

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**RAY CHARLES BATE AND
DEBORAH SUE BATE**

APPELLANTS,

**v.
GREENWICH INSURANCE COMPANY**

RESPONDENT.

DOCKET NUMBER WD76086

DATE: April 29, 2014

Appeal From:

Boone County Circuit Court
The Honorable Christine Carpenter, Judge

Appellate Judges:

Division Three: Thomas H. Newton, Presiding Judge, Mark D. Pfeiffer, Judge and Cynthia L. Martin, Judge

Attorneys:

Susan Ford Robertson and J. Zachary Bickel, Kansas City, MO and Christian L. Faiella and Rex V. Gump, Moberly, MO, for appellants.

Steven J. Hughes, St. Louis, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**RAY CHARLES BATE AND
DEBORAH SUE BATE,**

APPELLANTS,

v.

GREENWICH INSURANCE COMPANY,

RESPONDENT.

No. WD76086

Boone County

Before Division Three: Thomas H. Newton, Presiding Judge, Mark D. Pfeiffer, Judge and Cynthia L. Martin, Judge

Ray and Deborah Bate appeal from the trial court's judgment setting aside a default judgment obtained against Greenwich Insurance Company, a foreign insurance company, because there was no valid service, and therefore no personal jurisdiction. At issue is whether the *method* of serving process described in section 375.906 is subject to the *proof* of service requirements described in Missouri Supreme Court Rules 54.15 and 54.20. We conclude that section 375.906 is supplemented by the proof of service requirements set forth in Rules 54.15 and 54.20.

Affirmed and remanded.

Division Three holds:

(1) Motions for relief from a judgment under Rule 74.06(b) are in the nature of an independent proceeding and, as such, a judgment entered pursuant to a Rule 74.06(b) motion is appealable even though the judgment restores the pendency of the petition.

(2) Section 375.906 addresses service of process on authorized foreign insurance companies and describes how process must be served on the Director of the Department of Insurance, and how the Director must thereafter notify the authorized foreign insurance company of the pending lawsuit by first class mail. The statute does not require proof of service on the Director or proof that notice was mailed by the Director to the defendant insurer.

(3) Rule 54.18 permits a party to use a method of service permitted by statute or the Rules. Rule 54.18 does not address proof of service requirements.

(4) Proof of service, and proof of notice to the defendant insurer where service is made on the Director are the subjects of Rules 54.15 and 54.20. Those Rules require the filing of a sheriff's return of service on the Director and the Director's affidavit together with a return receipt proving that notice was sent by the Director to the defendant insurer by registered or certified mail. Thus, where service is made pursuant to a statutory method, such as section

375.906, the proof of service requirements described in Rules 54.15 and 54.20 must also be established to confer personal jurisdiction.

(5) Proof of notice requirements of Rules 54.15(b) and 54.20(c) do not have the practical effect of eliminating section 375.906 as a viable method of service.

Opinion by Cynthia L. Martin, Judge

April 29, 2014

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