

SUPREME COURT OF ARKANSAS

No. 11-625

ADVANCE FIBERGLASS, LLC
PETITIONER

VS.

IRAG ROVNAGHI AND PEGAH
DEHESHMAND
RESPONDENTS

Opinion Delivered December 8, 2011

PETITION FOR WRIT OF
CERTIORARI

WRIT DENIED.

ROBERT L. BROWN, Associate Justice

Petitioner, Advance Fiberglass, LLC (Advance), petitions for a writ of certiorari and asserts that the circuit court lacked jurisdiction of this matter due to insufficiency of process and insufficiency of service of process and asks that the complaint against it be dismissed. We disagree that the writ is warranted, and we deny the petition.

On July 21, 2010, respondents, Irag Rovnaghi and Pegah Deheshmand, filed a complaint against Advance, alleging that due to Advance's negligence, an explosion occurred on August 9, 2007, resulting in both property damage and personal injury to them. On September 15, 2010, respondents served the summons and complaint on Bryan S. Jeffrey, the registered agent for Advance by certified mail with return receipt requested. Respondents also requested restricted delivery. The postal service delivered the summons and complaint to the address listed for Jeffrey; however, through an error on the part of the U.S. Postal



Service, Jeffrey did not sign for the certified mail. Instead, Joyce Harris, an employee of Jeffrey's, signed the receipt for the certified mail.

On September 24, 2010, Advance filed its answer and moved to dismiss on the basis of insufficiency of process and insufficiency of service of process. Advance filed a supplement to its motion to dismiss on March 18, 2011, in which it contended that service was improper because Advance's registered agent, Jeffrey, did not sign for the certified mail. On April 29, 2011, respondents answered Advance's motion to dismiss. A hearing was held that same day, and the parties presented arguments concerning service of process. Following the hearing, the circuit court made the following ruling from the bench:

Without reading the notes, it's difficult for me to make heads or tails of (8)(A)(i). In reading the notes and amendments, it at least appears that when an agent for service of a corporation is itself a corporation, you don't have to have restrict delivery. But it also seems like there is a trend in loosening the Rule 4 requirements.

I am going to deny the motion to dismiss and will admit that I've got to come down on one side or the other on this case, and it's a very close call

The circuit court then entered an written order on May 19, 2011, in which it denied Advance's motion to dismiss. Following this, Advance filed its petition for writ of certiorari with this court.

A writ of certiorari is extraordinary relief, and this court will grant it only when there is a lack of jurisdiction in the trial court, an act in excess of jurisdiction by the trial court on the face of the record, or the proceedings are erroneous on the face of the record. *Conner v. Simes*, 355 Ark. 422, 129 S.W.3d 476 (2003). In determining its application, this court will not look beyond the face of the record to ascertain the merits of a controversy, or to control



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a court's discretion, or to review a finding of fact, or to reverse a court's discretionary authority. *Id.* A writ of certiorari lies only where it is apparent on the face of the record that there has been a plain, manifest, clear, and gross abuse of discretion, and there is no other adequate remedy available to the petitioner. *Id.*

Arkansas law is well settled that service of valid process is necessary to give a court jurisdiction over a defendant. *Raymond v. Raymond*, 343 Ark. 480, 36 S.W.3d 733 (2001). Our case law is equally well settled that statutory service requirements, being in derogation of common-law rights, must be strictly construed, and compliance with them must be exact. *Id.* This court has held that the same reasoning applies to service requirements imposed by court rules. *Smith v. Sidney Moncrief Pontiac, Buick, GMC Co.*, 353 Ark. 701, 120 S.W.3d 525 (2003).

Rule 4(d)(5) of the Arkansas Rules of Civil Procedure provides in pertinent part:

Service shall be made upon any person designated by statute to receive service or as follows:

.....

(5) Upon a domestic or foreign corporation or upon a partnership, *limited liability company*, or any unincorporated association subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, partner other than a limited partner, managing or general agent, or any agent authorized by appointment or by law to receive service of summons.

Ark. R. Civ. P. 4(d)(5) (2010) (emphasis added).

Rule 4(d)(8)(A)(i) of the Arkansas Rules of Civil Procedure also provides that

[s]ervice of a summons and complaint upon a defendant of any class referred to in paragraphs (1) through (5), and (7) of this subdivision (d) may be made by the plaintiff or an attorney of record for the plaintiff by any form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or



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the agent of the addressee. The addressee must be a natural person specified by name, and the agent of the addressee must be authorized in accordance with U.S. Postal Service regulations. *However, service on the registered agent of a corporation or other organization may be made by certified mail with a return receipt requested.*

Ark. R. Civ. P. 4(d)(8)(A)(i) (2010) (emphasis added).

