FINE HOMEBUILDERS, INC. *v.* DIANE PERRONE ET AL.
(AC 26714)

Bishop, McLachlan and Rogers, Js.

Argued September 19—officially released December 26, 2006

(Appeal from Superior Court, judicial district of Stamford-Norwalk, Wilson, J.)

Jeffrey M. Sklarz, for the appellant (plaintiff).

Stephen A. Finn, with whom, on the brief, was *Alex K. Sherman*, for the appellees (named defendant et al.).

Opinion

BISHOP, J. The plaintiff, Fine Homebuilders, Inc., appeals from the judgment of the trial court dismissing its complaint against the defendants Diane Perrone and Richard Perrone[1] on the basis that the court lacked

personal jurisdiction over the defendants due to insufficient service of process. We reverse the judgment of the trial court.

This case arises out of an action to foreclose a mechanic's lien and for breach of contract. On September 14, 2004, state marshal Siegrun G. Pottgen purported to serve the defendants by leaving the writ of summons, complaint and notice of lis pendens at their residence, "Villa Aquaria," in Darien. The defendants' home is a gated compound consisting of a main house and one or more outbuildings. Public access to the property is guarded by a front gate, which runs completely across the driveway, a fence, which partially surrounds the grounds, and shrubbery and trees. The house is more than 200 feet from the front gate. When Pottgen arrived to serve the papers at approximately 1 p.m., she found the gate locked. There is a call box to the left of the gate, which Pottgen used in an attempt to contact the defendants, but there was no response. Pottgen left the property and returned between 3 p.m. and 3:30 p.m. Again, there was no response. Pottgen returned once again between 5 p.m. and 5:30 p.m. The gate remained locked and, again, there was no response to her calls from the call box. Confronted with the locked gate blocking the principal avenue of ingress to the property, Pottgen affixed the process to the gate.[2] The defendants received the process on September 16, 2004.

The defendants moved to dismiss the action on the ground that the court lacked jurisdiction over them due to insufficient service of process. After an evidentiary hearing, the court found that leaving the writ of summons and complaint and notice of lis pendens in a gate more than 200 feet from the defendants' home was not reliable service. This appeal followed.

We begin by setting forth our standard of review. "A challenge to the jurisdiction of the court presents a question of law. . . . Our review of the court's legal conclusion is, therefore, plenary." (Internal quotation marks omitted.) *Bove* v. *Bove*, 93 Conn. App. 76, 81, 888 A.2d 123, cert. denied, 277 Conn. 919, 895 A.2d 788 (2006).

"In many cases jurisdiction is immediately evident, as where the sheriff's return shows abode service in Connecticut. . . . When, however, the defendant is a resident of Connecticut who claims that no valid abode service has been made upon her that would give the court jurisdiction over her person, the defendant bears the burden of disproving personal jurisdiction. The general rule putting the burden of proof on the defendant as to jurisdictional issues raised is based on the presumption of the truth of the matters stated in the officer's return. When jurisdiction is based on personal or abode service, the matters stated in the return, if true, confer jurisdiction unless sufficient evidence is introduced to prove otherwise." (Internal quotation marks

omitted.) *Tax Collector* v. *Stettinger*, 79 Conn. App. 823, 825, 832 A.2d 75 (2003).

The manner in which service of process may be effected is determined by statute and by our decisional law interpreting the relevant statute. Therefore, we begin our analysis with the statute. General Statutes § 52-57 (a) provides: "Except as otherwise provided, process in any civil action shall be served by leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state." We note that the statute contains no definition of the term "abode." Thus, we do not know from the statute's language whether the term "abode" is intended narrowly to mean the dwelling house or more broadly to encompass the entirety of the property associated with a dwelling house.

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes." (Internal quotation marks omitted.) *State* v. *Tabone*, 279 Conn. 527, 534–35, 902 A.2d 1058 (2006). "We construe each sentence, clause or phrase to have a purpose behind it. . . . In addition, we presume that the legislature intends sensible results from the statutes it enacts. . . . Therefore, we read each statute in a manner that will not thwart its intended purpose or lead to absurd results. . . . Words in a statute must be given their plain and ordinary meaning . . . unless the context indicates that a different meaning was intended. . . . No word or phrase in a statute is to be rendered mere surplusage. . . . In applying those principles, we keep in mind that the legislature is presumed to have intended a reasonable, just and constitutional result." (Citation omitted; internal quotation marks omitted.) *Hibner* v. *Bruening*, 78 Conn. App. 456, 459, 828 A.2d 150 (2003). "If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . ." (Internal quotation marks omitted.) *State* v. *Tabone*, supra, 535.

