

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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|---------------------------------|---|-------------------------------|
| U.S. BANK NATIONAL ASSOCIATION, |) | CASE NO. 1:07CV2635 |
| |) | |
| Plaintiff, |) | JUDGE CHRISTOPHER A. BOYKO |
| |) | |
| v. |) | MAGISTRATE JUDGE VECCHIARELLI |
| |) | |
| KIMBERLY LENOR , et al., |) | |
| |) | |
| Defendant. |) | <u>ORDER</u> |

Plaintiff's counsel, Attorney Kristi Brown, also identified as Attorney Kristi Pallen, filed this matter on behalf of Plaintiff, U.S. Bank National Association, on August 30, 2007. Return of Service was executed on Kimberly Lenor and John Doe, Unknown Spouse, if any, of Kimberly Lenor by Process Server-Personally served on September 4, 2007, filed on behalf of U.S. Bank National Association (**Brown, Kristi**) (**Entered: 09/13/2007**),(ECF Doc. Nos. 5 and 6).

Plaintiff has not filed an "Application for Entry of Default" on Kimberly Lenor nor John Doe, Unknown Spouse, if any, of Kimberly Lenor as of April 9, 2008.

The following lists the Electronic Case Filing docket events regarding service on remaining Defendants, Willie Grady aka Willie Grady, Jr., and Jane Doe, Unknown Spouse, if

any, of Willie Grady aka Willie Grady, Jr.

- “Return of Service Unexecuted upon Willie Grady, aka Willie Grady, Jr., and Jane Doe, Unknown Spouse, if any, of Willie Grady aka Willie Grady, Jr., by Process Server attempted on September 4, 2007 filed on behalf of U.S. Bank Association (**Brown, Kristi**) (**Entered: 09/13/2007**)”(ECF Docs. No.7 and 8).
- “Praecipe for Issuance of Alias Summons for Willie Grady, Jr. and Jane Doe of Willie Grady, Jr., filed by U.S. Bank National Association (Attachments: #1 Summons Alias Summons for Willie Grady aka Willie Grady, Jr., #2 Summons Alias Summons for Jane Doe, Unknown Spouse, if any, of Willie Grady aka Willie Grady, Jr. ,(**Brown, Kristi**) (**Entered: 09/13/2007**)”(ECF Doc. No. 9).
- “Summons issued to counsel on 9/24/07 for service upon Willie Grady aka Willie Grady, Jr., Unknown Spouse of Willie Grady. (Attachments: #1 Summons of Unknown Spouse, if any, of Willie Grady, Jr., aka Willie Grady) (E,P) on **September 24, 2007**, (ECF Doc. No. 10).

On October 1, 2007, this case was Stayed pursuant to a Notice of Filing Bankruptcy filed by Plaintiff, (ECF Doc .Nos. 12, 13).

- “Praecipe for issuance of 2nd Alias Summons on Willie Grady aka Willie Grady, Jr., and Jane Doe of Willie Grady aka Willie Grady, Jr., filed by U.S. Bank national Association (Attachments:1 Summons 2nd Alias Summons for Willie Grady aka Willie Grady, Jr., #2 Summons 2nd Alias Summons for Jane Doe of Willie Grady aka Willie Grady, Jr. (**Brown, Kristi**) (**Entered: 11/29/2007**)(ECF Doc. No. 20).

- “Praecipe for issuance of 2nd Alias Summons on Willie Grady, Jr. and Jane Doe, Unknown Spouse, if any, of Willie Grady, Jr., filed by U.S. Bank National Association (Attachments:#1 Summons 2nd Alias Summons for Willie Grady Jr., #2 Summons 2nd Alias Summons for Jane Doe of Willie Grady, Jr.) **Pallen, Kristi (Entered: 02/07/2008)**” (ECF Doc. No. 25).
- “Alias Summons (2nd) issued to counsel on 2/12/08 for service upon Willie Grady, Jane Doe, Unknown Spouse, if any, of Willie Grady, Jr.,” entered by the Clerk on **February 12, 2008**, (ECF Doc. No. 26).

