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SEE TX R RAP RULE 47.2 FOR DESIGNATION AND SIGNING OF OPINIONS.

MEMORANDUM OPINION
Court of Appeals of Texas,
Dallas.

Roy Seton ROGERS, Individually and d/b/a National Auto Purchasing and Sales, Appellants
v.
James MOORE, Appellee.

No. 05–05–01666–CV.
|
Nov. 13, 2006.

On Appeal from the County Court at Law No. 3, Collin County, Texas, Trial Court Cause No. 003–2366–04.

Attorneys and Law Firms

Gerardo Rojas, for Roy Seton Rogers.

Sharon Campbell, for James Moore.

Before Justices WRIGHT, O'NEILL, and LANG–MIERS.

MEMORANDUM OPINION

Opinion by Justice WRIGHT.

***1** Roy Seton Rogers appeals the default judgment rendered against him in favor of James Moore. In two issues, appellant contends (1) the trial court did not acquire service over him because he was improperly served, and (2) the record does not show a return of service was filed. We overrule appellant's issues and affirm the trial court's judgment.

In his first issue, appellant contends the trial court erred by denying his motion for new trial because appellee failed to show appellant was personally served. We disagree.

Rule 103 of the rules of civil procedure provides, among other things, that the citation shall be served by any person authorized by rule 103 by "delivering to the defendant, in person, a true copy of the citation with the date of delivery endorsed thereon with a copy of the petition attached thereto." TEX.R. CIV. P. 106(a)(1). Generally, a person within the jurisdiction has the obligation to accept service of process when it is reasonably attempted. *See* *Dosamantes v. Dosamantes*, 500 S.W.2d 233, 237 (Tex.Civ.App.-Texarkana 1973, writ dism'd). He is usually held to have been personally served if he physically refuses to accept the papers and they are then deposited in an appropriate place in his presence or near him where he is likely to find them, if he is also informed of the nature of the process and that service is being attempted. *Id.; see also* *Texas Industries, Inc. v. Sanchez*, 521 S.W.2d 133, 135 (Tex.Civ.App.-Dallas), *writ ref'd n.r.e.*, 525 S.W.2d 870 (Tex.1975).

At the hearing on appellant's motion for new trial, John Smith testified he made numerous attempts to serve appellant with the original petition in this case. Eventually, the trial court issued an order for substitute service and Smith delivered the original petition by leaving a copy of the petition at appellant's place of business. Thereafter, he was asked to serve appellant with the amended petition. Smith went to appellant's business, National Auto Purchasing, and asked if appellant was there. An employee indicated that appellant "was in a gold car just outside the door." Smith went to the car where he saw a man wearing a shirt with the name "Roy Rogers" stenciled on it. Smith told the man he was there to serve papers and attempted to hand them to the man. The man denied being Roy Rogers and instructed Smith to leave the papers in the office, which Smith did.

Thus, the record shows that after Smith informed appellant he was attempting to serve him, appellant physically refused the papers. At appellant's direction, Smith left the papers at the front desk of appellant's business, an appropriate place near appellant, where he

was likely to find the papers. In reaching this conclusion, we necessarily reject appellant's argument that because Smith did not personally know appellant, he could not be certain that was the man he encountered. An employee of appellant's business indicated the man who refused the papers was appellant and the man had on a shirt with appellant's name stenciled on it. Under these circumstances, we cannot conclude the trial court erred by denying appellant's motion for new trial. We overrule appellant's first issue.

***2** In his second issue, appellant contends we must reverse the trial court's judgment because the record does not contain a return of citation. After appellant filed his brief, the clerk's record was supplemented with the return. Consequently, we overrule appellant's second issue because it is moot.

Accordingly, we affirm the trial court's judgment.

All Citations

Not Reported in S.W.3d, 2006 WL 3259337