

NO. FBT-CV-15-6054375-S : SUPERIOR COURT
PAUL LIONETTI : J.D. OF FAIRFIELD
V. : AT BRIDGEPORT
WESTERN CONNECTICUT STATE UNIVERSITY : March 30, 2016

OBJECTION TO MOTION TO DISMISS

The plaintiff, Paul Lionetti hereby objects to the defendant's Motion to Dismiss dated February 1, 2016. Defendant has based its entire motion on the fact that the case was not returned within 6 days of the return date as dictated by CGS Section 52-46a. Plaintiff concedes that fact but is simultaneously filing a motion to amend the return day pursuant to 52-72 to January 12, 2016. This cures the alleged defect.

LEGAL ANALYSIS

In *Coppola v. Coppola*, 243 Conn. 657; 707 A.2d 281 (1998) the Supreme Court specifically allowed a plaintiff who had failed to return the process at least 6 days before the return date to amend the return date pursuant to CGS Section 52-72. The undersigned has attached the case and it is directly on point. It is undisputed that the defendant received actual notice within the relevant time frame and suffered no prejudice as a result of the late return of process. In light of the fact that the plaintiff has filed a motion to

amend the return day to January 12, 2016 and the Supreme Court has stated that said statute (52-72) must be liberally construed the defendant's motion to dismiss must be denied.

PLAINTIFF
PAUL LIONETTI

BY: 407404
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Juris No.: 429623

ORDER

The foregoing objection having been heard by the Court is hereby sustained/overruled

By the Court

Judge/Clerk

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed on March 30, 2016, postage prepaid, to the following:

Walter Menjivar, Esq.
Assistant Attorney General
55 Elm Street
P.O. Box 120
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407404

Paul M. Cramer
Commissioner of the Superior Court

Coppola v. Coppola

Supreme Court of Connecticut

December 4, 1997, Argued ; February 17, 1998, officially released

(SC 15715)

Reporter

243 Conn. 657; 707 A.2d 281; 1998 Conn. LEXIS 38

EILEEN COPPOLA v. PAUL J. COPPOLA

Prior History: [***1] Action to recover damages for personal injuries sustained in an automobile accident caused by the defendant's alleged negligence, brought to the Superior Court in the judicial district of New Haven, where the court, Hon. William L. Hadden, Jr., judge trial referee, granted the defendant's motion to dismiss and, exercising the powers of the Superior Court, rendered judgment thereon, from which the plaintiff appealed to the Appellate Court, O'Connell, C. J., and Foti and Hennessy, Js., which affirmed the trial court's judgment, and the plaintiff, on the granting of certification, appealed to this court.

Disposition: Reversed; further proceedings.

Core Terms

return date, return day, Statutes, days, motion to dismiss, amend, returnable, provides, late return, appearance, civil process, service of process, trial court

Case Summary

Procedural Posture

Plaintiff injured party appealed from the judgment of the Appellate Court (Connecticut), which affirmed the dismissal of her negligence action for personal injuries against defendant, the alleged tortfeasor.

Overview

The injured party sustained personal injuries in an automobile accident and filed a negligence action against the alleged tortfeasor. The injured party then attempted to amend the return date of civil process to correct her failure to return the process at least six days before the return date as required by law, but the trial court denied her request and granted the motion to dismiss filed by the alleged tortfeasor. The court held that the trial court was incorrect in concluding that Conn. Gen. Stat. § 52-72 did not permit the injured party to

correct her defect, and the statute should have been liberally construed. It was undisputed that the alleged tortfeasor received actual notice of the cause of action within the statutory time frame and suffered no prejudice as a result of the late return of process, as he had already filed an appearance in the case. Allowing an amendment of the return date under the circumstances did not render the limitations of Conn. Gen. Stat. § 52-46a meaningless, and Connecticut practice did not favor terminating the action without offering the injured party her day in court.

