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Parker v. Frank Emmet Real Estate: Should Plaintiff's Choice of Service of Process Method Matter?

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PARKER V. FRANK EMMET REAL ESTATE: SHOULD PLAINTIFF'S CHOICE OF SERVICE OF PROCESS METHOD MATTER?

The fundamental right to due process of law is afforded to every person in the United States by the fifth and fourteenth amendments to the United States Constitution.[1] Procedural due process has been interpreted by the Supreme Court to require that a defendant be notified of any legal action brought against him and given the opportunity to be heard through presentation of a defense.[2] The initial requirement of notice is met if the defendant is adequately informed of a legal action, including the nature of that action.[3] To that end, the plaintiff provides the defendant with notice of the commencement of an action in the form of a summons and complaint. The plaintiff's process server serves notice either on the defendant personally or at the defendant's home.[4]

To ensure that service of process will be adequate, legislatures have en-

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1. U.S. CONST. amend. V ("nor [shall any person] be deprived of life, liberty, or property, without due process of law"); U.S. CONST. amend. XIV ("nor shall any State deprive any person of life, liberty, or property, without due process of law").

2. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 314.

3. *See Mullane*, 339 U.S. at 315.

> The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . . or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.

Id. (citation omitted). *See also* Greene v. Lindsey, 456 U.S. 444, 451 (1982): "[t]he sufficiency of notice must be tested with reference to its ability to inform people of the pendency of proceedings that affect their interests."

4. Service of process has been defined as "the giving of such actual or constructive notice of a suit or other legal proceeding to defendant as makes him a party thereto, and compels him to appear or suffer judgment by default . . . ." 72 C.J.S. *Process* § 25 (1951). *See Greene*, 456 U.S. at 449.

> [p]ersonal service guarantees actual notice of the pendency of a legal action; it thus presents the ideal circumstance under which to commence legal proceedings against a person, and has traditionally been deemed necessary in actions styled *in personam*. . . . Nevertheless, certain less rigorous notice procedures have enjoyed substantial acceptance throughout our legal history . . . .

acted laws enumerating alternative means of serving process. The different methods set forth in each service of process statute depend, in part, on the nature of the cause of action being asserted. For forcible entry and detainer cases,[5] the District of Columbia Code specifies two methods by which a landlord may effect service of process on a tenant.[6] These include both actual and constructive service of process. Actual service entails handing the summons and complaint to the defendant. Constructive service entails delivering the summons and complaint to either a tenant in possession of the premises or someone over the age of sixteen in possession of or residing on the premises, or by posting the summons and complaint in a conspicuous place on the premises.[7] Though the statute itself provides no indication of the preferred method of service if the defendant cannot be

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Id. (citation omitted). Notice will usually be served on the defendant by a special process server.

5. A cause of action for forcible entry and detainer may be brought by a landlord against a tenant who maintains possession of the leased premises beyond the time when possession was to cease. Forcible entry and detainer has been defined as "violently taking or keeping possession of lands or tenements, by means of threats, force, or arms, and without authority of law." 36A C.J.S. *Forcible Entry and Detainer* § 1 (1961).

6. Service of process in forcible entry and detainer cases may be either actual or constructive.

> Actual service is made by reading the original process to defendant, or by delivering to him a copy thereof; and constructive service, which is a substituted service, is made by leaving a copy of the process at defendant's residence when he is absent, or by posting or publishing notice of the pendency of the suit, and mailing a copy of the notice posted or published to defendant.

72 C.J.S. *Process* § 25 (1951) (footnotes omitted). The District of Columbia Code provides alternative means of serving process if personal service of the defendant cannot be accomplished.

> If the defendant has left the District of Columbia, or cannot be found, the summons may be served by delivering a copy thereof to the tenant, or by leaving a copy with some person above the age of sixteen years residing on or in possession of the premises sought to be recovered, and if no one is in actual possession of the premises, or residing thereon, by posting a copy of the summons on the premises where it may be conveniently read.

D.C. CODE ANN. § 16-1502 (1981) (original version at D.C. CODE ANN. § 11-736 (1940)). In Dewey v. Clark, 180 F.2d 766, 768-69 (D.C. Cir. 1950), the court stated that § 16-1502 of the District of Columbia Code

> can be given a reasonable and consistent construction throughout by reading it to provide that service shall be (1) on the defendant in person if he has not left the District of Columbia and can be found, (2) if he has left the District or cannot be found, by delivering a copy to the tenant or by leaving the same with some person over sixteen in possession of or residing on the premises, if there is a tenant or such person and either can be found; (3) if the defendant has left the District or cannot be found and no one above the age of sixteen can be found in actual possession or residing on the premises then no one is in "actual possession" or "residing thereon" and posting is proper.

