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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2017-2018

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Barbara Lane, as administrator of the Estate of Ora Sullins,
deceased

v.

Main and Associates, Inc., d/b/a Southern Springs Healthcare
Facility

Appeal from Bullock Circuit Court
(CV-16-900025)

PARKER, Justice.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(E), Ala. R. App. P.

Bolin, J., concurs.

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Shaw and Mendheim, JJ., concur specially.

Stuart, C.J., and Bryan and Sellers, JJ., dissent.

Main and Wise, JJ., recuse themselves.

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SHAW, Justice (concurring specially).

I concur to affirm the summary judgment in this case that, for purposes of this writing, essentially held that the underlying action was untimely filed. The background of this case is provided in Justice Sellers's dissenting opinion, and I see no need to repeat it here.

The dispositive issue¹ to me is whether the defendant, Main and Associates, Inc., d/b/a Southern Springs Healthcare Facility ("Main and Associates"),² was properly and timely served with process. The chief executive officer and part owner of Main and Associates is also a part owner of Main Drug Store, a pharmacy. It appears from the record that these are two distinct businesses that are not affiliated and do not operate as alter egos and that they are both located in Union Springs.

Barbara Lane, as administrator of the estate of Ora Sullins, deceased, attempted to commence a wrongful-death action against Main and Associates but apparently served the

¹Numerous arguments were presented on appeal; I will address the one Justice Sellers identifies in his dissent.

²There were other defendants in this case; they are not material to this appeal.

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complaint on another business. When she discovered Main and Associates' identity, she attempted service of process by a certified letter addressed and mailed to Main and Associates' registered agent at Main and Associates' street address. For some inexplicable reason, the letter was not delivered to that address but was instead placed in Main Drug Store's post-office box. That letter was received and signed for by Dorothy Surles, an employee of Main Drug Store.

Surles received the letter after the statute of limitations for Lane's wrongful-death action had expired, but it is alleged that she received it within the 120-day period provided in Rule 15(c)(3), Ala. R. Civ. P. Main and Associates apparently received the letter from the drug store after the 120-day period had expired. For Lane's action to be considered timely, Lane was required to show that Surles's receipt of the letter imputed service to Main and Associates. The pertinent legal issue is whether Surles was an "agent" for Main and Associates as contemplated by Rule 4(i)(2)(C), Ala. R. Civ. P. That rule states:

"Service by certified mail shall be deemed complete and the time for answering shall run from the date of delivery to the named addressee or the addressee's agent as evidenced by signature on the

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return receipt. Within the meaning of this subdivision, 'agent' means a person or entity specifically authorized by the addressee to receive the addressee's mail and to deliver that mail to the addressee."

(Emphasis added.)

According to the testimony in the record, Surles was an 18-year employee of Main Drug Store. She routinely picked up mail from the drug store's post-office box, but she was not the only employee who did so. Occasionally certified mail is in the box and she signs for it. She then takes the mail back to the drug store and leaves it with the pharmacist. She has never been tasked with picking up mail for Main and Associates; she does not know Main and Associates' post-office-box number and does not have a key for its post-office box. She had never been to Main and Associates' physical location. She has never been asked to pick up mail for Main and Associates, and she has never been authorized to do so. She did not recall signing for the certified letter at issue or ever before signing for Main and Associates' mail. Apparently, she had done so at least once before--in 2015 she signed for a summons in a different civil action against Main and Associates. She did not remember doing so.

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In its motion for a summary judgment, Main and Associates contended that it was untimely served with process. Lane was required to present substantial evidence to defeat that motion. "Substantial evidence" is "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." West v. Founders Life Assur. Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989). Here, Lane was required to provide substantial evidence that Surles was, under Rule 4(i)(2)(C), "specifically authorized by" Main and Associates to receive its mail.

I do not believe that such substantial evidence was produced in this case. Here, Surles was picking up mail for the drug store at which she worked; she had not been tasked, and had never been tasked, with picking up mail for Main and Associates. At best, the two times she received mail for Main and Associates in her past 18 years of employment--in 2015 and in the instant case--appear inadvertent. From these two isolated incidents, in which her picking up Main and Associates' mail was not requested, authorized, or intended, I do not believe that a trier of fact could reasonably infer

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that Surlles was "specifically authorized by" Main and Associates to pick up its mail. To hold otherwise would greatly expand the meaning of the term "agent" in Rule 4(i)(2)(C) to someone other than one who is "specifically authorized."

The result in this case is unfortunate but, for all that appears, required. Lane, by addressing the letter to Main and Associates' registered agent, did what was required by the face of the rules relating to service of process. However, an intervening act--the post office's failure to deliver the letter to the correct address--prevented timely service of process.

Mendheim, J., concurs.

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SELLERS, Justice (dissenting).