Outcome

The court reversed the appellate court's judgment dismissing the injured party's negligence action.

LexisNexis® Headnotes

Civil Procedure > ... > Pleadings > Service of Process > General Overview

HN1 See Conn. Gen. Stat. § 52-72.

Civil Procedure > ... > Pleadings > Service of Process > General Overview

HN2 See Conn. Gen. Stat. § 52-46a.

Civil Procedure > Preliminary Considerations > Venue > General Overview

Civil Procedure > ... > Responses > Defenses, Demurrers & Objections > Motions to Dismiss

Civil Procedure > ... > Pleadings > Service of Process > General Overview

HN3 Any defendant, wishing to contest the court's jurisdiction, may do so even after having entered a general appearance, but must do so by filing a motion to dismiss within thirty days of the filing of an appearance. The motion to dismiss shall be used to assert insufficiency of process, and insufficiency of service of process. Any claim of lack of jurisdiction over the person or improper venue or

insufficiency of process or insufficiency of service of process is waived if not raised by a motion to dismiss filed in the sequence provided.

Civil Procedure > ... > Pleadings > Amendment of Pleadings > General Overview

HN4 The plaintiff may amend any defect, mistake or informality in the writ, complaint or petition and insert new counts in the complaint, which might have been originally inserted therein, without costs, during the first thirty days after the return day.

Civil Procedure > ... > Pleadings > Service of Process > General Overview

Civil Procedure > ... > Service of Process > Proof of Service > General Overview

Civil Procedure > ... > Service of Process > Time Limitations > General Overview

Governments > Courts > Clerks of Court

HN5 The requirement of Conn. Gen. Stat. § 52-46a to return process in civil actions to the clerk of the superior court at least six days before the return date is mandatory and failure to comply with its requirements renders the proceeding voidable, rather than void, and subject to abatement. Once an action has been brought by service of process on the defendant, a trial court may thereafter dismiss the action for failure to return the service of process within the mandated time period.

Governments > Legislation > Interpretation

HN6 In seeking to determine the meaning, the courts look to the words of the statute itself, 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.

Civil Procedure > ... > Pleadings > Service of Process > General Overview

HN7 Conn. Gen. Stat. § 52-72 (a) provides in relevant part that any court shall allow a proper amendment to civil process which has been made returnable to the wrong return day or is for any other reason defective. Section 52-72 does not define the term defective.

Governments > Legislation > Interpretation

HN8 If a statute or regulation does not sufficiently define a term, it is appropriate to look to the common understanding of the term as expressed in a dictionary.

Civil Procedure > ... > Pleadings > Service of Process > General Overview

HN9 See Conn. Gen. Stat. § 52-48(a).

Civil Procedure > ... > Pleadings > Service of Process > General Overview

HN10 The purpose of Conn. Gen. Stat. § 52-72 is to provide for amendment of otherwise incurable defects that go to the court's jurisdiction. The apparent intent of the legislature in enacting § 52-72 is to prevent the loss of jurisdiction merely because of a defective return date.

Civil Procedure > ... > Pleadings > Service of Process > General Overview

Governments > Courts > Common Law

HN11 The language of Conn. Gen. Stat. § 52-72 that any court shall allow a proper amendment to civil process which has been made returnable to the wrong return day is mandatory. Section 52-72 is a remedial statute that must be liberally construed in favor of those whom the legislature intended to benefit.

Governments > Legislation > Interpretation

Real Property Law > Torts > Construction Defects

HN12 The principles of statutory construction require the courts to construe a statute in a manner that will not thwart its intended purpose or lead to absurd results.

Civil Procedure > Dismissal > Involuntary Dismissals > General Overview

HN13 The practice in Connecticut does not favor the termination of proceedings without a determination of the merits of the controversy where that can be brought about with due regard to necessary rules of procedure.

