

2021 NOV - 8 FILE NO. A 10 27

ORANGE CO., N.C.

Plaintiff
v.

BY RFM **JUDGMENT FOR
ABSOLUTE DIVORCE**

Defendant

THIS MATTER came on to be considered and was considered upon the Plaintiff 17 September 2021 motion for summary judgment¹. Upon considering the entire record, the arguments of counsel of the Plaintiff, and the lack of objections from the Defendant, this Court makes the following:

FINDINGS OF FACT

1. Plaintiff is a citizen and resident of Orange County, North Carolina and has been a resident of Orange County, North Carolina for more than six months preceding the filing of this action.
2. Defendant is a resident and citizen of Russia. The Defendant has no legal status in the United States. Accordingly, the Defendant is not a member of the armed services of the United States.
3. On 13 August 2021, the Plaintiff served the Defendant a copy of the Complaint and Summons via Fedex at her primary residence in Moscow, Russia.
4. To date, the Defendant did not file an Answer, did not respond to the Plaintiff's Motion for Summary Judgment, did not raise any objections to the sufficiency of the service of process, and the record does not indicate that the Defendant attempted to communicate in any way with the Court.
5. The Plaintiff and the Defendant were married on 27 August 2019.

¹ "A defense of insufficient service of process is waivable under [] Rule of Civil Procedure 12[] and therefore is not normally a defense that courts would consider under a motion for summary judgment." Fields v. SDH Servs. E., No. 4:18-CV-01438, at *2 (S.D. Tex. Mar. 7, 2019), citing 5B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1353 (3d ed.) ("Since the defense of improper service of process involves a matter in abatement and does not go to the merits of the action, it is technically not proper to raise it by a summary judgment motion.")

6. The Plaintiff and the Defendant separated on 3 July 2020. At the time of the separation, the parties intended for the separation to be permanent.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this action.
2. "A court of this State having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to Rule 4(j)(1)d of the Rules of Civil Procedure" in "any action under Chapter 50 that arises out of the marital relationship within this State, notwithstanding subsequent departure from the State, if the other party to the marital relationship continues to reside in this State." N.C. Gen. Stat. § 1-75.4(12).
3. Rule 4(j)(1)d of the North Carolina Rules of Civil Procedure provides ~~that~~ service of process by depositing with a designated delivery service such as Federal Express a copy of the summons and complaint, addressed to the defendant, delivering to the addressee, and obtaining a delivery receipt. N.C. R. Civ. P. 4(j)(1) (2021).
4. Moreover, this Court may permit any means of service not prohibited by international agreement. N.C. R. Civ. P. 4(j)(3) (2021); see Smith v. Wolf Performance Ammunition, No. 2:13-cv-02223-JCM-NJK, at *4 (D. Nev. Jan. 23, 2015) ("Here, the Court finds that service by international express mail and e-mail is appropriate to serve the Third-Party Complaint and summons on Tula Cartridge Works [in Russia]")².
5. Although Russia is officially a signatory to the Hague Convention, Russia "has adopted the policy of not cooperating with the United States on civil [] judicial matters." Phx. Process Equip. Co. v. Capital Equip. & Trading Corp., 250 F. Supp. 3d 296, 308 (W.D. Ky. 2017); see also Sec. & Exch. Comm'n v. Dubovoy, No. CV156076MCAMAH, 2016 WL 7217607, at *2 (D.N.J. Dec. 13, 2016) ("Russia, despite being a signatory to the Hague Convention, unilaterally suspended all judicial cooperation with the United States in civil and commercial matters in July 2003"); AMTO, LLC v. Bedford Asset Mgmt., LLC, No. 14-CV-9913, 2015 WL 3457452, at *4 (S.D.N.Y. June 1, 2015) (citing Arista Records LLC v. Media Servs. LLC,

² Service of process must also "comport with constitutional notions of due process," meaning it must be "reasonably calculated, under the circumstances, to apprise the 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 (1950). This Court finds that the delivery of documents by a reliable carrier like FedEx to one's primary residence satisfies that requirement. Id.