Barbara Lane, as administrator of the estate of Ora Sullins, deceased, appeals from a summary judgment entered in favor of Main and Associates, Inc., d/b/a Southern Springs Healthcare Facility ("Main and Associates"). For the following reasons, I respectfully dissent from this Court's decision affirming, without an opinion, the summary judgment in favor of Main and Associates.

Lane filed a wrongful-death action under § 6-5-410, Ala. Code 1975, against several defendants, one of which was Main and Associates. Lane did not name Main and Associates as a defendant in her original action. However, she filed an amended complaint substituting Main and Associates as a defendant after the applicable statute of limitations in § 6-5-410(d), Ala. Code 1975, had expired. The circuit court entered a summary judgment in favor of Main and Associates, holding that Lane's amended complaint did not relate back under Rule 15(c), Ala. R. Civ. P., to the date she originally filed her wrongful-death action and that the action as to Main and Associates was, thus, barred by the two-year limitations period set forth in § 6-5-410(d). The controlling issue

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addressed by the circuit court was whether Main and Associates had been properly served with the amended complaint within the limitations period because the return receipt for the certified mail was signed by someone other than the registered agent for Main and Associates. Lane had requested that the clerk of the circuit court serve the amended complaint by certified mail to Main and Associates' registered agent on file with the Secretary of State's office:

"[Main and Associates]
"C/o Michael O. Emfinger
"103 Beaumont Drive
"Union Springs, AL 36089"

Although the certified mail was addressed to Main and Associates at its registered office as reflected by the Secretary of State's office, the mail was apparently delivered to a post-office box belonging to Main Drug Store. Although Main and Associates and Main Drug Store are separate entities, Benjamin Gordon Main is part owner of Main Drug Store and part owner and chief executive officer of Main and Associates. The return receipt for the certified mail indicates that the mail was signed for and accepted by Dorothy Surles, an 18-year employee of Main Drug Store.

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Rule 4(i)(2)(C), Ala. R. Civ. P., provides, in pertinent part:

"Service by certified mail shall be deemed complete and the time for answering shall run from the date of delivery to the named addressee or the addressee's agent as evidenced by signature on the return receipt. Within the meaning of this subdivision, 'agent' means a person or entity specifically authorized by the addressee to receive the addressee's mail and to deliver that mail to the addressee. Such agent's authority shall be conclusively established when the addressee acknowledges actual receipt of the summons and complaint or the court determines that the evidence proves the addressee did actually receive the summons and complaint in time to avoid a default."

(Emphasis added.) Both Surles and Benjamin Gordon Main testified in their depositions that Surles had never been authorized to pick up mail or to receive legal documents for Main and Associates. However, it was undisputed that Surles had on at least one previous occasion signed for and accepted certified mail addressed to Main and Associates. Further, Surles had never been disciplined or instructed not to accept certified mail on behalf of Main and Associates. Main candidly testified in his deposition that Main and Associates routinely received certified mail and that in this case, although he received the certified mail containing the amended complaint at some unspecified time, he merely threw the mail

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in the trash unopened because it was addressed to Michael D. Emfinger, who had been dead for approximately nine years. In fact, Main stated that it was his habit to throw away all mail received by Main and Associates that was addressed to Emfinger. Main further testified in his deposition that, although he had instructed the chief operating officer of Main and Associates to update the company's "records" with the Secretary of State, he nonetheless could not state who had been designated as the registered agent for service of process. Pursuant to § 10A-1-5.31, Ala. Code 1975, every corporation doing business in Alabama must maintain with the Alabama Secretary of State a registered agent and a registered address for service of process. In the event a corporation fails to maintain a registered agent as required by statute, § 10A-1-5.35, Ala. Code 1975, provides that

"the entity may be served with process as provided by the Alabama Rules of Civil Procedure and may be served with any other notice or demand required or permitted by law to be served on the entity in a manner similar to the procedure provided by the Alabama Rules of Civil Procedure for the service of process."

Rule 4(c)(6), Ala. R. Civ. P., provides that a corporation may be served "by serving an officer, a partner (other than a

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limited partner), a managing or general agent, or any agent authorized by appointment or by law to receive service of process." The record is clear that, even though the registered agent in this case had been dead for several years, he was still publicly listed as Main and Associates' agent for service of process. It is further undisputed that Surles had on at least one previous occasion signed for and accepted certified mail on behalf of Main and Associates. For these reasons, I conclude that a genuine issue of material fact exists as to whether Surles's acceptance of the certified mail containing the amended complaint was effective. A reasonable person, reviewing the evidence in a light most favorable to Lane, could conclude that the death of the corporation's registered agent, coupled with Surles's actions of signing and accepting certified mail on the corporation's behalf, accomplished service as contemplated by the Alabama Rules of Civil Procedure. Accordingly, I would reverse the summary judgment in favor of Main and Associates.