

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

STATE SENATOR ERNIE CHAMBERS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GOD, )  
 )  
 Defendant, )

Doc. 1075 No. 462

**ORDER TO FORMALIZE  
 DISMISSAL WITH PREJUDICE  
 FILED  
 JOURNAL CLERK  
 OCT 14 2008  
 JOHN M. FRIEND  
 CLERK DISTRICT COURT**

This matter is before the Court for hearing on the Plaintiff's Motion to Take Judicial Notice of God, for Purpose of these Proceedings, and to Waive Notice filed July 31, 2008. A hearing was held on August 5, 2008. The Plaintiff appeared pro se. Evidence was adduced and argument was heard. The Court took this matter under advisement.

Having fully reviewed the matter, and for the reasons set forth below, the Court now finds and concludes that, service of process was not effectuated under Nebraska law and therefore this action was dismissed by operation of law as of March 17, 2008. The Proposed Scheduling Order filed July 14, 2008, the Motion to Take Judicial Notice of God, for Purpose of these Proceedings, and to Waive Notice filed July 31, 2008 were filed or entered more that 6 months after the Petition was filed, and thus at a time when the action stood dismissed pursuant to § 25-217. Accordingly, this Court now has no jurisdiction over these proceedings except to formalize the dismissal as follows:

1. The Petition for Permanent Injunction was filed on September 14, 2007;
2. A purported Special Appearance by God was filed on September 18, 2007;
3. A purported Answer was filed by God on September 19, 2007;
4. A purported Answer was filed by God on September 20, 2007;

5. A purported Answer, Cross-Petition and Counter-Claim was filed by an agent of God on September 21, 2007;

6. Plaintiff was notified of dismissal on case progression pursuant to Rule 4-10 of the Rules of the District Court of the 4<sup>th</sup> Judicial District on or about June 16, 2008;

7. Plaintiff filed a Proposed Scheduling Order on July 14, 2008;

8. Plaintiff filed a Motion to Take Judicial Notice of God, for Purpose of these Proceedings, and to Waive Notice and Affidavit on July 31, 2008.

9. A civil action must be commenced by filing a complaint in the office of the clerk of a proper court. Neb. Rev. Stat. § 25-501 (Reissue 1995).

10. A plaintiff shall file with the clerk of the court a praecipe for summons stating the name and address of each party to be served and the manner of service for each party. Neb. Rev. Stat. § 25-502.01 (Reissue 1995).

11. A copy of the complaint shall be served with the summons, except when service is by publication. Neb. Rev. Stat. § 25-504.01 (Reissue 1995).

12. Service of a lawsuit may be accomplished through personal service, residence service, or by certified mail. Neb. Rev. Stat. § 25-505.01 (Reissue 1995); Kovar v. Habrock, 261 Neb. 337, 341, 622 N.W.2d 688 (Neb. 2001) (alternate service methods are authorized under § 25-517.02 when service cannot be accomplished under § 25-505.01).

13. The Nebraska Revised Statutes relating to the commencement and limitations of actions provides,:

An action is commenced on the date the complaint is filed with the court. The action shall stand dismissed without prejudice as to any defendant not served within six months from the date the complaint was filed.

Neb. Rev. Stat. § 25-217 (Cum. Supp. 2004) (emphasis supplied).

14. Rule 11 of the Nebraska Rules of Pleading in Civil Actions provides, “Every pleading...and other paper shall be signed by at least one attorney of record in the attorney’s individual name, or if the party is not represented by an attorney, shall be signed by the party.” Neb. R. of Pl in Civ. Actions 11.

15. The Nebraska Supreme Court has examined and discussed the applicability of Neb. Rev. Stat. § 25-217 (Cum. Supp. 2004) in Vopalka v. Abraham, 260 Neb. 737, 619 N.W.2d 594 (Neb. 2000) and in Dillion v. Mabbutt, 265 Neb. 814, 660 N.W.2d 477 (Neb. 2003). In Vopalka, the Court stated,:

The language of § 25-217 mandates that an action ‘shall stand dismissed without prejudice’ if unserved 6 months after filing and does not delineate any predicate action which must be taken by a court to effect dismissal. The statute does not contain discretionary language to the effect that a court ‘may’ dismiss an unserved action, nor does it contain exceptions pursuant to which a plaintiff would be able to demonstrate to a court good cause in order to avoid the operation of the statute. dismissal by operation of law effectuates the mandatory language of the statute.

Id. at 746 (emphasis supplied). In Dillion v. Mabbutt, 265 Neb. 814, 660 N.W.2d 477 (Neb. 2003), the Court further stated with regard to § 25-217,

The language of § 25-217 providing for dismissal of unserved petitions is self-executing and mandatory [citations omitted]. After dismissal of an action by operation of law pursuant to § 25-217, there is no longer an action pending and the district court has no jurisdiction to make further orders except to formalize the dismissal.... If orders are made following a dismissal under § 25-217, they are a nullity,” citing Kovar v. Habrock, 261 Neb. 337, 622 N.W.2d 688 (Neb. 2001) and Vopalka v. Abraham, 260 Neb. 737, 619 N.W.2d 594 (Neb. 2000).

Id. at 816 (emphasis supplied). See also Cotton v. Fruge, 8 Neb. App. 484, 596 N.W.2d 32 (Neb. Ct. App. 1999) and McDanel v. Fischer, 8 Neb. App. 160, 589 N.W.2d 172 (Neb. Ct. App. 1999).

16. In the instant case, the Petition for Permanent Injunction was filed on September 14, 2007. To avoid the mandatory operation of Neb. Rev. Stat. § 25-217, a summons and copy of the Petition would have to have been served by or about March 17, 2008.

17. The purported pleadings filed on behalf of the named Defendant are nullities in that they were filed in violation of Rule 11 of the Nebraska Rules of Pleading in Civil Actions and are not considered by this Court as the acceptance of service by the named Defendant.

18. There is no evidence before this Court to show that service was effectuated on the named Defendant as of March 17, 2008, and therefore, under Neb. Rev. Stat. § 25-217 and as interpreted in Vopalka v. Abraham and Dillion v. Mabbutt, supra, this action stood dismissed by operation of law, there is no longer an action pending and this Court has no jurisdiction to make further orders except to formalize the dismissal.

19. Given that this Court finds that there can never be service effectuated on the named Defendant this action will dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Petition for Permanent Injunction is hereby dismissed with prejudice.

IT IS FURTHER ORDERED that Plaintiff's Motion to Take Judicial Notice of God, for Purpose of these Proceedings, and to Waive Notice is denied as moot.

IT IS SO ORDERED.

DATED this 9th day of October, 2008.

BY THE COURT:



MARLON A. POLK  
DISTRICT COURT JUDGE