Civil Procedure > ... > Pleadings > Service of Process > General Overview

HN14 Conn. Gen. Stat. § 52-48(b) requires that all process shall be made returnable not later than two months after the date of the process. Section 52-48(b), therefore, with its two month limit, circumscribes the extent to which a return date may be amended.

Counsel: Pat Labbadia III, for the appellant (plaintiff).

Gerald H. Cohen, for the appellee (defendant).

Judges: Callahan, C. J., and Norcott, Katz, Palmer and McDonald, Js. In this opinion the other justices concurred.

Opinion by: NORCOTT

Opinion

[*658] [**282] OPINION

NORCOTT, J. The dispositive issue in this certified appeal is whether, pursuant to General Statutes § 52-72,¹ the return date of civil process can be amended to [*659] correct the plaintiff's failure to return the process at least six days before the return date as required by General Statutes § 52-46a.² [***3] The plaintiff, [***2] Eileen Coppola, appeals³ from the judgment of the Appellate Court affirming the trial court's judgment granting the defendant's motion to dismiss. The plaintiff claims that the trial court improperly concluded that: (1) § 52-72 does not permit the amendment of the return date to correct a late return of process; and (2) the defendant did not waive the defect, despite having filed his motion to dismiss more than thirty days after the filing of an appearance, in violation of Practice Book § 142 et seq.

⁴ We agree with the plaintiff that § 52-72 permits the amendment of the return date⁵ and, accordingly, we reverse the judgment of the Appellate Court.

[***4] The facts relevant to this appeal are undisputed. The plaintiff brought an action against the defendant, Paul [*660] J. Coppola, for injuries arising out of a July 4, 1993 automobile accident. The writ of summons and complaint were dated June 25, 1995, with a return day of August 15, 1995. The defendant was served on June 28, 1995, and he filed an appearance on July 19, 1995. The plaintiff returned the process to the Superior Court on August 15, 1995, which was the return date. Thereafter, on September 8, 1995, the defendant, pursuant to Practice Book § 142, filed a motion to dismiss on the ground that the process was not returned at least six days prior to the return date as required by § 52-46a. On September 14, 1995, the plaintiff, pursuant to Practice Book § 175,⁶ filed an amendment to revise the return day from August 15, 1995, to August 22, 1995, in order to satisfy the six day requirement of § 52-46a. The trial court denied the plaintiff's request to amend the return date because it concluded that a late return of process was not the type of defect that could be amended pursuant to § 52-72. The court further stated that the plaintiff's reliance on [***5] Concept Associates, Ltd. v. Board of Tax Review, 229 Conn. 618, 642 A.2d 1186 (1994), was "misplaced" and

¹ *HN1* General Statutes § 52-72 provides in relevant part: "Amendment of process. (a) Any court shall allow a proper amendment to civil process which has been made returnable to the wrong return day or is for any other reason defective, upon payment of costs taxable upon sustaining a plea in abatement. . . ."

² *HN2* General Statutes § 52-46a provides in relevant part: "Return of process. Process in civil actions . . . shall be returned . . . if returnable to the Superior Court . . . at least six days before the return day."

³ We granted the plaintiff's petition for certification limited to review of the following issue: "Did the Appellate Court properly affirm the trial court's judgment of dismissal?" *Coppola v. Coppola*, 241 Conn. 923, 696 A.2d 1264 (1997).

⁴ Practice Book § 142 provides in relevant part: "Motion To Dismiss

HN3 "Any defendant, wishing to contest the court's jurisdiction, may do so even after having entered a general appearance, but must do so by filing a motion to dismiss within thirty days of the filing of an appearance. . . ."

Practice Book § 143 provides in relevant part: "[Motion To Dismiss] -- Grounds

"The motion to dismiss shall be used to assert . . . insufficiency of process, and . . . insufficiency of service of process. . . ."

