## IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

STEVEN A. MCLEOD	)
Plaintiff,	) ) C.A. No. N11C-03-111 MJB
<b>v.</b>	) ) )
HUGHEY F. MCLEOD,	) )
Defendant.	)

Submitted: November 15, 2012 Decided: January 23, 2013

# UPON PLAINTIFF'S MOTION FOR ORDER TO ALLOW ALTERNATIVE METHOD OF SERVICE OF PROCESS, DENIED.

Steven McLeod, Jefferson C.I., 1050 Big Joe Road, Monticello, Florida 32344.

Hughey F. McLeod, Post Office Box 2514, Brandon, Florida 33509.

Brady, J

#### INTRODUCTION

This is a personal injury action based upon Plaintiff Steven A. McLeod's ("Plaintiff's") allegations that the named defendant, Hughey McLeod ("McLeod") sexually abused Plaintiff as a child. Plaintiff has filed this action pursuant to 10 *Del. C.* § 8145, which provided a two year period of time following July 9, 2007 for the filing of causes of action based upon sexual abuse of a minor by an adult which would otherwise be barred by the general, three year statute of limitations. This Court determined McLeod timely filed his action on April 29, 2011 applying the Delaware savings statute, in an Opinion dated February 6, 2012.

Before the Court is Plaintiff's Motion for Order to Allow Alternative Method of Service of Process. Plaintiff requests for the Court to rule that serving a Florida attorney named M.D. Purcell, who, Plaintiff claims, represented McLeod in the civil case Plaintiff filed against McLeod in Florida for the same allegations he asserts in the present action, is sufficient to serve McLeod.

In a letter dated November 16, 2012, Plaintiff informed the Court that the Hills County, Florida Sheriff's Office refused to accept his Delaware *in forma pauperis* documents. Consequently, the Sheriff's Office will not waive service fees necessary to effect service of process upon McLeod. Plaintiff cites Florida statutes providing that sheriffs may carry out service of process issued by out-of-state courts as they would for process issued by Florida courts.<sup>4</sup>

<sup>&</sup>lt;sup>1</sup> See 10 Del. C. § 8106.

<sup>&</sup>lt;sup>2</sup> *Id.* §8118(a).

<sup>&</sup>lt;sup>3</sup> McLeod v. McLeod, N11C-03-111 (Del. Super. Feb. 6, 2012) aff'd 317 (Del. June 15, 2012), 47 A.3d 972 (Del. 2012) (table).

<sup>&</sup>lt;sup>4</sup> See Fl. Stat. § 48.195 (2012). Plaintiff also cites Fl. Stat. § 48.194, which provides service is considered obtained upon mailing the envelope containing the service for *in rem* or *quasi in rem* foreclosure

For reasons set forth herein, the Court, on the record before it, lacks authority to conclude that M.D. Purcell, Esquire is an appropriate agent for service of process upon McLeod or to compel Florida's sheriffs' departments or courts to waive service fees in recognition of this Court's grant of *in forma pauperis* status to Plaintiff.

#### **DISCUSSION**

### A. The Court cannot determine if service on Hughey McLeod's former counsel will be sufficient on the record before it.

Plaintiff cites 10 *Del. C.* § 3104(d)(4), providing that service of process outside the State of Delaware may be made "as directed by the court." According to the statute's synopsis, the legislature intended to "create a less 'cumbersome' method to serve out-of-state residents." The statute provides the Court the authority to direct a manner of services provided that service be "reasonably calculated to give actual notice." Furthermore, due process requires that a party be served notice that is "reasonably calculated under all circumstances to apprise interested parties of the pendency of the action, and afford them an opportunity to present their objections."

Delaware Courts have held that a plaintiff may not properly serve a named defendant via a defendant's former attorney unless the plaintiff can show that the attorney is an authorized agent for service of process or that the attorney and named defendant have maintained communications. In *Snyder v. Swanson*, the Third Circuit Court of Appeals affirmed the United States District Court for the District of Delaware's dismissal

proceedings. *Id* § 48.194. Since the present action is not a foreclosure proceeding and requires *in* personam jurisdiction, Plaintiff's cited provision is inapplicable.

<sup>&</sup>lt;sup>5</sup> 10 *Del. C.* § 3104(d)(4).

<sup>&</sup>lt;sup>6</sup> Maldonado v. Matthews, 2010 WL 663723, \*3 (Del. Super. Feb. 23, 2010).