No. 06-CV-15319, 2008 WL 563470, at *2 (S.D.N.Y. Feb. 25, 2008) (the court acknowledged that "Russia unilaterally suspended all judicial cooperation with the United States in civil and commercial matters" and held that "[b]ecause there is no reason to believe that service would be effective if [a plaintiff] were required to serve [a defendant based in Russia] in accordance with the Hague Convention procedures, substituted service pursuant to Rule 4(f)(3) is appropriate"). In light of this, courts have found that it is "fair to conclude that there are no internationally agreed means of service for those cases in which the defendant being served resides in Russia, and that any attempts to serve process through Hague Convention procedures would most likely be unsuccessful." Sec. & Exch. Comm'n, 2016 WL 7217607 at *2; see also In re Cyphermint, Inc., 445 B.R. 11, 15-17 (Bankr.D.Mass.2011) (holding that alternative service was "sufficient and proper" because service under the Hague Convention had "been rendered impossible due to the unilateral action of the Russian Federation Central Authority"); Microsoft Corp. v. John Does 1-18, No. 1:13cv139, 2014 WL 1338677, at *3-4 (E.D.Va. Apr. 2, 2014) (court order) (allowing service on Russian litigant through international courier and registered mail).

6. Furthermore, subject matter jurisdiction is "court power" and serves institutional interests by "keep[ing] the [] courts within the bounds" prescribed by the Constitution and the legislature, it "must be policed by the courts" at all times and, thus, is not waivable. Ruhrigas, AG v. Marathon Oil Co., 526 U.S. 574, 583, 119 S.Ct. 1563, 143 L.Ed.2d 760 (1999). On the other hand, personal jurisdiction restricts a court's jurisdiction over the person, "protect[ing] individual rights." Id. Personal jurisdiction "represent[s] a restriction on judicial power . . . as a matter of individual liberty." Id. at 584, 119 S.Ct. 1563. Thus, "a party *must insist* that the limitation be observed, or [s]he may forgo that right, effectively consenting to the court's exercise of adjudicatory authority." Id. (quoting Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982)).
7. Because the Defendant had adequate notice of this action and made no attempts to raise objections, challenges to personal jurisdiction have been waived. Id. Indeed, Defendant failed to challenge the lack "of jurisdiction over the person" or the "[insufficiency] of service of process" within the prescribed time "after service of the summons and complaint upon [her.]" N.C. Gen. Stat. 1A-1, Rule 12(a),(b); see also N.C. Gen. Stat. 1A-1, Rule 12(h)(1); Smith, 2:13-cv-02223-JCM-NJK, at *4 ("Tulammo does not claim


that service by international express mail and e-mail violate international law.")³.

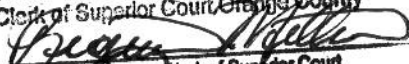
8. For the foregoing reasons, this Court has jurisdiction over both parties to this action and the Plaintiff is entitled to an Absolute Divorce based on one year's separation.

Based upon these findings and conclusions, **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that the bonds of matrimony between the Plaintiff and the Defendant are hereby dissolved.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that if the Defendant intends to appeal this judgment, she must file a Notice of Appeal of this civil judgment within 30 days after its proper service.

IT IS SO ORDERED, this the 8th day of November, 2021.


District Court Judge Presiding

CERTIFIED TRUE COPY FROM ORIGINAL
Clerk of Superior Court, Orange County
By: 
Assistant Deputy Clerk of Superior Court
Date: 11/8/21

³ Our Supreme Court has addressed whether noncompliance with Rule 4 affects a court's subject matter jurisdiction or solely personal jurisdiction over a party. See In re K.J.L., 363 N.C. 343, 677 S.E.2d 835 (2009). "[A] court's lack of subject matter jurisdiction is not waivable and can be raised at any time." In re K.J.L., 363 N.C. at 346, 677 S.E.2d at 837 (citing N.C. Gen. Stat. § 1A-1, Rule 12(h)(3)). "Conversely, a court's jurisdiction over a person is generally achieved through the issuance and service of a summons." Id. (citing Peoples v. Norwood, 94 N.C. 167, 172 (1886)). "Deficiencies regarding the manner in which a court obtains jurisdiction over a party, including those relating to a summons, are waivable and must be raised in a timely manner." Id. (citing N.C. Gen. Stat. § 1A-1, Rule 12(h)(1)).