A review of the legislative history fails to shed any

light on the meaning or import of the term "abode" or the phrase "at the usual place of abode." Some guidance is, however, provided by a review of the decisional law regarding the purpose of § 52-57 (a). Our Supreme Court has determined that the purpose of abode service is to afford a defendant actual notice of a pending action. "Abode service is only a step removed from manual service and serves the same dual function of conferring jurisdiction and giving notice. . . . Its chief purpose is to ensure actual notice to the defendant that the action is pending." (Citation omitted.) *Smith* v. *Smith*, 150 Conn. 15, 20, 183 A.2d 848 (1962). Accordingly, in order to effectuate abode service, "[t]he process must be left at the usual place of abode of the defendant in such a place and in such a manner that is reasonably probable the defendant will receive the notice of the action against him." *Pozzi* v. *Harney*, 24 Conn. Sup. 488, 491, 194 A.2d 714 (1963). Thus, whether the term "abode" connotes one's dwelling or more broadly one's property, we know that service must be effectuated in a way reasonably calculated to provide actual notice. Here, the defendants claim that service of process at a gate more than 200 feet from their house was insufficient as a matter of law because such service could not be construed as reasonably calculated to provide actual notice to them. We do not agree.

We begin our assessment with the word "abode" to determine whether the word narrowly means one's dwelling or whether it more broadly encompasses one's property. Although the statute at hand contains no internal definitions, our review of the General Statutes yields two instances in which the term "abode" is utilized and has been construed in a manner relevant to our inquiry. General Statutes § 53-206 provides in relevant part: "(a) Any person who carries upon his or her person. . . any knife the edged portion of the blade of which is four inches or over in length . . . shall be fined not more than five hundred dollars or imprisoned not more than three years or both. . . . (b) The provisions of this section shall not apply to . . . any person who is found with any such knife concealed upon one's person while lawfully removing such person's household goods or effects from one place to another, or from one residence to another . . . any person while actually and peaceably engaged in carrying any such knife from *such person's place of abode* or business to a place or person where or by whom such knife is to be repaired, or while actually and peaceably returning to such person's place of abode or business with such knife . . . ." (Emphasis added.)

In *State* v. *Sealy*, 208 Conn. 689, 690, 546 A.2d 271 (1988), the defendant had been convicted of carrying a dangerous weapon in violation of § 53-206 (a). The defendant had left his third floor apartment and confronted a police officer in the hall and stairway adjacent to the apartment. Id., 691. On this basis, the defendant

claimed that he was in his abode and, thus, by the terms of § 53-206 (a), entitled to be in possession of the knife he wielded. Id., 692–93. In assessing this claim, our Supreme Court looked not to whether the defendant had been within the confines of his apartment when in possession of the knife, but rather whether he was entitled to exercise exclusive control over the hall and stairway. The court opined: "In this case the defendant did not have the exclusive use of the area between the second and third floor apartments, as he did not have the legal right to control access and to exclude others. At any time there might be deliverypersons, the landlord, his or her agents, visitors, or residents of the other apartment in that common hallway and the defendant could not lawfully have excluded them from the premises. . . . In other words, although the defendant may have been the principal user of the third floor landing and stairway, other individuals, however infrequent their use, also had a right to use that area. . . . This being the case, we conclude that the stairway and landing which led to the defendant's apartment were not part of his residence or abode. Therefore, the trial court did not err in instructing the jury that § 53-206 (a) would be violated if the defendant was carrying the knife in a common hallway." (Citation omitted.) Id., 694.

From *Sealy*, we glean that in the context of a penal statute, the term abode connotes more than one's dwelling and may also encompass an area outside of the dwelling that is within the person's exclusive control. Because in *Sealy* the hall and stairways outside the defendant's apartment were not within his exclusive possession and control, they were not part of his abode. By inference, if the hallway or stairwell had been within the defendant's exclusive possession and control, those areas would have been construed as part of his abode.

