Bowling v. Grange Mut. Cas. Co.*, 10th Dist. Franklin No. 05AP-51, 2005-Ohio-5924, ¶ 33. "A trial

court is not required to give preclusive effect to a movant's sworn statement that [the movant] did not receive service of process when the record contains no other indication that service was ineffectual." *TCC Mgt., Inc. v. Clapp*, 10th Dist. Franklin No. 05AP-42, 2005-Ohio-4357, ¶ 15.

{¶17} "Even when service of process complies with the applicable rules, it will be invalid if it does not comply with due process requirements." *In re A.G.*, 4th Dist. Athens No. 14CA28, 2014-Ohio-5014, ¶ 24, citing *Akron-Canton Regional Airport Auth. v. Swinehart*, 62 Ohio St.2d 403, 406 N.E.2d 811 (1980), syllabus. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950). "A party may show that service did not comply with due process by establishing that service was not made to an address where it would be 'reasonably calculated' to reach the intended person or entity." *In re A.G.* at ¶ 24, citing *Mullane* at 315.

{¶18} Juv.R. 15(A) provides that after a complaint is filed, the court "shall cause the issuance of a summons" directed to the parents, along with a copy of the complaint. Juv.R. 16(A) states: "Except as otherwise provided in these rules, summons shall be served as provided in Civil Rules 4(A), (C) and (D), 4.1, 4.2, 4.3, 4.5 and 4.6." Civ.R. 4(A) states: "Upon the filing of the complaint the clerk shall forthwith issue a summons for service upon each defendant listed in the caption." Civ.R. 4.1 describes "[a]ll methods of service within this state, except service by publication." Civ.R. 4.1(A)(1)(a) states:

> **Service by United States certified or express mail.** Evidenced by return receipt signed by any person, service of any process shall be by United States certified or express mail unless otherwise permitted by these rules. The clerk shall deliver a copy of the process and complaint or other document to be served to the United States Postal Service for mailing at the address set forth in the caption or at the address set forth in written instructions furnished to the clerk as certified or express mail return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

{¶19} In this case, a rebuttable presumption of proper service arose because pursuant to Civ.R. 4.1(A)(1)(a), Mother was served via certified mail at the address in the caption of the complaint as evidenced by a return receipt "signed by any person." *See Britton*, 4th Dist. Washington No. 18CA10, 2019-Ohio-2179, at ¶ 18 (rebuttable presumption of proper service arose because pursuant to Civ.R. 4.1(A)(1)(a), defendant "was served via certified mail at the address in the caption of the complaint and the instructions for service form, and the return receipt was 'signed by any person' as required by the rule"). And under the circumstances of this case, we cannot say that the trial court abused its discretion when it concluded that Mother failed to rebut the presumption or establish that service at the Denver Road address was not reasonably calculated to reach her. Mother admitted that the Denver Road address was still her mailing address as of July 1, 2020, and the trial court did not believe Mother's testimony that she did not receive the certified mail or learn about the legal custody case until after the final hearing. "We generally defer to the trier of fact on evidentiary weight and credibility issues because the trier of fact is better positioned to view the witnesses and to observe their demeanor, gestures and voice inflections and then to use those observations to weigh witness credibility." *Combs v. Hobstetter-Hall*, 4th Dist. Lawrence No. 16CA2, 2016-Ohio-7407, ¶ 18. Although Father could not recall whether he gave Mother the certified mail, Mother's

testimony that she did not receive it was undercut by her admission that she received other mail which had been sent to the Denver Road address, Father and Grandmother's testimony that they had communications with Mother about proceedings in the legal custody case during its pendency (even if Father did not understand the proceedings and the phrase "legal custody" was never used), and Father's testimony that Mother asked him to lie about her knowledge of the proceedings in exchange for a "50/50 custody" agreement.

{¶20} Because Mother was properly served, the trial court had personal jurisdiction over her when it issued the April 19, 2021 judgment entry granting legal custody to Grandparents. Accordingly, we overrule the sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pike County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.