

IN THE COURT OF APPEALS OF IOWA

FILED

SEP 27 1983

CLERK SUPREME COURT

EDWIN ALLEN,

)

Plaintiff-Appellee,

)

Filed September 27, 1983

vs.

)

J. R. ALLEN/J. M. ALLEN (sic),

)

3-1672-68479

Defendant-Appellant.

)

Appeal from Cerro Gordo District Court - John F. Stone, Judge.

Defendant appeals with permission from a trial court order overruling his special appearance. **AFFIRMED.**

Ross H. Sidney and Stephen D. Hardy of Grefe & Sidney, Des Moines, for defendant-appellant.

No appearance for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

HAYDEN, J.

This is an interlocutory appeal by defendant challenging the overruling of his special appearance by the court below. We affirm.

Plaintiff alleged injuries resulting from a fall on the snow and ice around his apartment building. He filed suit against his landlord who was named in the petition as J.R. Allen. The original notice, however, was directed to J.M. Allen and was personally served on Jay Michael Allen, the appellant herein. Appellant filed a special appearance challenging the jurisdiction of the court. He claims that the original notice was defective because it did not name and was not directed to the same defendant whose name appeared on the petition.

In an appeal from a ruling on a special appearance, our scope of review is on error. The trial court findings have the force and effect of a jury verdict. However, we are not bound by the trial court's conclusions of law. Larsen v. Scholl, 296 N.W.2d 785, 787 (Iowa 1980).

Appellant cites several older cases in support of his argument. E.g. Pilkington v. Potwin, 163 Iowa 86, 144 N.W. 39 (1913); Thornily v. Prentice, 121 Iowa 89, 96 N.W. 728 (1903); Fanning v. Krapfl, 61 Iowa 417, 14 N.W. 727 (1888). However, an examination of more recent cases reveals that the supreme court has become more lenient in situations such as the one at bar. Burg v. Bryant, 264 N.W.2d 750 (Iowa 1978); Reynolds v. Nowotny, 189 N.W.2d 557 (Iowa 1971); Engelson v. Mallea, 180 N.W.2d 127 (Iowa 1970); Kraft v. Bahr, 256 Iowa 822, 128 N.W.2d 261 (1964). The court is "now committed to a liberal construction of our rules of procedure to insure resolution of disputes on their merits." Burg v. Bryant, 264 N.W.2d at 751.

A distinction has been made between misnomers in constructive notice and actual notice cases. Where the service is personal, we look to see if the real defendant has been served or is identifiable from the record. Engelson v. Mallea, 180 N.W.2d at 130. A mistake as to a middle initial does not ordinarily render service void. Reynolds v. Nowotny, 189 N.W.2d at 560.

In the present case it is clear that the real party defendant was actually served. There was no defect in the original notice. Defendant's name was correctly set forth and he was personally served. The defect was in the petition. Such a mistake under our present view is not sufficient to make the service a nullity and defeat the jurisdiction of the court.

AFFIRMED