Elsewhere, in the workers' compensation context, the General Assembly has employed the term abode to connote more than one's dwelling itself. General Statutes § 31-275 sets forth the workers' compensation scheme for police officers and firefighters who are injured in the course of employment. The statute's definition of the term "in the course of employment" is instructive. In pertinent part, the statute provides: "For a police officer or firefighter, 'in the course of his employment' encompasses such individual's departure from such individual's place of abode to duty, such individual's duty, and the return to such individual's place of abode after duty . . . ." General Statutes § 31-275 (1) (A) (i). Thus, a police officer or firefighter injured while traveling to or from his or her abode while in the course of employment may be entitled to workers' compensation benefits. Subparagraph (E) of subdivision (1), however, provides in relevant part: "A personal injury shall not be deemed to arise out of the employment if the injury is sustained: (i) At the employee's place of abode . . . ." General Statutes § 31-275 (1)

(E). Unlike § 52-57, the statute at hand, the legislature in § 31-275 also provided a definition of the term "abode." The statute provides in relevant part: "For purposes of subparagraph (E) of this subdivision, 'place of abode' includes the inside of the residential structure, the garage, the common hallways, stairways, driveways, walkways and the yard . . . ." General Statutes § 31-275 (1) (F).

We believe the broad application of the term "abode" as used in the workers' compensation statute is equally applicable to the statute at hand regarding service of process. While a workers' compensation statute, as remedial, should be broadly construed, so, too, should we read a statute regarding jurisdiction broadly, consistent with our policy to assert jurisdiction when it is reasonable to do so. "Connecticut law repeatedly has expressed a policy preference to bring about a trial on the merits of a dispute whenever possible and to secure for the litigant his or her day in court." (Internal quotation marks omitted.) *Mulcahy* v. *Mossa*, 89 Conn. App. 115, 129, 872 A.2d 453, cert. denied, 274 Conn. 917, 879 A.2d 894 (2005).

Although we recognize, as the defendants argue, that it may be common practice to slide process under a defendant's door, thereby placing it within the confines of the dwelling, § 52-57 (a) requires service "at [the] usual place of abode," not in the dwelling. In the context of a gated single-family residence, where there is no access to the front door and no evidence that the process could have been slid under a door, interpreting § 52-57 (a) to require service at the dwelling itself would be particularly troubling, as such an interpretation could, as a practical matter, insulate defendants who live in gated single-family estates from abode service.[3]

The case at hand presents a difficult question because the main entryway to the property is guarded by a gate more than 200 feet from the house. As noted, the defendants reside on an estate to which public access to their front door is blocked by a gate, fence and shrubbery. Unable to reach the defendants' home, the marshal testified, she had no alternative but to leave the process at the front gate in order to effectuate abode service. If the locked front gate to an estate is not treated akin to a person's front door for the purposes of satisfying § 52-57 (a), state marshals could be required to scale fences, traverse brush or otherwise potentially trespass on a defendant's property or adjoining properties to obtain access to a home in order to effectuate abode service. Such absurd requirements cannot be in furtherance of the intent or purpose of § 52-57 (a).

In this case, it is significant, though not conclusive, that the defendants actually did receive the process, thereby accomplishing the purpose of abode service. General Statutes § 52-57 (a), authorizing abode service,

should be construed liberally in cases in which the defendant received actual notice. *Krom* v. *Krom*, judicial district of Hartford, Docket No. FA97-0714850 (January 6, 2003). Accordingly, in light of the fact that the front door of the defendants' home was inaccessible, that the marshal affixed the process to the main entryway to the property, that the property is a single-family residence and the defendants actually received notice of the action, we believe that the service of process effected by the marshal was reasonably likely to achieve personal notice. Therefore, the court improperly determined that it lacked personal jurisdiction over the defendants.

The judgment is reversed and the case is remanded for further proceedings.

In this opinion ROGERS, J., concurred.

[1] Also named as defendants were Washington Mutual Bank, F.A., Barrington Bogle Plastering Services and Webster Bank. Because none of those defendants is a party to the appeal, we refer in this opinion to the Perrones as the defendants.

[2] At the hearing on the motion to dismiss, Pottgen testified that she placed the papers in a plastic bag and secured the bag to the gate with two rubber bands. Richard Perrone testified that the papers were merely lodged in the gate and that there was no protective plastic wrap around them.

[3] We note that this case is distinguishable from cases holding that process left in common areas of multifamily dwellings is insufficient. See *Cugno* v. *Kaelin*, 138 Conn. 341, 84 A.2d 576 (1951), overruled in part on other grounds by *Lampson Lumber Co.* v. *Hoer*, 139 Conn. 294, 300, 93 A.2d 143 (1952); *Clover* v. *Urban*, 108 Conn. 13, 142 A. 389 (1928). The rationale for the holdings in those cases stemmed from a desire to ensure that the proper party is served when process is deposited in a place commonly used by several people. When presented with a single-family residence, however, these historical concerns regarding the number of people who travel in common areas do not exist.