



# In the Missouri Court of Appeals Eastern District

## DIVISION ONE

MARY A. COOK AND THE  
WILLIAM EDWARD COOK,  
AND MARY ANN COOK  
TRUST,

Respondents,

v.

GLENN SYKES, D/B/A  
SYKES HAULING AND  
TREE SERVICE,

Appellant.

No. ED113495

Filed: October 28, 2025

**Appeal from the Circuit Court of St. Louis County  
The Honorable Heather R. Cunningham, Judge**

Glenn Sykes, d/b/a Sykes Hauling and Tree Service, (Sykes) appeals from the trial court's judgment denying his motion to set aside the judgment, motion to quash service of process, and motion to quash execution and set aside sale of real property following a default judgment in favor of Mary A. Cook and the William Edward Cook and Mary A. Cook Trust (Cook). We affirm.

## **Background**

In July 2019, Cook filed a three-count petition against Sykes for breach of contract, fraud, and violation of the Missouri Merchandising Practices Act (MMPA). In her petition, she alleged she hired Sykes to perform tree removal and hauling services at her property. Prior to the work being completed, she paid him the agreed upon amount of \$8,525 in full. Sykes did not complete the services, and she alleged she incurred additional costs for waste removal and completion of the project by another company.

Upon filing her petition, Cook requested appointment of a special process server. A summons was issued in July 2019, but not returned as served. Again in September 2019, a special process server was appointed and summons was issued. This time an affidavit of service was filed on November 20, 2019, attesting to personal service of the summons to Sykes's nephew (Nephew) at 4209 Beachwood Avenue (Beachwood address) on September 28, 2019. Sykes did not answer or otherwise respond in any way to the petition and in January 2020, Cook filed a motion for entry of default judgment. A notice of hearing for the motion was sent to the Beachwood address, which was asserted as Sykes's last known address in the certificate of service. On February 27, 2020, the court entered a default judgment in favor of Cook for a total of \$20,290 plus statutory interest of nine percent per year.

In March 2024, Cook filed an application for execution of the judgment, and a sheriff's sale of Sykes's property was ordered. A certificate of service was filed on May 13, 2024, stating that notice of the sale was sent to Sykes at the address of the property to

be sold, informing him the sale would occur on June 25, 2024. A partial satisfaction of judgment was filed on June 26, 2024, reflecting the proceeds of the sale.

On January 31, 2025, Sykes filed a motion to quash the execution and void judgment. He filed two subsequent amended motions, including motions to quash process, service of process, set aside the judgment, and set aside the execution sale and quiet title. On March 25, 2025, the court held a hearing, and on April 3, 2025, the court denied Sykes's motions. This appeal follows.

### **Discussion**

Sykes argues eight points on appeal. In his first point, he claims the trial court erred in denying his motion to set aside the judgment pursuant to Rule 74.06(b)(3) and (4)<sup>1</sup> as time barred because the default judgment was inherently void as it was entered without jurisdiction over his person. Each of points two through six asserts error in denying his motion to set aside on grounds of lack of personal jurisdiction because of defective process and service of process. Point two contends the return of service was defective on its face because it failed to attest to sufficient facts to show the service was made at Sykes's usual place of abode, upon a person who resided there, or who was over fifteen years of age. In point three, Sykes also challenges the return of service, arguing it was not filed promptly after service nor with leave of the court to file late. Point four argues that process was not served at an address that was Sykes's usual place of abode. Point five contends service was not made upon a person who resided at Sykes's usual

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<sup>1</sup> All references to Rules are to Missouri Supreme Court Rules (2025).

place of abode. In point six, Sykes argues the special process server was not named in the summons, and therefore, process was defective. In point seven on appeal, Sykes argues the court erred in denying his motion to set aside the sheriff's sale of his real property and to quiet title because the default judgment was void *ab initio* since the court lacked personal jurisdiction over him due to insufficient service. Finally, in point eight, Sykes argues the court erred in denying his motion to quash process and service of process because service and the return of service was irregular. We address Sykes's multiple points in non-sequential but procedurally chronological order below.