7. *See* D.C. CODE ANN. § 16-1502, *supra* note 6.

personally served, courts have determined that the means of serving process are set forth in the statute in descending order of preference.[8]

In several landlord-tenant cases, District of Columbia courts have addressed the adequacy of service of process by posting.[9] Posting alone has been found adequate only after the process server has used due diligence and made a conscientious effort to use other, more preferred methods of service.[10] District of Columbia courts have generally interpreted due diligence to mean attempting personal or substitute service more than once. If repeated attempts at personal or substitute service of process fail, service by posting is an acceptable last resort.[11] The degree of care required of a landlord's process server was at issue in *Parker v. Frank Emmet Real Es-*

8. The legislative history of the statute does not indicate if one method of service of process is preferred over another. *See Dewey*, 180 F.2d at 768 n.2. Courts, however, have added a judicial gloss to the statute to clarify which methods of service are preferred. *See id.* at 768-69; Moody v. Winchester Management Corp., 321 A.2d 562, 564 (D.C. 1974).

9. *E.g., Dewey*, 180 F.2d at 767-68 (where the marshall tried on three consecutive days to serve and no one was at home, service by posting was valid); Westmoreland v. Weaver Bros., Inc., 295 A.2d 506 (D.C. 1972) (service by posting does not violate due process in landlord-tenant cases where the tenant wants to retain possession because the tenant can probably be found on the premises and is very likely to get notice); Gordan v. William J. Davis, Inc., 270 A.2d 138 (D.C. 1970) (where a process server claimed to have twice gone to defendant's home to serve process, but defendant's wife denied hearing a knock the second time, and defendant was then served by posting, service was valid because it provided timely notice); Etelson v. Andre, 61 A.2d 806 (D.C. 1948) (a maid refused to accept process and the marshall tacked notice on front door; because process was left available after the maid's refusal, service was valid); Lynch v. Bernstein, 48 A.2d 467 (D.C. 1946) (where a process server went twice to a defendant's home and, on the second visit, while the process server was tacking the notice on the door, a woman came to the door and a discussion ensued, and tacking was then completed, service was valid because defendant received timely notice); Shannon & Luchs Co. v. Jones, L & T (D.C. Super. Ct. Nov. 16, 1981) (No. 56508-81), 109 Daily Wash. L. Rep. 2501 (Dec. 8, 1981) (service is not valid where the process server attempted service of process on nine defendants only once prior to posting notice and eight out of the nine times someone who could have received service was at home and did not hear the process server's knock).

10. "[T]he validity of service by posting depends on the process server first making a diligent and conscientious attempt to effect personal or substituted service." *Westmoreland*, 295 A.2d at 509. Also, in *Shannon & Luchs*, the court stated that "the judicially construed requirement of diligence, was designed to prevent the commencement of actions for possession where . . . further efforts on the part of the process server could have avoided utilization of the least preferred method of effecting service of process." *Shannon & Luchs*, 109 Daily Wash. L. Rep. at 2506. The District of Columbia courts are not the only courts that have had to set the standard for what constitutes due diligence. An article in the Wisconsin Bar Bulletin states clearly that Wisconsin courts have also had to define due diligence through case law. *See* Ware, *Service of Process: Establishing Reasonable Diligence*, 54 WIS. B. BULL. 13 (1981).

11. "The term 'post,' when used with reference to a notice, means '. . . to nail, attach, affix or otherwise fasten up physically and to display in a conspicuous manner . . . .'" *Moody*, 321 A.2d at 564 (quoting Epp v. Bowman-Biltmore Hotels Corp., 171 Misc. 338, 342, 12 N.Y.S.2d 384, 388 (1939)).

tate,[12] a forcible entry and detainer case recently decided by the Court of Appeals for the District of Columbia.