Practice Book § 144 provides: "[Motion To Dismiss] -- Waiver Based on Certain Grounds

"Any claim of lack of jurisdiction over the person or improper venue or insufficiency of process or insufficiency of service of process is waived if not raised by a motion to dismiss filed in the sequence provided in Secs. 112 and 113 and within the time provided by Sec. 142."

⁵ Because this issue is dispositive of the appeal, we do not reach the plaintiff's second claim alleging that the defendant's motion to dismiss was untimely.

⁶ Practice Book § 175 provides: "[Amendments] -- Amendment as of Right by Plaintiff

HN4 "The plaintiff may amend any defect, mistake or informality in the writ, complaint or petition and insert new counts in the complaint, which might have been originally inserted therein, without costs, during the first thirty days after the return day."

that "no case has been found that supports the plaintiff's argument that . . . she can correct a late return of process by an amendment filed on September 14, 1995, which simply changes the return [**283] day from August 15, 1995 to August 22, 1995, and then claim that the original process, which was returned on August 15, 1995, was returned at least six days before the new return day of August 22, 1995." The court, in light of its finding that the defendant's motion to dismiss was timely, dismissed the plaintiff's action. The Appellate Court summarily affirmed the trial court's judgment of [*661] dismissal. Coppola v. Coppola, 44 Conn. App. 930, 691 A.2d 1128 (1997). This certified appeal follows.

[***6] The plaintiff claims that § 52-72 permits the amendment of the return date to correct a failure to return civil process at least six days prior to the return day as required by § 52-46a.⁷ She relies on our analysis of § 52-72 in Concept Associates, Ltd. v. Board of Tax Review, 229 Conn. 618, 623-625, 642 A.2d 1186 (1994), as authority for her construction of the statute. The defendant, in support of the contrary view, argues that a late return of process is a defect of service that cannot be amended. He further contends that Concept Associates, Ltd., is inapplicable to the facts in the present case because it dealt with the amendment of an improper return date rather than the amendment of a proper return date to remedy a late return of process.

[***7] As a preliminary matter, we note that *HN5* the requirement of § 52-46a to return process in civil actions to the clerk of the Superior Court at least six days before the return date⁸ is mandatory and failure to comply with its [*662] requirements renders the proceeding voidable, rather than void, and subject to abatement. Rogozinski v. American Food Service Equipment Corp., 211 Conn. 431, 433, 559 A.2d 1110 (1989). "Once an action has been brought by service of process on the defendant, a trial court may thereafter dismiss the action for failure to return the service

of process within the mandated time period." Rana v. Ritacco, 236 Conn. 330, 339, 672 A.2d 946 (1996).

[***8] Our resolution of the plaintiff's claim requires an analysis of § 52-72, in which "we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of this case *HN6* In seeking to determine that meaning, we look to the words of the statute itself, 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.) United Illuminating Co. v. New Haven, 240 Conn. 422, 431, 692 A.2d 742 (1997).

HN7 Section 52-72 (a) provides in relevant part that "any court shall allow a proper amendment to civil process which has been made returnable to the wrong return day or is for any other reason defective . . ." The defendant argues that the phrase "for any other reason defective" does not encompass a late return of process. Section 52-72 does not define the term defective. *HN8* "If a statute or regulation does not sufficiently define a term, it is appropriate to look to the common understanding of the term as expressed in a dictionary." [***9] State v. Payne, 240 Conn. 766, 771, [**284] 695 A.2d 525 (1997). The term "defective" is defined as "lacking in some particular which is essential to the completeness, legal sufficiency, or security of the object spoken of; as a 'defective' service of process or return of service. . . ." [*663] Black's Law Dictionary (6th Ed. 1990). In construing the meaning of defective as used in the statute, we find the analysis of the legislative intent and purpose of § 52-72 set forth in Concept Associates, Ltd. v. Board of Tax Review, 229 Conn. 618, 623-625, 642 A.2d 1186 (1994), more instructive than the dictionary definition.