#### *Standard of Review*

Although Sykes asserts the appropriate standard of review is set forth under *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976),<sup>2</sup> he also claims it is for abuse of discretion relative to the trial court's decision to deny his motion to set aside pursuant to Rule 74.06. *See O'Hare v. Permenter*, 113 S.W.3d 287, 289 (Mo. App. E.D. 2003). Neither standard of review is correct. Instead, each of Sykes's points concern whether the default judgment entered in favor of Cook was void for lack of personal jurisdiction due to defective process and service of process, thereby negating the subsequent sale of his property. Where the claim on appeal is whether a judgment should be vacated because it is void, our review of this question of law is *de novo*. *Id.*; *see also Coburn v. Kramer & Frank, P.C.*, 627 S.W.3d 18, 30 (Mo. App. E.D. 2021) (internal citations omitted).

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<sup>2</sup> Under this standard of review, we affirm the trial court's judgment unless it is not supported by substantial evidence, it is against the weight of the evidence, or the court erroneously declares or applies the law.

However, when considering the evidence upon which the court made its determination regarding whether service was proper, the trial court is free to disbelieve the witness's testimony and we defer to this credibility determination. *Morris v. Wallach*, 440 S.W.3d 571, 578-79 (Mo. App. E.D. 2014).

### **Special Process Server**

“Service of process is a prerequisite to personal jurisdiction, and a judgment entered against a party without proper service on that party is void for lack of jurisdiction.” *O’Hare*, 113 S.W.3d at 289 (citing *Cook v. Polineni*, 967 S.W.2d 687, 690 (Mo. App. E.D. 1998)). Rule 54.13(b)(1) provides that service shall be made upon an individual by “delivering a copy of the summons and petition personally to the individual or by leaving a copy of the summons and petition at the individual’s dwelling house or usual place of abode with some person at least 18 years of age residing therein . . . .”

Cook requested a special process server be appointed to effect service on Sykes. Thus, she bears the initial burden to show the procedural requirements for service of process were met. *O’Hare*, 113 S.W.3d at 289 (internal citation omitted). Pursuant to Section 506.140.1 RSMo (2016),<sup>3</sup> service of process may be made by “some person” “specially appointed by the court or the circuit clerk following procedures established by local court rules . . . .”

Pursuant to Section 506.140.1, Rule 54.01, and St. Louis County Circuit Court Local Rule 28, on September 17, 2019, the circuit court appointed a special process

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<sup>3</sup> All statutory references are to RSMo (2016).

server and a summons was issued. To the extent Sykes contends the failure to name the special process server on the summons rendered the process defective in point six, this argument is without merit. Here, the record shows the circuit clerk appointed the special process server as requested, and as recognized by the court in *Coburn*, an executed court order is sufficient to effect the appointment of the special process server under Section 506.140.1. 627 S.W.3d at 33. Moreover, as the trial court recognized, nothing in Section 506.140, Rule 54.01, or Local Rule 28 concerning special process servers requires the appointed process server be named on the summons. Instead, Missouri case law merely requires that the individual serving the defendant must be the same individual who is properly appointed, which occurred here. *See, e.g., Maul v. Maul*, 103 S.W.3d 819, 821 (Mo. App. E.D. 2003), and *Reisinger v. Reisinger*, 39 S.W.3d 80, 84, 85 (Mo. App. E.D. 2001). As a result, the trial court did not err in denying the motion to set aside the judgment for insufficiency of process. Point six is denied.

### **Return of Service**

With respect to Sykes's arguments concerning deficiencies in the return of service filed with the court, unlike a sheriff's return of service, the special process server's return is not presumed to be conclusive. *O'Hare*, 113 S.W.3d at 289 (internal quotation omitted). Instead, a special process server must file an affidavit stating the time, place, and manner of service. Rule 54.20(b)(2). The special process server's affidavit must attest to sufficient facts to show the requirements of Rule 54.13(b)(1) were met. *O'Hare*, 113 S.W.3d at 289. "The court may consider the affidavit or any other evidence in determining whether service has been properly made." Rule 54.20(b)(2).