This matter was reopened on February 13, 2008 upon Motion by Plaintiff to reopen case following bankruptcy relief (ECF Doc. No 22).

- “Service by Clerk. Summons and Complaint addressed to Willie Grady and Unknown Spouse of Willie Gray placed in U.S. Mail,” Receipt # 7007 2680 0000 8798 1502 and 7007 2680 0000 8798 1496. (B,B) **(Entered 02/14/2008)**. (ECF non document entry).
- “Return of Service Unexecuted upon Willie Grady and Jane Doe, Unknown Spouse, if any, of Willie Grady aka Willie Grady, Jr., by Certified Mail attempted on February 20, 2008, filed on behalf of U.S. Bank National Association (**Pallen, Kristi (Entered: 03/05/2008)**) (ECF Doc. No. 27).
- “Return of Service Unexecuted upon Jane Doe, Unknown Spouse, if any, of Willie Grady aka Willie Grady, Jr., by Certified Mail attempted on 2/22/2008 filed on behalf of U.S. Bank National Association (**Pallen, Kristi (Entered:**

03/05/2008). (ECF Doc. No. 28).

- “Request to Clerk for service upon Willie Grady, Unknown Spouse of Willie Grady by ordinary mail. Filed by U.S. Bank National Association. (Attachments: #1 Exhibit Certificate of Mailing for Willie Grady, #2 Exhibit Certificate of Mailing for Jane Doe of Willie Grady (*Pallen, Kristi*) (*Entered: 03/28/2008*), (ECF Doc. No. 29).
- “Praecipe for issuance of 2nd Alias Summons filed by U.S. Bank National Association. (*Pallen, Kristi*) (*Entered: 03/28/2008*) (ECF Doc. No. 30).

ANALYSIS

Plaintiff’s counsel attempted service on Willie Grady aka Willie Grady, Jr., and Jane Doe, Unknown Spouse, if any, of Willie Grady aka Willie Grady, Jr., from September 13, 2007 to March 28, 2008, six months or more, with repeated requests for summons, alias summons, and praecipes to issue for service upon Willie Grady, et. al., at four different addresses¹.

Plaintiff’s counsel filed a “*Notice of Completion of Service*” on April 8, 2008. Plaintiff informed the Court service has been completed on all parties and the Court can expect Plaintiff to file its “*Application to the Clerk for Entry of Default*” against any and all non-answering parties after 20 days, (ECF Doc. No. 32).

Plaintiff’s counsel, herself, docketed and filed “*Return of Service Unexecuted*” upon Willie Grady aka Willie Grady, Jr., Jane Doe, Unknown Spouse of Willie Grady aka Willie Grady, Jr., for attempts of service by Certified Mail, ECF Doc. Nos. 27 and 28.

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The addresses are: 7711 Goodman Avenue, Cleveland , OH 44105; 208 Monroe Street, Joliet, Illinois 60436; 15817 Walvern Blvd, Maple Hts., OH 44137; and 11921 Jessie Avenue, Cleveland, OH 44105

Local Rule 4.2, Service of Process, provides instructions for service by the *Clerk* when mailing summons and complaint by Certified Mail.

Local Rule 4.2(a) states:

- (a) *“Plaintiff’s attorney shall address the envelope to the person to be served, shall enter as the return address the address of the issuing location for **The Office of the Clerk**, and shall place a copy of the summons and complaint or other document to be served in the envelope. Plaintiff’s attorney shall also affix to the back of the envelope the domestic return receipt card, PS Form 3811, July 1983 (the “green card”) showing the **Name of Sender as “Clerk, United States District Court, Northern District of Ohio”** at the appropriate address with the certified mail number affixed to the front of the envelope. The instruction to the delivering postal employee shall require the employee to show to whom delivered, date of deliver, and address where delivered. Plaintiff’s attorney shall affix adequate postage to the envelope and deliver it to the Clerk who shall cause it to be mailed. The envelope should be unsealed when it is delivered to the Clerk so that the **Clerk** can verify the contents prior to mailing.*
- (b) *“**The Clerk** shall enter the fact of mailing on the appearance docket and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, the Clerk should forthwith electronically file a Return of Service Unexecuted which shall serve as notice to the attorney of record or if there is no attorney of record, the party at whose instance process was issued (who shall be copied by regular mail), that service was not obtained.”*
- (c) *“If service of process is refused or was unclaimed, **the Clerk** shall forthwith electronically file a Return of Service Unexecuted which shall serve as notice to the attorney of record or if there is no attorney of record, the party at whose instance process was issued (who shall be copied by regular mail), that service was not obtained. . .”*

