FILED
NOV 24 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

FREDA L. LONG and DARWIN E. LONG,)
Plaintiffs-Appellants,)
vs.)
DOROTHY THIBADEAU,)
Defendant-Appellee.)

Filed November 24, 1981

1-320
2-66351

Appeal from Linn District Court - Robert Osmundson, Judge.

Plaintiffs appeal from district court's order sustaining a special appearance of defendant which was based upon her having been misnamed in the petition and original notice contending that defendant actually received notice and because they were misled as to her correct name by her insuror, the special appearance should have been denied. REVERSED AND REMANDED.

Tim A. Estlund of Wenzel, Piersall, Riccolo & Baker, P.C., Cedar Rapids, Iowa, for plaintiffs-appellants.

Robert M. Jilek of Simmons, Perrine, Albright & Ellwood, Cedar Rapids, Iowa, and Lloyd E. Humphreys, Cedar Rapids, Iowa, for defendant-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiffs, Freda L. and Darwin E. Long, appeal from district court's order sustaining a special appearance of Leola L. Thibadeau, which was based upon her having been misnamed in the petition and original notice. Plaintiffs contend that since Leola Thibadeau actually received notice and because they were misled as to her correct name by her insuror, the special appearance should have been denied. We reverse and remand.

On October 30, 1980, plaintiffs filed a petition naming Donald Thibadeau and Dorothy Thibadeau as defendants. On November 12th, a Linn County Deputy Sheriff personally served an original notice and petition on Dorothy Thibadeau and stated in the return of service that service was made on "DOROTHY THIBADEAU A/K/A LEOLA THIBADEAU." Leola Thibadeau filed a special appearance on January 7, 1981, asserting that Leola Belle Thibadeau had never been known as Dorothy Thibadeau, that the petition and original notice were directed to Dorothy Thibadeau, and that consequently the court had no jurisdiction over her. On February 3, 1981, the district court sustained the special appearance. This appeal followed.

I. Scope of Review. Since this is an action at law, our review is for correction of errors only. Iowa R. App. P. 4.

II. Nature of this Appeal. We will first consider whether this appeal should be dismissed as interlocutory. The order sustaining Leola Thibadeau's special appearance stood as a final adjudication from which appeal could be taken by plaintiff as a matter of right. Boye v. Mellerup, 229 N.W.2d 719, 720 (Iowa 1975); Saxton v. State, 206 N.W.2d 85, 86 (Iowa 1973).

III. Name Variance. Plaintiffs argue that the rules of civil procedure do not require strict compliance and that, since the name variance resulted in no prejudice to Leola Thibadeau, trial court's ruling should be reversed and Leola Thibadeau should be subject to the jurisdiction of the court. We agree.

Iowa R. Civ. P. 49 states in pertinent part: ". . . the original notice shall contain the name of the court and the names of the parties . . . [and] be directed to the defendant. . . ." Where a misnomer is substantial, the name variance can be fatal and void the notice. Burg v. Bryant, 264 N.W.2d 750, 751 (Iowa 1978). However, where the real defendant has been served, some variation in the name is not fatal. Hickman v. Hygrade Packing Co., 185 N.W.2d 801, 802 (Iowa 1971). Also of importance is the fact that we no longer require strict compliance with the components of the original notice,

but rather give liberal construction to our rules of procedure to insure resolution of disputes on their merits. Burg, 264 N.W.2d at 751. We must distinguish between notice irregularities from which no prejudice results and those which are so substantial that jurisdiction does not attach. Gray v. Steele, 264 N.W.2d 752, 753 (Iowa 1978). It is unavailing in most instances to raise nonprejudicial errors to the form of original notice or the manner of service. Id.

In the instant case, the mistake occurred because of Leola Thibadeau's insurance company's misnomer on its check to plaintiff. Despite the fact that her insurance carrier's mistake is not imputable to her, she, nonetheless, was the owner of a vehicle involved in an automobile accident which gave rise to this action and her husband was the driver of that vehicle. Her insurance company had already been involved in some transaction with regard to the incident. She obviously knew that the petition was directed to her. As in Gray and Burg, the real defendant was actually served, the mistake occurred because of information upon which one could ordinarily rely, and the mistake was without prejudice to the defendant. We thus see no reason for permitting Leola Thibadeau to avoid the jurisdiction of the court.

Defendant also contends, since the misnomer was also in the petition, that no action was ever commenced against Leola Belle Thibadeau and that the district court therefore had no jurisdiction over her and properly sustained her special appearance in the case not brought against her. We find no merit to this argument. Special appearances are for the sole purpose of attacking the jurisdiction of the court. Personal jurisdiction is obtained by service of original notice on the defendant. Wyatt v. Crimmins, 277 N.W. 615, 616 (Iowa (1979). Thus, the claim that the petition was defective in some manner is not properly the subject of a special appearance challenging personal jurisdiction.

In summary, we conclude that trial court erroneously sustained defendant's special appearance and thus reverse and remand this case to the district court for further proceedings.

REVERSED AND REMANDED.