In *Dewey v. Clark*,[13] a deputy marshall tried on three consecutive days to serve the defendant at his home. On each occasion, the marshall, after knocking on the door, found neither the defendant nor any other person of the requisite age on the premises. After failing on the third day to elicit any response, the marshall securely fastened two copies of the summons and complaint to the apartment door. Noting the three attempts to serve the defendant either personally or constructively through someone in possession of the premises, the United States Court of Appeals for the District of Columbia Circuit held that service by posting was valid under the circumstances.[14]

In *Etelson v. Andre*,[15] a deputy marshall made two visits to the defendant's home to attempt service of process. Finding no one at home on his initial visit, the marshall returned two and one half hours later, at which time a maid answered the door. Upon inquiry, the maid stated that the defendant was not at home and that she was under orders to accept papers from no one. Thereafter, the marshall tacked the summons and complaint to the door of the premises. The District of Columbia Municipal Court of Appeals held that the marshall's actions constituted due diligence and, therefore, service of process by posting was valid.[16]

Recently, in *Shannon & Luchs Co. v. Jones*,[17] plaintiff's special process server attempted service on nine defendants. In each case, the process server knocked on the front door and, after waiting approximately one minute, proceeded to tack the complaint to the door.[18] Eight of the nine defendants served claimed to have been at home at the time of attempted service and to have heard no knock. Though all nine defendants received timely notice, the District of Columbia Superior Court found that the process server had failed to make a diligent and conscientious effort to serve the defendants personally.[19] The court held that where diligence on the

12. 451 A.2d 62 (D.C. 1982).

13. 180 F.2d 766 (D.C. Cir. 1950).

14. *Id.* at 768-69.

15. 61 A.2d 806 (D.C. 1948).

16. *Id.* at 807-08.

17. L & T (D.C. Super. Ct. Nov. 16, 1981) (No. 56508-81), 109 Daily Wash. L. Rep. 2501 (Dec. 8, 1981).

18. *Id.* at 2501.

19. *Id.* at 2506. "[T]his Court concludes that the process server's perfunctory efforts failed to comply with the requirement that diligent and conscientious attempts be made to effect personal or substitute service before resorting to posting, as mandated by § 16-1502." *Id.*

part of the process server could have resulted in personal or substitute service, posting was inadequate.[20]

In *Gordan v. William J. Davis, Inc.*,[21] the District of Columbia Court of Appeals reached a somewhat different result. In *Gordan*, the landlord's process server claimed to have attempted twice to serve process on the defendant. The first time, he knocked on the door of the premises and received no answer. He left the premises, returned later the same day and again received no answer to his knock. He proceeded to tack the summons and complaint to the front door of the defendant's abode. The defendant's wife took issue with the process server's recital of the facts, claiming that she had been at home the entire day, heard no knock and saw the process server merely tack a copy of the summons and complaint to the front door of the premises. Though there was some dispute as to the facts, the court found service of process to be valid. The court reasoned that the defendant had received the summons and complaint in a timely fashion, had knowledge of the suit against him, and was able to file a timely answer.[22]

District of Columbia courts have attempted to set a standard for determining when posting is an adequate method of service process. Attempting personal or substitute service two or three times prior to posting has consistently been held to constitute due diligence on the part of the process server.[23] On one occasion, however, an attempt to serve process in this manner has not been sustained. In the 1982 opinion in *Parker v. Frank*

20. *Id.* "This Court believes that the judicially construed requirement of diligence, was designed to prevent the commencement of actions for possession where, as apparently in this case, further efforts on the part of the process server could have avoided utilization of the least preferred method of effecting service of process." *Id.* This view is, however, effective only in hindsight. The court is able to determine whether the proper method of serving process was used only after the defendant has appeared in court to protest. If the defendant makes a timely appearance then the reason for the statute, "to provide the means for summoning defendants who have absented themselves from the District," has been fulfilled and the defendant has no right to protest the method of service on due process grounds. *Dewey*, 180 F.2d at 768 n.2 (quoting 89 CONG. REC. 1162 (1888) (statement of Mr. Hemphill)). If, on the other hand, the defendant fails to make a timely appearance, he will suffer a default judgment. Only then should the defendant be allowed to protest the method of service.

Opponents of this proposal may argue that if courts espouse this view, a defendant who wishes to protest the method of service, though he received timely notice to make appearance in court, may willingly suffer a default judgment in order to preserve his right to protest the method of service at a later date. On the surface this seems to be a valid argument. Most defendants, however, who receive service of process by posting will not know until they appear in court whether posting was accomplished on the process server's first, second, or third visit. This ensures that a defendant who receives process in time to appear in court will be unable to avoid suit.

21. 270 A.2d 138 (D.C. 1970).

22. *Id.* at 141.