The same special process server appointed by the court filed an affidavit of service, stating he personally served Nephew on September 28, 2019, at the Beachwood address. In addition to the affidavit, he personally attested to leaving the summons and petition at the “usual abode” of Sykes with a member of Sykes’s family over the age of fifteen who resided with Sykes.<sup>4</sup> The attestation on the return of service was signed by the special process server and notarized. As a result, the record before us establishes the special process server sufficiently stated the time, place, and manner of service in compliance with Rule 54.20(b)(2) and Rule 54.13(b).

In addition, Rule 54.21 requires an officer or other person receiving a summons to “serve the same and make return of service promptly.” According to Sykes, because service occurred on September 28, 2019, but the return was not filed with the court until November 20, 2019, it was not filed “promptly” as required by the rule. However, he cites no authority for this argument. We note that while the rule says the individual serving process must “make return of service promptly,” it does not contain any dictate regarding what is required with respect to the timing the return is filed with the court. Nor does the rule state the failure to do so renders the return of service legally defective. Missouri Supreme Court Rules are construed similarly to statutes, and we will not add language to a rule that does not exist. *See Gabriel v. Saint Joseph License, LLC*, 425 S.W.3d 133, 139 (Mo. App. W.D. 2013) (citing *State ex. rel. Vee-Jay Contracting Co. v.*

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<sup>4</sup> Rule 54.13 was amended in 1993, effective January 1, 1994, changing the age of the family member from fifteen to eighteen. The return of service on the summons in this case still contained language referencing the previous age requirement of fifteen.

*Neill*, 89 S.W.3d 470, 472 (Mo. banc 2002)), and *Peters v. Wady Indus., Inc.*, 489 S.W.3d 784, 792 (Mo. banc 2016) (courts cannot add language to a statute where it does not exist).

The special process server testified at the hearing on Sykes’s motion that he served Nephew with the summons and petition and completed his paperwork for the return of service. He did not file anything with the court himself, but instead provided the paperwork to Cook’s attorney. The court concluded based on this testimony that he properly served the summons within thirty days of issuance and “promptly” returned the affidavits to counsel for filing in accordance with Local Rule 28.<sup>5</sup> Based on the record before us, the trial court did not err in making that determination.

As a result of the foregoing, the return of service and supporting affidavit were not defective as a matter of law and the trial court did not err in denying Sykes’s motion to set aside the judgment. Points two and three on appeal are denied.

### **Service of Process**

Sykes further argues service was insufficient to establish personal jurisdiction over him, thereby rendering the default judgment void. Once a compliant proof of service is filed, it can be impeached only by clear and convincing evidence the party was not served. *T Westfall Plaza WCR MO, LLC v. SJB Rest. Grp. LLC*, 689 S.W.3d 216, 220 (Mo. App. E.D. 2024) (internal quotations omitted).

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<sup>5</sup> St. Louis County circuit court Local Rule 28 concerning special process servers requires the return of service be given to the attorney or party seeking service and the attorney “shall file the return electronically. . . .”

As the party challenging service of process, Sykes bears the burden to show he was not properly served. *Id.* Clear and convincing evidence is that which tilts the scales in favor of the lack of service when weighed against opposing facts. *Id.* The evidence must clearly convince the fact-finder of the truth of the proposition. *Id.* While Rule 54.22(b) allows a “party served” to show “the true facts of service and impeach the return when the return does not comport with the facts as found by the court,” he cannot do so merely by testifying he was not served without evidence to support this contention. *Id.*

As previously discussed, personal service upon an individual may be made leaving a copy of the summons and petition at the defendant’s “dwelling house or usual place of abode,” with an individual at least eighteen years old who also resides therein. Rule 54.13(b)(1). Sykes claims the address at which Nephew was served on his behalf was neither Sykes’s “usual place of abode,” nor did Nephew reside there, rendering service ineffective to establish personal jurisdiction over him. Therefore, he claims the default judgment was void.

