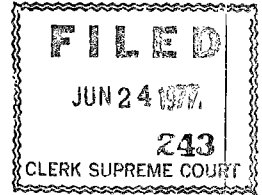


IN THE COURT OF APPEALS OF IOWA



IKE BYERS, WYVONNE E. BYERS)
and GEORGE BYERS,)

Appellees,)

Filed June 24, 1977

vs.)

IOWA MUTUAL INSURANCE COMPANY)
OF DeWITT, IOWA,)

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NO. 2-58176

Appellant.)

Appeal from Monroe District Court -- Charles N. Pettit,
Chief Judge, and L. R. Carson, Judge.

Trial court overruled a special appearance, rule 66,
R.C.P., relating to rule 56(g), R.C.P., Personal Service, that
was served on a clerk-typist in an insurance agency to commence
a suit against the insurance company - AFFIRMED.

Richard C. Bauerle, of Johnson, Bauerle & Hester, of
Ottumwa, counsel for appellant.

Alfred M. Pabst, of Pabst & Pabst, of Albia, counsel for
appellees.

Heard by Allbee, C. J., Donielson, Snell, Oxberger and
Carter, JJ.

DONIELSON, J.

On November 8, 1972, the appellees-plaintiffs-insureds filed a suit against the appellant-defendant-insurance company of DeWitt, Iowa for damages resulting from a fire. The appellee had previously purchased a homeowners insurance policy from the defendant's agent, the Bankson Insurance Agency in Ottumwa, Iowa. The appellees had a total loss to their personal property and to their dwelling as a result of the fire. The appellant-insurance company denied coverage.

The insurance agent, Bankson Insurance Agency, was served the original notice by the sheriff of Wapello County pursuant to personal service statute, rule 56(g), Rules of Civil Procedure. *

The actual original notice was served on November 9, 1972, upon the only full-time clerk-typist, Deanna Pickens, while the owner, Elaine Bankson, on that date was confined in a hospital in Rochester, Minnesota.

The trial court observed that it was not faced with a decision as it related to rule 56(f), R.C.P., or §617.5, The Code. We add the additional comment that §§616.10 and 616.14 are not in issue either, but they do lend some assistance in interpreting rule 56(g), R.C.P., as it relates to the specific set of facts before us. The obvious reasons behind these statutes have been to make it less difficult to bring the

* rule 56(g), R.C.P., Personal Service

If the action, whether against an individual, corporation, partnership or other association suable under a common name, arises out of or is connected with the business of any office or agency *maintained* by the defendant in a county other than where the principal resides, by serving any agent or clerk employed in such office or agency. (emphasis added)

suit in the local county. We interpret these particular statutes in accordance with chapter 4, The Code, and in particular §4.2 which states:

"The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. Its provisions and all proceedings under it shall be liberally construed with a view to promote its objects and assist the parties in obtaining justice."

See also Tuttle v. Nichols Poultry & Egg Co., 240 Iowa 199, 203, 35 N.W.2d 875 (1949) where it states: *"It may be observed from the foregoing decisions that the applicable rule as to third persons, dealing through an agency, ... , has been construed quite liberally on behalf of such third persons."*

The appellant filed a timely special appearance pursuant to rule 66, R.C.P., challenging jurisdiction of the trial court essentially alleging that the appellant-insurance company was not served properly under rule 56(g), R.C.P., because the insurance agency was not "maintained" by them. This motion was subsequently overruled * and the matter proceeded to trial where a judgment for \$12,000 was rendered against the appellant-insurance company for damages resulting from the fire.

* The essential portion of the trial court's ruling on the motion stated:

"... Sec. 4.1(2) of the Code provides that words shall be construed according to the context and approved usage of the language. The word 'maintained' as used in R.C.P. 56(g) is not a technical word, but rather a broad, generic term that has, as its general meaning, 'to continue in existence; to carry on; to persevere in or with; to keep or hold'; Webster's Third New International Dictionary, p. 1362; The American Heritage Dictionary of the English Language, p. 787; See also, 26 Words & Phrases, p. 68."