23. *See Dewey*, 180 F.2d at 766 (three attempts at service on three consecutive days

Emmet Real Estate,[24] the District of Columbia Court of Appeals continued to apply this standard to determine what constitutes due diligence in a case of service by posting.

In *Parker*, the landlord, Frank Emmet Real Estate, proceeded against a tenant, Ross Parker, for nonpayment of rent. Proceedings were begun on June 18, 1981, at which time a summons and complaint was served on Parker. Upon visiting Parker's home once and finding no one at home, the landlord's process server posted a copy of the summons and complaint on the apartment door. Parker subsequently received the posted notice, made a timely appearance in court, and moved to dismiss the case for insufficiency of service of process. The motion was denied by the Superior Court for the District of Columbia,[25] and Parker appealed. After examining existing law for guidance, the District of Columbia Court of Appeals noted the factual dissimilarities between the *Dewey* and *Etelson* cases, and the *Parker* case.[26] In *Dewey* and *Etelson*, personal or substitute service of process has been attempted more than once prior to posting. In *Parker*, personal service has been attempted only once. The court emphasized the factual similarities between *Parker* and *Shannon & Luchs* as justification for its view that one visit does not constitute a diligent and conscientious effort.[27] As for *Gordan*, the court stated that timely receipt of process will not cure defective service, but will merely be further evidence of proper service.[28]

By once again holding that service of process by posting on the first visit does not constitute due diligence, the District of Columbia Court of Appeals is reaffirming a line of demarcation. The *Parker* decision is a continuation of the court's efforts to provide a practical interpretation of the service of process statute. It is an attempt both to ensure a defendant's constitutional right to due process of law[29] and to set forth guidelines for process servers to follow so that a plaintiff's right to prompt adjudication

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constitutes due diligence); *Etelson*, 61 A.2d at 807-08 (two attempts to serve a defendant, made two and one half hours apart, constitutes due diligence).

24. 451 A.2d 62 (D.C. 1982).

25. *Id.* at 63.

26. For a discussion of *Dewey* and *Etelson*, see *supra* notes 13-16 and accompanying text.

27. *See Parker*, 451 A.2d at 65. For a discussion of *Shannon & Luchs*, see *supra* notes 17-20 and accompanying text. Both *Parker* and *Shannon & Luchs* involve process servers who made one visit to the defendant's residence, waited a short time for a response to a knock on the door, and then posted process on the door of the premises.

28. *Parker*, 451 A.2d at 66.

29. *See supra* notes 1-2 and accompanying text for a discussion of the constitutional right to due process of law.

of claims will be realized.[30] In addition, the articulation of well-defined guidelines will aid courts in determining the validity of service of process, thereby reducing the amount of time courts must spend hearing debates on that issue.

Though these goals are laudable, there is danger that the process will become so streamlined and mechanical that the rights of one of the parties will be compromised in the name of efficiency. Because many variables have to be taken into account, the question of the validity of service of process does not lend itself to application of a rigid formula. As noted above, the purpose of service of process is to give a defendant notice of the action being asserted against him and time to prepare a defense.[31] Whether or not this purpose is attained does not depend on the number of times service is attempted, but rather on whether notice is timely received by the defendant. By setting a numerical cut-off point, the *Parker* court has ignored the factual similarities between *Gordan* and *Parker*,[32] the factual differences between *Shannon & Luchs* and *Parker*,[33] and the possibility of situations in which even stringent requirements of due diligence might fail to ensure a defendant's due process rights.

Relying on *Gordan*, the landlord argued that Parker's actual receipt of notice and timely appearance in court cured any defect in service of process.[34] Though the *Parker* court acknowledged the *Gordan* court's consideration of the defendant's actual, timely receipt of process,[35] it refused to view actual receipt as curing inadequate service of process. Rather, it viewed receipt only as further evidence of valid service.[36] By limiting the *Gordan* holding, the *Parker* court has ignored the factual similarity between the two cases. In *Parker*, the special process server attempted service only once. In *Gordan*, if the special process server failed to knock prior to posting during the second visit, as contended by the defendant's wife, then personal or substitute service was attempted only once prior to posting. Furthermore, the defendants in both cases received timely notice. By

30. *Parker*, 451 A.2d at 64.

31. *See supra* note 2 and accompanying text.

32. Both *Parker* and *Gordan* arguably are cases in which service was attempted only once. Assuming that defendant's wife's story in *Gordan* was true, then service was attempted only once. *Gordan*, 270 A.2d at 141. In addition, defendants in both cases received timely notice of the suits against them and appeared in court to present a defense.