Local Rule 4.2(a) clearly states it is the attorney’s responsibility to address the envelope,

provide the return address of the Clerk of Court, affix appropriate postage, and deliver the envelope to the *Clerk* unsealed so the *Clerk* may verify the contents of the envelope prior to mailing. Further, Local Rule 4.2(c) clearly instructs if service of process is refused or was unclaimed, the *Clerk* shall forthwith electronically file a “*Return of Service Unexecuted*”.

The Electronic Case File documents 27 and 28 indicate the “*Return of Service Unexecuted*” was not entered by the *Clerk*, but by Attorney Kristi Pallen:

“*The following transaction was entered by Pallen, Kristi on 3/5/2008 at 9:05 AM EST and filed on 3/5/2008 (ECF Doc. No. 27)*

Docket Text:

Return of Service Unexecuted upon Willie Grady aka Willie Grady, Jr. by Certified Mail attempted on 2/20/2008 filed on behalf of U.S. Bank National Association (Pallen, Kristi)

and

The following transaction was entered by Pallen, Kristi on 3/5/2008 at 9:10 AM EST and filed on 3/5/2008 (ECF Doc. No. 28)

Docket Text:

Return of Service Unexecuted upon Jane Doe, Unknown Spouse, if any of Willie Grady aka Willie Grady, Jr. by Certified Mail attempted on 2/22/2008 filed on behalf of U.S. Bank National Association (Pallen, Kristi)

The Court finds Plaintiff’s counsel did not follow Local Rule 4.2. filing procedures for service by Certified Mail. Plaintiff’s counsel addressed its own mailing envelope, affixed the postage, affixed the return receipt card with counsel’s return address - not that of the *Clerk of Courts* - confirmed the contents of the mailing envelope and mailed it (See Doc. Nos. 27 and 28). Upon receipt of the returned mail, counsel entered and filed the docket text, “*Return of Service Unexecuted.*”.

Attorneys are authorized by Local Rule 4.2 and the Ohio Rules of Civil Procedure to

docket a return of service only if service was perfected by “*Personal Process Server.*”

CONCLUSION

The Court finds Plaintiff’s counsel did not follow Local Rule 4.2 filing procedures for service by Certified Mail as to Willie Grady aka Willie Grady, Jr., and Jane Doe, Unknown Spouse, if any, of Willie Grady. The Court strikes all entries pertaining to service on Willie Grady and Unknown Spouse, if any, of Willie Grady.

The Court finds Plaintiff’s counsel failed to perfect service as to Willie Grady aka Willie Grady, Jr., and Jane Doe, Unknown Spouse, if any, of Willie Grady, within 120 days of the filing of the Complaint, according to Fed.R.Civ.P. 4. Plaintiff’s counsel did not motion the Court for additional time to perfect service nor shown good cause as to why service was not perfected within 120 days of the filing of the Complaint.

Further, the Court finds Plaintiff’s counsel failed to prosecute this matter as to Kimberly Lenor and Unknown Spouse, if any, of Kimberly Lenor, even though service was perfected on September 4, 2007.

Therefore, it is ORDERED this case is dismissed, without prejudice, as to Kimberly Lenor and Unknown Spouse, if any, of Kimberly Lenor for Want of Prosecution. It is further ORDERED this case is dismissed as to Willie Grady aka Willie Grady, Jr., and Unknown Spouse, if any, of Willie Grady for failure to perfect service within 120 days, according to Fed.R.Civ.P 4.

Plaintiff’s counsel is admonished to follow Local Rule 4.2 as to Service by Certified Mail.

IT IS SO ORDERED.

s/Christopher A. Boyko
CHRISTOPHER A. BOYKO
United States District Court Judge

April 15, 2008