In Concept Associates, Ltd., the defendant filed a motion to dismiss on the basis that the return date was a Thursday

⁷ Although the plaintiff cited Practice Book § 175 in her motion to amend the return date, she relied on § 52-72 and our analysis of that statute in Concept Associates, Ltd. v. Board of Tax Review, 229 Conn. 618, 623-625, 642 A.2d 1186 (1994), as authority for her motion to amend the return date. Accordingly, we will analyze her statutory claim.

⁸ The return date historically was the day that the defendant actually was required to appear in court to answer the summons. W. Moller & W. Horton, 1 Connecticut Practice Series: Practice Book Annotated (3d Ed. 1989) § 49, p. 215, comment. "From an early time in Connecticut, however, the return of process has been required *prior* to 'the day of sitting of the court.'" (Emphasis added.) E. Stephenson, Connecticut Civil Procedure (3d Ed. 1997) § 16, p. 31; see General Statutes (1821 Rev.), tit. 2, § 10 ("officers serving writs shall return them, or cause them to be returned, to the clerks of the courts to which they are made returnable, at least forty-eight hours prior to the day of the session of the court").

Today, the return date determines how to compute the time for service of process; General Statutes § 52-46; the time for filing the writ with the court; General Statutes § 52-46a; the time for the defendant to file an appearance with the court; General Statutes § 52-84; and the time for the defendant to respond to the complaint. Practice Book § 114. W. Moller & W. Horton, 1 Connecticut Practice Series: Practice Book Annotated, p. 215.

rather than a Tuesday as required by *General Statutes § 52-48 (a)*.⁹ *Id.*, 620. After the return date had passed, the plaintiff sought to amend the return date pursuant to *§ 52-72* from May 28, 1992, a Thursday, to May 26, 1992, a Tuesday. The issue presented was whether *§ 52-72* "permits the amendment of an improper return date in civil process after the return date has passed." *Id.*, 619-20.

[***10] Our resolution of this issue necessarily required a thorough process of statutory interpretation. In so doing, we determined that "[§ 52-72 was originally adopted in 1917. Public Acts 1917, c. 164. Although there is no legislative history available, it appears that the statute was enacted in response to decisions of this court holding that an improper return date was a jurisdictional defect that could not be corrected. See, e.g., *Hoxie v. Payne*, 41 Conn. 539 (1874). Indeed, this court has stated that *HN10* the purpose of *§ 52-72* 'is to provide for amendment of otherwise incurable defects that go to the court's jurisdiction.' *Hartford National Bank & Trust Co. v. Tucker*, 178 Conn. 472, 478-79, 423 A.2d 141 (1979), cert. denied, 445 U.S. 904, 100 S. Ct. 1079, 63 L. Ed. 2d 319 (1980). The apparent intent of the legislature in enacting *§ 52-72* was to prevent the loss [***64] of jurisdiction merely because of a defective return date." *Concept Associates, Ltd. v. Board of Tax Review*, 229 Conn. 618, 623, 642 A.2d 1186 (1994).

With these principles in mind, we review the plaintiff's claim. The plaintiff argues that the term "defective" as used in *§ 52-72* encompasses a failure to return the [***11] process at least six days prior to the return date, thus rendering the return date amendable pursuant to the statute.¹⁰ The defendant claims, however, that the return date in this case was proper and that the plaintiff was simply late in returning the process, a flaw which *§ 52-72* was not intended to amend. We reject, as we did in *Concept Associates, Ltd.*, so narrow a construction of the statute.