33. In *Shannon & Luchs*, eight of the nine defendants served were at home at the time process was posted. This is not the case in *Parker*. Such a factual dissimilarity is significant in service of process cases where courts stress personal service of the defendant and find it overwhelmingly the preferred method.

34. *Parker*, 451 A.2d at 66.

35. *Id.*

36. *Id.*

emphasizing the number of times the process server visited the defendant's home, rather than the defendant's actual receipt of notice, the court may be undermining the substance of the due process requirement while embellishing the judicial gloss placed on the statute. The reason for requiring service of process is to provide notice to defendants.[37] The logical conclusion, therefore, is that service is valid, regardless of the number of times attempted, if the defendant is actually notified in a timely fashion by any one of the means prescribed by the statute.[38] Such a conclusion is consis-

37. *See supra* notes 2-4 and accompanying text for a discussion of the fundamental due process right to notice.

38. The statute itself, D.C. CODE ANN. § 16-1502 (1973) (current version at D.C. CODE ANN. § 16-1502 (1981)), merely sets forth the different means by which service may be made. *See supra* note 6. Though the statute has been judicially interpreted as listing methods of service of process in order of preference, the statutory language does not specify that one means must be exhausted before others are attempted. Courts have determined that a process server must first attempt personal service on the defendant. If that fails, then the process server must attempt substitute service. Only then, when both personal and the more preferred methods of substitute service have failed, may the process server resort to posting notice. *See supra* note 7 and accompanying text.

In contrast to the judicially issued summons and complaint in a forcible entry and detainer case, a notice to quit is "simply a notice given privately from one party to another, terminating (or attempting to terminate) the landlord-tenant relationship." Craig v. Heil, 47 A.2d 871, 872 (D.C. 1946). The statute governing service of a notice to quit states that:

> Every notice to the tenant to quit shall be served upon him personally, if he can be found, and if he can not be found it shall be sufficient service of said notice to deliver the same to some person of proper age upon the premises, and in the absence of such tenant or person to post the same in some conspicuous place upon the leased premises.

D.C. CODE ANN. § 45-906 (1973) (current version at D.C. CODE ANN. § 45-1406 (1981)). The District of Columbia Court of Appeals has found actual receipt of a notice to quit sufficient to justify the means of service. In *Craig*, where a landlord served a notice to quit on a tenant by registered mail, the court held that because notice was put into the tenant's hands by the postman in conformance with personal service specified by statute, service was valid. *Craig*, 47 A.2d at 872-73. The *Craig* court stated that

> [i]t is not so much that we approve the method as that we give effect to the result attained. We emphasize that 'served upon him personally' as used in the statute means just that, and that any method which accomplishes less than that will not satisfy the requirement of personal service.

Craig, 47 A.2d at 873. In Lynch v. Bernstein, 48 A.2d 467 (D.C. 1946), where a landlord served a notice to quit on a tenant on the second visit made to the tenant's domicile, the court based its finding of adequate notice on the tenant's actual receipt of notice and compliance with the terms of D.C. CODE ANN. § 45-1605(b)(3) (1940) (current version at D.C. CODE ANN. § 45-906 (1981)). In its holding, the *Lynch* court stated that "[w]e are not to be understood as holding that receipt of notice constitutes a waiver of the requirements of the statute for substituted service. Such receipt, however, shows that the purpose of the statute was accomplished." *Lynch*, 48 A.2d at 468.

In contrast to *Lynch* and *Craig*, the District of Columbia Court of Appeals in Jones v. Brawner Co., 435 A.2d 54 (D.C. 1981), found service to be invalid where a landlord served a tenant notice to quit by slipping it under the tenant's door. Similarly, service was found to be invalid in Moody v. Winchester Management Corp., 321 A.2d 562 (D.C. 1974), where a

tent with the language as well as the purpose of the service statute.