During the hearing on his motion to set aside the judgment, both Sykes and Nephew testified. Sykes said he was never served with the petition, and he only learned of the default judgment when he received a letter regarding execution on his property. He testified he lived at a different address from the Beachwood address in September 2019, and Nephew was never a member of his household.

The trial court took judicial notice of a separate cause between the parties initially filed in associate circuit court but subsequently dismissed, in which Sykes’s address was listed as the Beachwood address on both the summons and the record of the parties for

the case. Moreover, the special process server testified he previously served paperwork for Sykes to his mother at the Beachwood address in July 2019, and she confirmed Sykes resided there with her. The special process server's affidavit and testimony was that Sykes had a history of using the Beachwood address on "official documents," including the articles of organization for his company which were filed with the Missouri Secretary of State. Sykes did not present any documentary evidence to support his contention that he lived at a separate address and not at the Beachwood address in September 2019.

Nephew testified he was not a resident of the Beachwood address on September 28, 2019. He said he was only there helping Sykes's mother clean the property that day. According to Nephew, he lived at a separate property in the City of St. Louis at the time. Nephew testified no one served him with any papers at the Beachwood address on September 28, 2019. However, Nephew had no documentary support for his contention he lived elsewhere in September 2019.<sup>6</sup> He did not have record of any lease or bills showing a different address.

The only evidence that service of process was not properly made at Sykes's usual abode or upon an individual residing there was the testimony of Sykes and Nephew, which the trial court concluded was not supported by any documentation and was not credible. The court was free to disbelieve this testimony, and we defer to its determination regarding the credibility of the witnesses. *Morris*, 440 S.W.3d at 578-59.

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<sup>6</sup> Sykes attempted to introduce an exhibit showing voter registration records for the City of St. Louis to establish Nephew's address in September 2019; however, the trial court found he last voted in 2008 and the records did not establish or corroborate his testimony that he lived at the separate address in 2019.

Sykes's bare assertion that the Beachwood address was not his "usual place of abode," and Nephew did not reside there, absent any supporting evidence, was not sufficient to meet his burden to prove he was not properly served and the default judgment was void for lack of personal jurisdiction.<sup>7</sup> See *T Westfall Plaza WCR MO, LLC*, 689 S.W.3d at 220 (not sufficient for defendant to merely deny he was properly served, but instead, he must introduce some supporting evidence to contradict the facts asserted). As a result, the trial court did not err in denying his motion to set aside the default judgment for lack of personal jurisdiction.<sup>8</sup> Points four and five are denied.

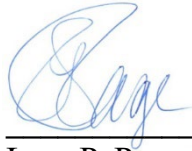
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<sup>7</sup> Sykes argues in point one that the trial court erred in finding his motion to set aside the judgment under Rule 74.06(b)(3) and (4) was time barred because the default judgment was void for lack of personal jurisdiction. We find the default judgment was not void because service was proper, and therefore, any claim regarding a defect or irregularity in the judgment would be time barred because as the trial court points out it was filed "well beyond one year from the date the default judgment was entered." See Rule 74.06(c) (motion under (b)(1), (2), and (3) shall be made not more than one year after judgment was entered). In addition, point eight alleges the court erred in denying his motion to quash service of process and the return of service as irregular. These claims were similarly time barred, and the trial court did not err denying the motion to quash. Points one and eight are denied.

<sup>8</sup> Point seven on appeal argues the trial court erred in denying Sykes's motion to set aside the sheriff's sale of his property because the default judgment was void *ab initio* for lack of proper service. As discussed in detail above, we find service was proper and therefore the judgment was not void. The court properly denied his motion to set aside the sale. Point seven is denied.

### **Conclusion**

The judgment of the trial court is affirmed.



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LISA P. PAGE, JUDGE

Robert M. Clayton III, Presiding Judge and  
Michael E. Gardner, Judge, concur.