

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

**FILED**  
November 30, 1995  
Cecil Crowson, Jr.  
Appellate Court Clerk

BARBARA JUNE CLINE,	)	C/ A NO. 03A01-0508-CH-00258
	)	
Plaintiff - Appellant,	)	KNOX CHANCERY
	)	
v.	)	HON. FREDERICK D. McDONALD,
	)	CHANCELLOR
JDH, INC., which holds itself	)	
out to be EMPLOYER'S SECURITY	)	
COMPANY, INC., and EMPLOYER'S	)	
SECURITY COMPANY, INC.,	)	AFFIRMED
	)	AND
Defendants - Appellees.	)	REMANDED

PETER ALLIMAN, LEE & ALLIMAN, Madisonville, for Plaintiff-Appellant.

L. WEBB CAMPBELL, II, SHERRARD & ROE, P. L. C., Nashville, and J. THOMAS JONES, BERNSTEIN, STAIR & McADAMS, Knoxville, for Defendants - Appellees.

O P I N I O N

Franks. J.

In this action the Trial Court entered summary judgment for defendant Employer's Security Company, Inc., on the basis the statute of limitations had run as to this defendant, and the doctrine of relation back was inapplicable.

On appeal, plaintiff insists there is a disputed issue of material fact as to whether this defendant had notice

of the lawsuit prior to the running of the statute of limitations, and summary judgment was not appropriate.

In the complaint, plaintiff alleges that she was the employee of JDH, Inc., which holds itself out to be Employer's Security Company, Inc., and was wrongfully discharged on July 22, 1992. She filed her complaint on July 7, 1993, and subsequent to the running of the statute of limitations, she amended her complaint to name Employer's Security Company, Inc., as a defendant and, as noted, the Trial Judge held the statute of limitations had run as to that defendant and granted summary judgment.

After the complaint was filed, defendant JDH, Inc., moved for summary judgment on the grounds that plaintiff was not employed by defendant after November 14, 1991, because on that date it sold the business known as Employer's Security Company, Inc., to Employer's Acquisition Corporation, a Delaware corporation, and that all the averments in the complaint alleging discrimination or other wrongs occurred after January 30, 1992. The Court ultimately granted JDH, Inc., summary judgment.

It is undisputed that on November 14, 1991, Employer's Acquisition Corporation bought the assets of JDH, Inc., which purchase included "assets used by that company to operate the security guard business and the trade name "Employer's Security Company". After the acquisition, Employer's Acquisition Corporation changed its corporate name to Employer's Security Company, Inc., and registered to do business in Tennessee under that name before plaintiff filed suit. The president of that company's affidavit states he had

no knowledge that plaintiff had sued JDH, Inc., until after the statute had run, or any knowledge that plaintiff was making a claim against his company until February of 1994.

Plaintiff concedes that in order to prevail it is critical to demonstrate that this defendant had notice of the lawsuit prior to the running of the statute of limitations, but she insists such notice was given by the actions of the process server who served the original process, his affidavit was filed in response to the motion. The affidavit states that the deputy sheriff "served a complaint on Employer's Security Company, Inc." located at 10816 Kingston Pike in Knoxville. He described what he did:

When I arrived at the business, I took the papers to the receptionist desk and told her that I had legal papers to serve. This is always my practice when serving papers on a corporation. She left to get someone to accept service. A man in a security guard's uniform returned. He was wearing officer's insignia, either a captain or a major. I served the papers on him

When there are two names on the complaint as there were in this case, it is my custom and habit to write in the name of the company on which the papers were actually served. In this case that was Employer's Security Company, Inc.

A receptionist for Employer's Security Company, Inc., filed an affidavit which state she does not remember a deputy sheriff attempting to deliver any kind of papers to her, but if papers had been delivered to her directed to Jack Houston, she would have taken them to his office. Also, an affidavit of a field supervisor with the rank of Colonel employed by Employer's Security Company, Inc., gave his affidavit that he did not recall accepting service of process on behalf of Employer's Security Company, Inc. from a deputy sheriff, but if papers

delivered to him which were directed to Jack Houston, he would have taken them to Houston's office.

Jack Houston and his corporation, JDH, Inc., maintained an office at the same address as Employer's Security Company, Inc., at the time the process server visited the premises.

While the return of the summons is not before this Court, we conclude from the process server's affidavit that he neither properly served the defendant named in the complaint, nor this defendant. *See Rules of Civil Procedure*, Rule 4.04. *Also see Garland v. Seaboard Coastline R. Company*, 650 S.W2d 528 (Tenn. 1983). By August 12, 1993, Jack D. Houston, sole stockholder of JDH, Inc., had notice of the action as an attorney on that date entered an appearance on behalf of that corporation.

Essentially the complaint directed the process server to serve JDH, Inc., whose agent for service of process was Jack D. Houston, and further that it was doing business as Employer's Security Company, Inc. Obviously, as the Supreme Court noted in *Floyd v. Rentrop*, 675 S.W2d 165 (Tenn. 1984) "if a party, individual or corporation has been served with process in the action, they would have actual notice of the action". *Id.* at 168. The process was clearly intended to be served upon the party defendant, JDH, Inc., through its agent for service of process. Suit papers naming a corporation as a party defendant left with an unidentified employee of another corporation is not evidence that the latter corporation has

notice that suit has been brought.<sup>1</sup>

We affirm the summary judgment entered by the Trial Court and the cause is remanded with costs of the appeal assessed to appellant.

-----  
Herschel P. Franks, J.

CONCUR:

-----  
Don T. Murray, J.

-----  
Charles D. Susano, Jr., J.

---

<sup>1</sup>See Advisory Commission Comment to Rule 15.03 T.R.C.P.