The Reporter's Notes to Arkansas Rule of Civil Procedure 4 provide an additional explanation of the requirements for service upon a registered agent of a corporation, as a result of the 2004 Amendment:

[P]aragraph (A)(i) has been amended to establish less onerous requirements when service is made on the registered agent of a corporation or other organization. In that situation, the new last sentence provides that service may be made by certified mail, return receipt requested. Because delivery need not be restricted, there is no requirement that the addressee be a natural person or that the agent of the addressee be authorized in accordance with postal service regulations.

This court construes court rules using the same canons of construction that we invoke to interpret statutes. *Henyan v. Peek*, 359 Ark. 486, 199 S.W.3d 51 (2004). The first rule in considering the meaning and effect of a statute or rule is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Id.* When the language is plain and unambiguous, there is no need to resort to rules of statutory construction, and the analysis need go no further. *Id.* This court reviews issues of statutory construction de novo, as it is for this court to determine what a statute or rule means. *Id.* In this respect, this court is not bound by the circuit court's decision; however, in the absence of a showing that the circuit court erred in its interpretation of the law, that interpretation will be accepted as correct on appeal. *Id.*



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The facts of the instant case are undisputed. To repeat in part, delivery of the summons and complaint was restricted to the registered agent, Bryan Jeffrey. Yet, through an error on the part of the postal service, Jeffrey's employee, Joyce Harris, and not Jeffrey himself, signed for the certified mail. A plain reading of Rule 4(d), as amended, however, makes it very clear that restricted delivery is not required, when serving the registered agent of a corporation or other organization.

The language of Rule 4(d)(5) permits service on a corporation or other organization, like a limited liability company, to be made upon an agent for that organization. Rule 4(d)(8)(A)(i) then clearly provides that service upon a limited liability company may be made by any form of mail addressed to the person to be served, with a return receipt requested and delivery restricted to the addressee or the agent of the addressee. Rule 4(d)(8)(A)(i) next requires that the addressee be a natural person and that the agent for the addressee be authorized to receive restricted mail in accordance with the regulations of the U. S. Postal Service. But Rule 4(d)(8)(A)(i) was amended in 2004, and that amendment now permits service to be made on the registered agent of a corporation or other organization by certified mail with return receipt requested. There is no restricted-delivery requirement.

Furthermore, the Reporter's Notes to the 2004 Amendment, as quoted above, give the rationale for adding the last sentence to the rule. This sentence was added, the notes say, in order "to establish less onerous requirements when service is made on the registered agent of a corporation or other organization." Specifically, the notes explain that "delivery need not be restricted" and that "there is no requirement that the addressee be a natural person or



that the agent of the addressee be authorized in accordance with postal service regulations.” Ark. R. Civ. P. 4 rptrs. nn. (2004 amend.). In addition, the cases cited by Advance in its briefs on appeal for the proposition that there is not proper service when an employee of a corporation, who was not authorized to accept service, signs for a letter containing the summons and complaint, were decided prior to the 2004 Amendment to Rule 4. *See, e.g., Henry v. Gaines-Derden Enters., Inc.*, 314 Ark. 542, 863 S.W.2d 828 (1993).

As an additional matter, the fact that the respondents elected to restrict delivery to the registered agent does not render the service on Advance insufficient. The respondents chose a more restrictive form of service than they needed, and, based on an error on the part of the U. S. Postal Service, that more restrictive form of service was not properly completed. Nevertheless, as already referenced, the last sentence of Rule 4(d)(8)(A)(i) now does not require restricted delivery when serving the registered agent of a corporation or other organization but merely permits service by certified mail with a return receipt requested, which is what occurred in the instant case. The Reporter’s Notes to the rule clarify that the agent of the addressee who signs for the mail need not be authorized by the regulations of the postal service to accept that mail.

We hold that Advance is not entitled to the issuance of a writ of certiorari, because the circuit court, in correctly interpreting Rule 4(d) and denying Advance’s motion to dismiss, did not act in excess of its jurisdiction; nor did it commit a plain and manifest abuse of discretion. Because there was no abuse of discretion or lack of jurisdiction, this court need



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not consider the argument that Advance has no other adequate remedy available apart from this extraordinary writ.

Writ denied.

Watts, Donovan & Tilley, P.A., by: *Michael McCarty Harrison* and *Bethany A. Pike*, for appellant.

Terrence Cain and *John W. Walker, P.A.*, by: *John W. Walker*, for appellees.