<sup>&</sup>lt;sup>7</sup> 10 *Del. C.* § 3104(d).

<sup>&</sup>lt;sup>8</sup> *Maldonado*, 2010 WL 663723, at \*3 (internal citations omitted).

<sup>&</sup>lt;sup>9</sup> 371 Fed.Appx. 285 (D. Del. 2010).

of a case for failure to serve a defendant where the plaintiff served an attorney who had acted as counsel for the defendant in prior litigation but was not authorized to accept service on the defendant's behalf. 10

In In re Heckmann Corporate Securities Litigation, 11 the United States District Court for the District of Delaware considered whether an attorney could accept service of process on behalf of a defendant where the attorney represented the defendant in a Delaware Chancery Court action resolved over six months prior to the action at issue, without any indication that the attorney maintained contact with the defendant.<sup>12</sup> The Court concluded that such service would not be reasonably calculated to satisfy due process. 13

Plaintiff has not presented to the Court sufficient information to explain his belief that McLeod's former counsel, M.D. Purcell, Esquire, is authorized to accept service of process on behalf of McLeod, or that the attorney maintains contact with McLeod in a manner that serves as a basis for a reasonable calculation that serving the attorney will apprise McLeod of the present litigation. Plaintiff contends the Supreme Court of Delaware has allowed Plaintiff to serve McLeod through M.D. Purcell in the present litigation, however no order of the same is evident in this Court's review of the record in that Court. Plaintiff is free to attempt service upon McLeod in any manner he believes to be reasonably calculated to provide notice of the present litigation. Therefore, while the Court will not prohibit service upon M.D. Purcell, Esquire, the Court cannot require that

 <sup>10</sup> Id. at \* 287.
11 2011 WL 5855333, \*4 (D. Del. Nov. 22, 2011) (slip copy).

<sup>&</sup>lt;sup>12</sup> *In re Heckmann Corp. Sec. Lit.*, 2011 WL 5855333, \*4 (D. Del. Nov. 22, 2011) (slip copy).

the service be deemed sufficient to procure jurisdiction over McLeod on the record before it.

### B. This Court lacks authority to order Florida sheriffs, courts, or other branches of government to effect service upon Steven McLeod.

The United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other state." <sup>14</sup> In interpreting the Full Faith and Credit Clause, the United States Supreme Court has held that it does not require states to enforce each other's statutes. <sup>15</sup> The Court reasoned that the Full Faith and Credit Clause did not compel "a state to substitute the statues of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." <sup>16</sup> Furthermore, under Full Faith and Credit, states are not required to enforce orders issued by other states commanding action or inaction where they purport to accomplish an official act within the province of the forum state, <sup>17</sup> even where the decree adjudicates rights and obligations between parties to litigation in the foreign state. <sup>18</sup>

This Court lacks the authority to control the Hillsborough County Sheriff's Office as well as any other branches, departments, or offices of the State of Florida. While Florida may have statutes providing for service of documents issued by out-of-state courts, there are no legal bases upon which this Court can compel a Florida sheriff's

<sup>15</sup> Baker v. General Motors Corp., 522 U.S. 222, 232 (1998); see Kent County, State of Md. V. Shepherd, 713 A.2d 290 (Del. 1998)).

<sup>&</sup>lt;sup>14</sup> U.S. CONST. ART. IV, § 1.

<sup>&</sup>lt;sup>16</sup> Baker, 522 U.S. at 232-33 (quoting Pacific Employers Ins. Co. v. Industrial Accident Comm'n, 306 U.S. 493, 501 (1985)).

<sup>&</sup>lt;sup>17</sup> *Id.* at 235-36 (citing a state's decree concerning land ownership in another state as ineffective to transfer title).

<sup>&</sup>lt;sup>18</sup> *Id*.

office to honor this Court's grant of Plaintiff's in forma pauperis status by waiving a

service fee so that Plaintiff may serve McLeod.

**CONCLUSION** 

For the reasons set forth above, the Court is not at liberty to grant Plaintiff his

requested relief, and his Motion for Order to Allow Alternative Method of Service of

Process is **DENIED** to the extent that Plaintiff requests this Court find, on the record

before it, that the proposed manner of service is legally sufficient.

IT IS SO ORDERED.

M. Jane Brady

Superior Court Judge