While focusing on the factual similarities between *Parker* and *Shannon & Luchs*, the *Parker* court ignored the factual dissimilarities. In *Shannon & Luchs*, eight of the nine defendants served by the process server were at home at the time the process server claimed to have attempted service, yet they heard no knock.[39] The logical conclusion is that the process server could have personally served eight of the nine defendants. Moreover, if the server had been diligent in attempting service of the defendants, there would have been no need to resort to the least preferred method of service. Relying on these facts, the court found service by posting to be invalid. In contrast, there is no evidence in *Parker* that the defendant was at home when service was attempted, or that further attempts at personal or substitute service would have resulted in any method of service other than posting. This factual distinction raises the question of whether the *Shannon & Luchs* decision was properly applied by the *Parker* court. Because of the factual similarities between *Parker* and *Gordan*, it would have been more appropriate for the *Parker* court to have applied the *Gordan* rationale. Using *Gordan* as precedent, the *Parker* court could have underscored the fact that the defendant actually received the summons and complaint in a

landlord's agent served notice to quit on a tenant by placing the notice in an envelope and slipping it under the tenant's door. Thus, in notice to quit cases, the District of Columbia Court of Appeals requires that service be made by some method specified in the service of process statute. It does not, however, require that personal service be attempted before resorting to substitute service or that personal and substitute service be attempted before resorting to posting. If service is made by some statutory method, then actual receipt of notice by the defendant results in valid service of process.

An analogy may be made between service of process in a forcible entry and detainer case and service of a notice to quit. Both statutes specify the same alternative methods of completing service of process. *See* D.C. CODE ANN. § 16-1502 (1981) (original version at D.C. CODE ANN. § 11-736 (1940); D.C. CODE ANN. § 45-906 (1973) (current version at D.C. CODE ANN. § 45-1406 (1981)). The difference between the statutes is the interpretation given them by the District of Columbia courts. Whereas the court in a forcible entry and detainer case will require exhaustion of the more preferred methods of serving process prior to the posting of notice, the court in a notice to quit case will uphold service if made by any method specified by statute so long as the defendant receives notice in a timely fashion. The court's reliance on the defendant's actual receipt of notice in a notice to quit case complies with the rationale underlying the notice requirement in any cause of action—that the defendant be made aware of a pending or potential suit against him. Though the court's rationale for treating service of process and notice to quit cases differently may be based on the fact that the former is issued by a court and the the latter by a landlord, there is great similarity between the two processes. Because of their similarity, it would be logical for the District of Columbia courts to apply the statutes in a comparable manner. Therefore, the District of Columbia Court of Appeals could justify applying the same service of process rule used in notice to quit cases to forcible entry and detainer cases.

39. *Shannon & Luchs*, 109 Daily Wash. L. Rep. at 2506.

timely manner and placed less emphasis on the actual means of service.[40] Reliance on *Gordan* would have fulfilled the purpose of service of process: notifying the defendant of the cause of action.

The court's holding in *Parker* is also flawed in hypothetical application. It is conceivable that a special process server might make two visits to the defendant's home only minutes apart on the same day. Under the court's rigid formula, service by posting on the first visit would be invalid, while on the second visit posting would constitute valid service. Because of the proximity of time, however, the second attempt at service probably would be no more likely to end in personal or substitute service than the first attempt. This hypothetical illustrates the problems inherent in applying a purely numerical standard to determine the validity of service of process. Indeed, reaffirmance of such a structured formula illustrates a lack of foresight on the part of the court.

Though it is questionable whether the number of times service has been attempted should be the sole determinant of due diligence, use of the defendant's timely receipt of process as the standard may also have its drawbacks. A timely receipt standard might encourage a defendant not to appear in court or file an answer even when timely notice of suit had been received. Upon the defendant's failure to file an answer, the presumption might arise that the plaintiff had failed to use due diligence in delivering service of process, though the plaintiff may have attempted service several times.

The District of Columbia courts should implement a more effective rule. For example, a defendant's timely appearance in court could be viewed as conclusive evidence of valid service of process, whereas a defendant's failure to make a timely appearance could alert the court to examine the method of service used and the number of times service was attempted. This rule would achieve the objectives sought by the District of Columbia courts: prompt adjudication of plaintiffs' claims and preservation of defendants' due process rights.

Whatever standard the District of Columbia courts ultimately choose to govern service of process cases, the *Parker* court clearly had justification to hold service by posting valid. The defendant in *Parker* was afforded the constitutional process due him. In addition, approval of this method would have been consistent with the language and purpose of the District of Columbia statute. The statute expressly allows service of process to be

40. *See Westmoreland*, 295 A.2d 506 (service by posting in a landlord-tenant case does not violate due process where the tenant wishes to stay on premises, because the tenant is easily accessible).

completed by posting. Service accomplished by posting should be found valid regardless of other available methods when the means actually used reach the end desired.

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