

DIVISION OF ST. THOMAS AND ST. JOHN

VS.

Defendants.

) CASE NO. ST-15-CV-105

¹ Informational Motion, at page 1.

ascertainable receive notice of the proceedings.”² Considering that an estate is managed by either an executor or administrator, who are easily ascertainable, it would be improper to serve an estate by publication.³

Plaintiff also indicates that he intended to file a motion to serve “Defendants DOES 1 through 20,” but the “Court issued its Orders before Plaintiff filed his motion to serve by publication.”⁴ However, almost a year and a half has passed and Plaintiff still has not moved to serve the unidentified defendants by publication.

In the Order, the Court also required Plaintiff to present evidence establishing (a) whether June A. Violet and June Thomas are the same person, (b) whether Carol David has authority to accept service of process on behalf of the Estate of Eugenia David, (c) whether Carol David is an heir of Eugenia David, (d) whether Eugenia David has any other heirs, (e) whether the Estate of Eugenia David was submitted to probate, (f) whether David Raimer and David W. Raimer are the same person, (g) whether the Estate of David Raimer was submitted to probate, (h) whether David Raimer had any heirs other than Dana, Dean, Phillip, and Shelly, and (i) whether Mavis M. Raimer and Mavis Raimer are the same person. In response, Plaintiff stated that he “concedes that during the course of the litigation he would have had to provide proof that probate actions were pending

² *Allan v. Allan*, 236 Ga. 199, 206, 223 S.E.2d 445, 451, 1976 Ga. LEXIS 815, *14-15 (Ga. 1976).

³ See also *Freitas v. Gomes*, 52 Haw. 145, 472 P.2d 494 (1970) (notice by publication in estate proceedings is constitutionally insufficient and must be supplemented by personal service or mailing to interested persons whose names and addresses are known, or by reasonable diligence can be ascertained); *Fredericks v. Tourism Indus.*, 1995 V.I. LEXIS 37, *10-11, 33 V.I. 23, 28, 1995 WL 810348 (V.I. Terr. Ct. 1995) (“Personal service on a defendant is preferred over service by publication because service by publication is the least calculated method to bring to a potential defendant’s attention the pendency of judicial proceedings. Therefore, counsel must exercise due diligence in attempting to serve a defendant personally before moving for substituted service by publication, because service by publication should be a last resort after other methods at actual service have failed”).

⁴ Informational Motion, at page 1.

for all estates and the name(s) of each legal representatives for each estate.”⁵ Plaintiff’s statement is not responsive to the concerns raised in the August 26, 2015, Order.

Finally, the Court had noted that several individuals were not served with the First Amended Complaint raising the question whether all people with an interest in the subject property were given notice of Plaintiff’s claims. In response, Plaintiff’s counsel stated that she:

has had several conversations with a local attorney who represented that he was retained by some of the Defendants, regarding the suit, including the amended complaint. The parties are attempting to resolve this matter without litigation and therefore none of the ‘local defendants’ has been formally served with the First Amended Complaint, although a copy of the First Amended Complaint was mailed to the local attorney.⁶

This response does not address the Court’s concern that all people with an interest in the subject property may not have been properly served. Moreover, the parties have not advised the Court whether this dispute has been resolved.

Plaintiff must supplement the record and specifically address each of the issues raised by the Court, failing which the Court will consider the dismissal of this action for failure to complete service and failure of prosecution.

An Order consistent with this Opinion shall follow.

Dated: May 5, 2017

ATTEST: Estrella H. George
Clerk of Court

by:

Donna D. Donovan

Court Clerk Supervisor


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

⁵ Informational Motion, at page 2.

⁶ *Id.*