

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2015 CA 0066

IMMACULETA A. ANYANWU

VERSUS

UNIVERSITY MEDICAL CENTER MANAGEMENT CORPORATION F/K/A
EARL K. LONG HOSPITAL, SANDRA WEITZ, M.D., COMPREHENSIVE
PAIN MANAGEMENT, L.L.C., EAST BATON ROUGE PARISH SHERIFF'S
OFFICE, AND XYZ INSURANCE CARRIER

Judgment Rendered: SEP 21 2015

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On Appeal from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. C608001
The Honorable Kay Bates, Judge Presiding

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Baton Rouge Parish Sheriff's Office

* * * * *

BEFORE: GUIDRY, HOLDRIDGE, AND CHUTZ, JJ.

HOLDRIDGE, J.

The issue in this case is a purely procedural timeliness issue of what constitutes a valid and timely request for service pursuant to La. C.C.P. art. 1201(C). Specifically, we are called to determine what constitutes a “request” for service upon a state entity pursuant to La. R.S. 13:5107(D).

PROCEDURAL HISTORY

On December 29, 2011, plaintiff, Immaculeta Anyanwu, filed a petition for damages against defendants, East Baton Rouge Parish Sheriff’s Office and Sheriff, Sid J. Gautreaux, III in his official capacity, among others,¹ based on injuries she allegedly sustained. Plaintiff attached an *in forma pauperis* affidavit with her petition. Plaintiff’s request to proceed *in forma pauperis* was denied as “incomplete” by the trial court on January 5, 2012. After being notified of the denial of her pauper status, plaintiff submitted payment of \$710.00 to the clerk of court on March 16, 2012, which was seventy-eight days after her petition for damages was filed. The sheriff was served on July 23, 2012.

On August 9, 2012, the sheriff filed a dilatory exception of lack of procedural capacity, peremptory exception of no cause of action, declinatory exception of insufficiency of service of process, and a motion for involuntary dismissal. The sheriff alleged that the plaintiff failed to timely request service of citation within ninety days as required by La. R.S. 13:5107(D)(1), and asked that the proceedings against him be dismissed under La. C.C.P. art. 1201(C). Moreover, the sheriff argued that the service request could not be considered made without the payment of filing fees.

¹ The other named defendants are University Medical Center Management Corporation F/K/A Earl K. Long Hospital, Sandra Weitz, Comprehensive Pain Management L.L.C., and XYZ Insurance Carrier.

A joint hearing on the exceptions and motion was held on October 29, 2012. The trial court granted the sheriff's declinatory exception of insufficiency of service of process and dismissed the suit without prejudice. Plaintiff now appeals judgment raising as the only assignment of error that the trial court committed manifest error by sustaining sheriff's declinatory exception of insufficiency of service of citation. For the reasons that follow, we reverse and remand.

DISCUSSION

Citation and service are essential in most civil actions; without them, all proceedings are absolutely null. La. C.C.P. art. 1201(A). Louisiana Code of Civil Procedure article 1201(C) requires that “[s]ervice of the citation shall be requested on all named defendants within ninety days of commencement of the action.” In particular, La. R.S. 13:5107(D)(1) and (2) explicitly governs the requisite period of service of citation on a political subdivision, such as the sheriff.² As set forth in La. R.S. 13:5107(D)(1), “[i]n all suits in which the state, a state agency, or political subdivision, or any officer or employee thereof is named as a party, **service of citation shall be requested within ninety days** of the commencement of the action” “If service is not requested by the party filing the action within the [ninety day] period ... the action shall be dismissed without prejudice ... as to the ... political subdivision ... upon whom service was not requested within the [ninety day] period[.]” La. R.S. 13:5107(D)(2).

On appeal, the trial court's dismissal of a suit for failure of the plaintiff to timely request service is subject to the manifest error standard of review. *Jones v. Iberville Parish Council*, 12-0391 (La. App. 1 Cir. 11/2/12), 111 So.3d 83, 85.

² According to La. R.S. 13:5102(B)(1), the sheriff is classified as a political subdivision, and as such, service in accordance with La. R.S. 13:5107(D)(1) applies to him. *See Reed v. Evans*, 09-1120 (La. App. 1 Cir. 2/12/10), 35 So.3d 359, 363-64, n.5.

In this case, plaintiff contends that the trial court erred in finding that service of citation was not requested timely because service fees were not paid at the time of filing. Moreover, plaintiff argues that since the original petition and filing fees were received by the clerk of court within 90 days, the duty imposed by La. R.S. 13:5107(D)(1) was met. To determine whether plaintiff timely requested service of citation, we must ascertain what constitutes a “request” for service of citation pursuant to La. R.S. 13:5107(D). *Tranchant v. State*, 08-0978 (La. 1/21/09), 5 So.3d 832, 835.

Service of citation is not considered requested until the clerk of court receives a request for service and payment or an order granting pauper status. *See Jenkins v. Larpenner*, 04-0318 (La. App. 1 Cir. 3/24/05), 906 So.2d 656, 659, *writ denied*, 05-1078 (La. 6/17/05), 904 So.2d 711. The Louisiana Supreme Court held that La. R.S. 13:5107 respecting *requesting* service within 90 days was clear and unambiguous and must be applied as written. *Naquin v. Titan Indem. Co.*, 00-1585 (La. 2/21/01), 779 So.2d 704, 711. Louisiana Revised Statutes 13:5107 does not require actual service within 90 days of the filing of the original petition, but only a request to the clerk’s office to effect service. *See Lockett v. Reese*, 04-0328 (La. App. 4 Cir. 4/28/04) 874 So.2d 913, 916. Thus, for purposes of La. R.S. 13:5107(D)(1), service of citation should be deemed “requested” when the clerk receives service instructions. *Tranchant*, 5 So.3d at 836.

The sheriff alleges that the plaintiff did not cite to any evidence introduced at trial to show that the service fees were paid to the clerk of court within ninety days from the filing of the original petition. However, the record does not support the sheriff’s assertion, as the record contains evidence that the plaintiff timely paid the filing fees to the clerk of court. Pursuant to La. C.C.P. art. 2164, a Court of Appeal is a court of record, which must limit its review to evidence in the record

before it and render its judgment upon the record on appeal. The sheriff's "Response to Plaintiff's Opposition to Exceptions", which was filed into evidence, acknowledges that the plaintiff's filing fees were paid timely to effectuate service. It is without question that the filing fees of \$710.00 were paid by the plaintiff timely.

Therefore, applying the rules of statutory interpretation, we conclude that the plaintiff's request for service of citation on the sheriff satisfied the requirements of La. R.S. 13:5107(D) and La. C.C.P. art. 1201(C). In light of the foregoing, we also conclude that the trial court manifestly erred in dismissing the plaintiff's suit for failure to timely request service of citation.

CONCLUSION

For the reasons stated herein, the trial court's judgment granting the sheriff's declinatory exception of insufficiency of service of citation is reversed and this matter is remanded for further proceedings. Costs of this appeal in the amount of \$1,287.00 are assessed to defendant, Sheriff Sid J. Gautreaux, III, in his official capacity.

REVERSED AND REMANDED.