*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-141

SEPTEMBER TERM, 2005

| | | |
|---|---|---|
| The Blodgett Supply Company | } | APPEALED FROM: |
| | } | |
| v. | } | Chittenden Superior Court |
| | } | |
| Robert E. Lowery, Sr. | } | |
| | } | DOCKET NO. S0590-04 CnC |
| | | Trial Judge: Richard W. Norton |

In the above-entitled cause, the Clerk will enter:

Defendant Robert E. Lowery, Sr. appeals the denial of his motion for relief from judgment. See V.R.C.P. 60(b)(4) (allowing trial court to relieve a party from a void judgment). The judgment defendant sought to reopen was entered by default in 1996. Defendant claims he was never served with the summons and complaint. Therefore, defendant argues, the default judgment is void because the court lacked jurisdiction to enter judgment against him. The Chittenden Superior Court denied defendant=s motion without a hearing to determine if, in fact, defendant had been properly served with process and had actual notice of the proceeding.

Plaintiff Blodgett Supply Company brought the underlying proceeding to recover sums owed on an account for Bob Lowery Heating, a business defendant previously owned. Defendant sold the business to his son, Robert Lowery, Jr., in 1994, and the business went bankrupt in 1997. Blodgett sought to collect the business=s unpaid debt by using the credit application and personal guaranty that defendant provided in 1978 when he owned Bob Lowery Heating. It sued defendant personally and obtained a default judgment against him. Defendant challenged Blodgett=s attempt to renew the default judgment because he claimed that he was not served with legal process and was unaware of Blodgett=s claim. Moreover, defendant contended that he did not owe money to Blodgett because he did not own the business when it ran up the debt Blodgett sought to recover in the proceeding. Defendant sought relief from judgment, which the superior court summarily denied.

We reverse and remand for a hearing on defendant=s motion for relief under Rule 60(b)(4). Rule 4 of the civil rules provides a number of methods for serving legal process. See V.R.C.P. 4(d) (setting forth permissible methods of service of process). Personal service upon an individual may be achieved by Adelivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual=s dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.@ V.R.C.P. 4(d)(1). The return of service at issue here is too ambiguous to survive a prima facie challenge because it fails to clearly report either personal delivery to defendant or authorized delivery to defendant=s dwelling house or abode as required by V.R.C.P. 4(d)(1). Cf. Taft v. Donellan Jerome, Inc., 407 F.2d 807, 808-09 (7th Cir. 1969) (signed return showing service by the marshal is prima facie evidence of valid service); Jones v. Jones, 217 F.2d 239, 240-42 (7th Cir. 1954) (upholding district court=s denial of Rule 60(b) motion where defendant denied that she received process but the marshal=s return identified a person on whom, and address at which, service was effected).

The return at issue in this case is a typewritten form with blanks for the process server to complete. The deputy sheriff completed the form as follows (the deputy=s handwritten text appearing in boldface type):

On the **23rd** day of **May**, 1996, I made service of the following documents on **Robert Lowery**:

1. Summons;
2. Complaint;

by delivering copies of same to **at Wilder, VT.**

As to personal delivery to defendant, the return fails to specify whether the deputy sheriff served defendant, Robert Lowery, Sr., or his son, Robert Lowery, Jr. Defendant made clear that he objected to paying Blodgett because his son owned the business when the debt at issue was incurred. Thus, the debtor=s identity was a central issue in Blodgett=s lawsuit. Although lack of proof of service does not affect the validity of service, V.R.C.P. 4(i), where the proof of service fails to set forth sufficient information to demonstrate how or on whom service was made, and the defendant moves for relief from a default judgment on grounds that he never received process and had no notice of the proceeding, a hearing on a motion for relief under Rule 60(b)(4) is required.

Reversed and remanded.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice