

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10363

Summary Calendar

VIRGINIA HAMILTON,

Plaintiff-Appellant,

versus

MARVIN T. RUNYON
POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(3:93-CV-1363-H)

(December 15, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Plaintiff appeals the district court's dismissal of her Title VII action against the U.S. Postal Service, her employer, for failure of service.

On July 14, 1993, plaintiff sent defendant the summons and complaint by certified mail. Defendant returned them the next day

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

with a letter advising her that her service was insufficient and directing her to Fed. R. Civ. P. 4(i)(1) and 4(i)(2), formerly Rules 4(d)(4) and 4(d)(5). In order to give her more time to perfect service, defendant twice moved for extensions of time to respond to the complaint.

Plaintiff alleges that her process server then personally delivered a copy of the complaint to the U.S. Attorney's Office on November 4, 1993. Defendant denies that the U.S. Attorney ever received personal service.

On December 16, 1993, defendant filed a motion to dismiss for failure of service, which the court granted on February 11, 1994. The court then granted plaintiff's motion for reconsideration and a hearing, held the hearing on March 17, 1994, and issued the same day a final judgment granting defendant's motion to dismiss without prejudice. (The court also vacated its February 11, 1994 order, which had mistakenly dismissed the case on the merits.) Plaintiff appeals the March 17 order of dismissal.

Plaintiff argues that her failure to properly serve should be excused because a clerk at the U.S. Attorney's Office allegedly misled her process server and caused him to serve the wrong person. The process server testified that a clerk on the Dallas federal building's third floor -- a floor that contains the U.S. Attorney's Office and another office -- directed him to serve his documents in the basement of One Main Place, a building across the street. Even crediting all the process server's testimony at the hearing, the

district court found the process server's attempt at service insufficient.

Plaintiff also challenges the court's finding that defendant never proved that service was made on November 4, 1993. The district court noted that there was no record of a return of service ever being filed, and found that the office log of the Dallas U.S. Attorney's office did not reflect that service was made. In any event, the burden is on plaintiff, not defendant, to show perfected service. See, e.g., Systems Signs Supplies v. U.S. Department of Justice, 903 F.2d 1011, 1013 (5th Cir. 1990).

We will not consider plaintiff's argument, raised for the first time on appeal, that because defendant had actual notice of the suit she did not need to comply with the service rules.

Finally, plaintiff urges us to look to the spirit, not the letter, of the Federal Rules of Civil Procedure, and to preserve her claim from dismissal for her procedural blunder. Yet part of the spirit of the Federal Rules of Civil Procedure is preserving the orderly and efficient administration of justice. Granting ad hoc exemptions from the simple, clear, easy-to-follow rules would destroy that.

Accordingly, the judgment below is AFFIRMED.