

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

November 7, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-1624**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**EASTMORE REAL ESTATE, a domestic  
corporation,**

**Plaintiff-Respondent,**

**v.**

**THOMAS W. SEEKINS,**

**Defendant-Appellant.**

APPEAL from an order of the circuit court for Milwaukee County:  
JACQUELINE SCHELLINGER, Judge. *Affirmed.*

SCHUDSON, J.<sup>1</sup> Thomas W. Seekins appeals from an order denying his motion to reopen the default judgment entered against him. Seekins argues that the trial court erred in finding that Eastmore Real Estate attempted with reasonable diligence to personally serve Seekins with the small claims summons and complaint prior to obtaining service by publication,

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<sup>1</sup> This appeal is decided by one judge pursuant to § 752.31(2), STATS.

pursuant to § 801.11, STATS.<sup>2</sup> The trial court denied Seekins's motion to reopen, finding that Eastmore used reasonable diligence. This court concludes that the trial court did not erroneously exercise its discretion by refusing to reopen the default judgment and, therefore, the order is affirmed.

Section 799.29(1), STATS., gives a trial court discretion to grant a motion to reopen a default judgment “upon notice and motion or petition duly made and *good cause shown*.” (Emphasis added.) This court will not reverse a default judgment or an order denying a motion to reopen a default judgment unless the trial court erroneously exercised its discretion. *Gaertner v. 880 Corp.*, 131 Wis.2d 492, 500, 389 N.W.2d 59, 62 (Ct. App. 1986). Additionally, the test for whether reasonable diligence for personal service has been satisfied is dependant upon the facts of each case. *Heaston v. Austin*, 47 Wis.2d 67, 73, 176

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<sup>2</sup> Section 801.11(1), STATS., provides, as material here:

**801.11 Personal jurisdiction, manner of serving summons for.** A court of this state having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in s. 801.05 may exercise personal jurisdiction over a defendant by service of a summons as follows:

**(1) NATURAL PERSONS....**

- (a) By personally serving the summons upon the defendant either within or without this state.
- (b) If with reasonable diligence the defendant cannot be served under par. (a), then by leaving a copy of the summons at the defendant's usual place of abode:

....

- (c) If with reasonable diligence the defendant cannot be served under par. (a) or (b), service may be made by publication of the summons as a class 3 notice, under ch. 985, and by mailing. If the defendant's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the defendant, at or immediately prior to the first publication, a copy of the summons and a copy of the complaint. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence.

N.W.2d 309, 313 (1970). Service by publication is authorized after the plaintiff, using due diligence, exhausts information or "leads" reasonably calculated to effectuate personal service. *West v. West*, 82 Wis.2d 158, 166, 262 N.W.2d 87, 90 (1978). Resolution of this issue therefore presents a question of fact. *Wisconsin Finance Corp. v. Garlock*, 140 Wis.2d 506, 518, 410 N.W.2d 649, 654 (Ct. App. 1987). Accordingly, this court will affirm unless the trial court's findings of fact are clearly erroneous. *Id.*

The relevant facts are undisputed. Seekins vacated Eastmore's premises and provided Eastmore with a forwarding address, which turned out to be for a post office box. Eastmore attempted to personally serve Seekins with a small claims summons and complaint at the forwarding address, but discovered that the address was for a post office box, registered to Donald Dimartino, 2426 N. Humboldt Blvd., #2. Nothing in the post office box listing indicated any relationship between Dimartino and Seekins. Eastmore attempted personal service at the post office box a second time before resorting to publication. Eastmore did not attempt service at Dimartino's Humboldt Blvd. address.

The trial court noted:

I don't find anything wrong with the service of process in this case.... So I'm finding that was diligent since there was no forwarding address left besides the post office box. I'm finding this was the only reasonable place to serve.

I'm finding since there was a copy of the summons and complaint mailed to the post office box and that post office box was apparently a place this defendant was getting mail, because it's attached to someone who he rents from, or he will be using that as a post office box, I don't know why he never got a copy of the summons and complaint. At least a good faith effort was made to provide him real notice as opposed to published notice, and it looks to me that everything was done and service was proper in this case.

This court concludes that Eastmore's attempts at personal service were sufficient for the trial court to conclude that the standard of reasonable diligence prior to publication was satisfied. Since Seekins left no forwarding address other than the post office box, it was not unreasonable for Eastmore to conclude that this was the only reasonable place to attempt to personally serve Seekins. Thus, the trial court could reasonably conclude that "reasonable diligence" did not require Eastmore to attempt to personally serve Seekins at Dimartino's address when it was not apparent that Dimartino had any relationship with Seekins. The totality of circumstances was sufficient to support the trial court's conclusion that Eastmore acted with "reasonable diligence." Therefore, this court concludes the trial court's denial of Seekins's motion to reopen the default judgment entered against him was not an erroneous exercise of discretion.

*By the Court.* – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.