

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA10-248

KARMAN, INC.

APPELLANT

V.

RICK ELLIOTT AND TONYA
ELLIOTT, INDIVIDUALLY AND
D/B/A PLEASURE APPAREL

APPELLEES

Opinion Delivered October 6, 2010

APPEAL FROM THE WHITE COUNTY
CIRCUIT COURT
[NO. CV-2002-542]

HONORABLE HARVEY L. YATES,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant argues that the trial court erred in setting aside a writ of garnishment for failure to strictly comply with the statutory service requirements, *i.e.*, service upon a named individual at a residence. We find no error, and we affirm.

Appellant sued Rick and Tonya Elliott, who were conducting a business called “Pleasure Apparel,” for debt arising from default on a commercial credit agreement applied for by the Elliotts. The application for commercial credit showed that the Elliotts’ business and residential address was P.O. Box 111, Searcy, AR. Appellant obtained judgment in the amount of \$5,357.70, plus costs, attorney’s fees, and postjudgment interest, and caused a writ of garnishment to be issued. The Elliotts filed an objection to the writ of garnishment,

asserting that the statutory service requirements had not been met. After a hearing, the trial court entered an order setting aside the writ of garnishment, and this appeal followed.

Arkansas Code Annotated section 16-110-402(2) (Repl. 2006) establishes the service-requirement procedure applicable to writs of garnishment. The judgment creditor is responsible for mailing a copy of the writ of garnishment and the “Notice to Defendant” to the judgment debtor the same day that the creditor serves the writ of garnishment and the “Notice to Defendant” on the garnishee. The judgment creditor shall mail the writ of garnishment and the “Notice to Defendant” to the residence of the judgment debtor by first-class mail.

The notice provided by appellant to the judgment debtors in this case was addressed to “Pleasure Apparel, PO Box 111, Searcy, Arkansas 72145.” This notice was defective. Pleasure Apparel, a fictitious entity, is not the judgment debtor, and PO Box 111 is patently not a residential address. See *Turner v. Farnam*, 82 Ark. App. 489, 120 S.W.3d 616 (2003). Section 16-110-402(2)(B) permits an alternative to residential service, but only where the residence address of the judgment debtor is not discoverable after a diligent search. There is no evidence of such a search in the present case.

It is undisputed that the Elliotts received actual notice of the garnishment. Nevertheless, we hold that the trial court correctly set aside the writ for failure to strictly comply with the statute. The Arkansas Supreme Court has consistently held that service-of-process requirements must be strictly construed and that compliance with applicable technical

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requirements must be exact. *See, e.g., Carruth v. Design Interiors, Inc.*, 324 Ark. 373, 921 S.W.2d 944 (1996). Despite appellees' actual knowledge, the statutory requirements regarding the debtors' names and residential address were not exactly complied with in this case, and the trial court properly set aside the writ.¹

Affirmed.

VAUGHT, C.J., and HART, J., agree.

¹In so holding, we note that the Arkansas Supreme Court has considered and rejected a proposal to allow trial courts to deny motions to dismiss based on marginal, technical violations of the process requirements where the defendant has actual notice of the service and files a response. *See In re Arkansas Rules of Civil Procedure*, 2010 Ark. 35; *compare In re Arkansas Rules of the Supreme Court*, 2010 Ark. 288.