The word "maintained" in rule 56(g), R.C.P., is the key word and the dispositive portion of this opinion. The question then is whether this word should receive a narrow construction or whether it should be considered a "broad generic term" for purposes of personal service as the trial judge found it to be. We refer to 4.2 and adopt the broader more liberal view mandated by chapter 4, The Code. See Tuttle v. Nichols Poultry & Egg Co., 240 Iowa 199, at 204, 35 N.W.2d 875 (1949) in referring to the office or agency statute, 616.14 where it states: *"Indeed Code section 4.2 requires that 616.14 'shall be liberally construed with a view to promote its objects and assist the parties in obtaining justice.'"*

The appellants rely upon Ballagh v. Polk-Warren Mutual Insurance Assn., 257 Iowa 1334, 136 N.W.2d 496 (1965) which clearly defines captive agents, the American Agency System, and independent agents. This is important as it bears upon the legal relationships between the company and its agents. However, we do not view this as having importance between the insured-third parties and the insurance companies for purposes of personal service to commence a legal action under rule 56(g), R.C.P.

It has been stated in McSwain v. Adams Grain & Provision Co., 93 S.Ct. 114, 76 S.E. 122, Anno. Cas. 1914D, 991: *"The chief object of service of process is to give notice to the party served of the proceeding against him."*

We, therefore, hold that "maintained" can best be determined by several criteria found here including (a) Where this company maintained an outlet for its product; (b) Where it provided for a representative or a place for the servicing of that product; (c) Where it provided in one form or another a

monetary contribution directly or indirectly for (a) and/or (b) to that end; and (d) Where there is a direct agency-product relationship. Here the appellant filed a supplement to special appearance which indicates that Bankson Insurance Agency as an agent *"is authorized to solicit, receive and accept proposals for insurance on behalf of Iowa Mutual Insurance Company ... "*

The record shows that the company issues the policies in its own name, and the relationship is purely one of local service for the defendants' policyholders from sales to claims. There is no intervening break in that relationship such as a retailer buying the product from a company for resale. That would be quite a different matter (not under consideration here) for purposes of interpreting personal service under 56(g).

One can well imagine a myriad of accounting, agency, contractual arrangements, and compensatory agreements relating to captive agents, independent insurance agents, financial contributions by commissions, by salary, contributions to telephones, offices, supplies, personnel or combinations of some or all of those listed.

We see no need nor any desirability in placing any burden upon the public to know or understand these complex accounting, compensatory or contractual arrangements between the company and the agent.

The insured purchased his policy at the Bankson Insurance Agency. It was the defendant's company's policy. The insured paid the local agent, and we are reasonably certain that the proceeds were sent in one form or another to the defendant's company. The defendant, therefore, *"maintained"* an office

for at least the limited purpose of personal service under rule 56(g), R.C.P.

We have examined the appellant's other citations of error relative to evidentiary matters and instructions, and find them without merit.

AFFIRMED.

Oxberger, J. concurs; Allbee, C.J., Snell, and Carter, JJ., specially concur.

CARTER, J. (specially concurring)

If this were entirely a matter of first impression, I would not contrue R.C.P. 56(g) to authorize the service of the original notice in this case upon the Bankson Agency's employee. This is because I believe the relationship between that employee and the defendant is not necessarily such as reasonably assured the notice would be transmitted to the defendant. Nor is it necessary to expand the scope of R.C.P. 56(g) to cover the present situation in order to afford a remedy to persons such as the plaintiffs. There are other means of service available to such persons which would serve their needs equally well and at the same time afford more protection to potential defendants.

I believe, however, that the interpretation which had been placed upon statutory predecessors to R.C.P. 56(g) by the Supreme Court would sustain the service on the Bankson Agency in the present case. *See* *Morey v. Standard Separator Co.*, 174 Iowa 530, 156 N.W. 719 (1916) and *Murphy v. Albany Pecan Development Co.*, 169 Iowa 542, 151 N.W. 500 (1915). Although the language of the rule is not identical with its statutory antecedents contemporary commentary at the time of the rule's adoption indicates that no change in the prior law was intended. *See* 31 Iowa L.Rev. 408, 414 (1946). I therefore concur in result on the basis of stare decisis.

ALLBEE, C.J., and SNELL, J., join in this special concurrence