

Summary of SC94256, *Ray Charles Bate and Deborah Sue Bate v. Greenwich Insurance Company*

Appeal from the Boone County circuit court, Judge Christine Carpenter
Argued and submitted February 18, 2015; opinion issued June 16, 2015

Attorneys: The Bates were represented by Susan Ford Robertson and J. Zachary Bickel of The Robertson Law Group LLC in Kansas City, (816) 221-7015; and Christian L. Faiella and Rex V. Gump of Tatlow, Gump, Faiella & Wheelan in Moberly, (660) 263-3100. Greenwich was represented by Steven J. Hughes, Robyn Greifzu Fox and Natalie Higgins of Pitzer Snodgrass PC in St. Louis, (314) 421-5545.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A couple that won a default judgment against an insurance company appeals a trial court's determination setting aside that judgment on the ground that the company was not served properly. In a unanimous decision written by Chief Justice Mary R. Russell, the Supreme Court of Missouri reverses the trial court's decision and remands (sends back) the case. The requirements for service and notice under the applicable statute were met fully, and two of this Court's rules pertaining to service and notice do not supplement this statutory process.

Facts: Ray Charles Bate and Deborah Bate were injured in a head-on collision with a vehicle driven by Rocky Wells. They sued Wells and obtained a \$3 million judgment. They then sued Greenwich Insurance Company seeking underinsured motorist coverage under a policy Greenwich allegedly issued to Charles Bate's employer. The director of the state insurance department was designated as Greenwich's agent for accepting service of process pursuant to section 375.906, RSMo. The sheriff delivered a copy of the petition and summons to the director, who then forwarded the petition and summons to Greenwich via first-class mail and filed an affidavit of service with the trial court pursuant to state regulation. Greenwich did not answer the petition, and the Bates obtained a default judgment against the company in the amount of their judgment against Wells. More than two years later, Greenwich asked the trial court to set aside the default judgment, alleging the default judgment was void because the service of process was invalid. The court ultimately set aside the judgment as void. The Bates appeal.

REVERSED AND REMANDED.

Court en banc holds: (1) Service was proper under section 375.906. Under this statute, an out-of-state insurance company doing business in Missouri must execute an irrevocable power of attorney authorizing the insurance director to receive service on the company's behalf "in any action against the company, instituted in any court of this state" – such service on the director constitutes personal service on the company. Under the statute, service is effectuated by delivering the petition and summons to the director, who the statute then requires to forward the process "by first class mail prepaid and directed to the secretary of the company." Under the insurance department's regulations, the director must forward an affidavit of such service to the appropriate court. The requirements of the statute were met fully – the Bates delivered a copy of

the petition and summons to the director, who forwarded the petition and summons to Greenwich by first-class mail and filed an affidavit of service with the trial court. To the extent Greenwich may wish to argue it has meritorious defenses to the suit, it cannot have the default judgment set aside under Rule 74.05(d) because its motion to do so was made more than a year after the one-year deadline set in the rule. And Rule 74.06(b)(4) does not apply because Greenwich's challenge is not jurisdictional but is a merits defense disguised as a jurisdictional argument.

(2) Rules 54.15 and 54.20 do not supplement section 375.906. These rules provide for different methods of service. But Rule 54.18 by its terms permits statutory service in lieu of service under the rules. Section 375.906 provides both a statutory method of service of process on an out-of-state insurance company and a provision for notice to the defendant – and, as noted above, the requirements of this statute were met fully. To the extent two appeals court cases hold that Rules 54.15 and 54.20 supplement section 375.906, those decisions should not be followed any longer.