Section 52-72 is a remedial statute that must be liberally construed in favor of those whom the legislature intended to benefit. *Concept Associates, Ltd. v. Board of Tax Review*, 229 Conn. 618, 623, 642 A.2d 1186 (1994). "Statutes such as *§ 52-72* were intended to take the sharp edges off the common law . . ." *Id.* "Centuries ago the common law courts of England [***12] . . . insisted upon rigid adherence

to the prescribed forms of action, resulting in the defeat of many suits for technical faults rather than upon their merits. Some of that ancient jurisprudence migrated to this country . . . and has affected the development of procedural law in this state. . . . However, our legislature enacted numerous procedural reforms applicable to ordinary civil actions that are designed to ameliorate the consequences of many deviations from the prescribed norm, which result largely from the fallibility of the legal profession, in order generally to provide errant parties with an opportunity [***65] for cases to be resolved on their merits rather than dismissed for some technical flaw." *Andrew Ansaldo Co. v. Planning & Zoning Commission*, [***285] 207 Conn. 67, 75-76, 540 A.2d 59 (1988) (*Shea, J.*, concurring). The legislature, in enacting *§ 52-72*, expressed an intent to reject the draconian result of dismissal of the plaintiff's cause of action because of a defect involving the return date. *HN12* The "principles of statutory construction . . . require us to construe a statute in a manner that will not thwart its intended purpose or lead to absurd results." (Internal quotation [***13] marks omitted.) *Concept Associates, Ltd. v. Board of Tax Review*, 229 Conn. 618, 624, 642 A.2d 1186 (1994). The construction of the term defective to permit an amendment of the return date to correct the plaintiff's failure to return process six days prior to the return day effectuates the statute's remedial purpose and statutory policy of "'amending . . . otherwise incurable defects that go to the court's jurisdiction.'" *Id.*, 623.

Furthermore, such an interpretation is consistent with our expressed policy preference "to bring about a trial on the merits of a dispute whenever possible and to secure for the litigant his day in court." *Snow v. Calise*, 174 Conn. 567, 574, 392 A.2d 440 (1978). "The design of the rules of practice is both to facilitate business and to advance justice; they will be interpreted liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice. . . . Rules are a means to justice, and not an end in themselves . . ." (Citations omitted; internal quotation marks omitted.) *In re Dodson*, 214 Conn. 344, 363, 572 A.2d 328, cert. denied, 498 U.S. 896, 111 S. Ct. 247, 112 L. Ed. 2d 205 (1990). *HN13* "Our practice does not favor the [***14] termination of proceedings without a determination of the merits of the controversy where that can be brought about with due regard to necessary rules of

⁹ *HN9* *General Statutes § 52-48 (a)* provides: "Process in civil actions, including transfers and applications for relief or removal, but not including summary process actions, brought to the Superior Court may be made returnable on any Tuesday in any month. The return day in any summary process action may be any week day, Monday through Saturday, except a holiday."

¹⁰ In *Concept Associates, Ltd. v. Board of Tax Review*, 229 Conn. 618, 626, 642 A.2d 1186 (1994), we concluded that *HN11* the language of *§ 52-72* that "any court shall allow a proper amendment to civil process which has been made returnable to the wrong return day" is mandatory.

procedure." *Johnson v. Zoning Board of Appeals*, 166 Conn. 102, 111, [*666] 347 A.2d 53 (1974). The plaintiff's motion to amend would not deprive the defendant of any substantive rights and would simply correct the return date so that the return of process met the statutory six day period required by § 52-46a. It is undisputed that the defendant received actual notice of the cause of action within the statutory time frame, suffered no prejudice as a result of the late return of process, and already had filed an appearance and had served the plaintiff with interrogatories. We "[refuse] to permit the recurrence of the inequities inherent in eighteenth century common law that denied a plaintiff's cause of action if the pleadings were technically imperfect." *Andover Ltd. Partnership I v. Board of Tax Review*, 232 Conn. 392, 399, 655 A.2d 759 (1995).

The defendant contends that the plaintiff's construction of § 52-72 undermines § 52-46a and his ability to file a motion to dismiss pursuant to Practice Book § 143. The trial court agreed and reasoned that "if the plaintiff's interpretation is adopted there is practically no limit short of due process considerations to a court's power to correct defects in service of process or failure to comply with rules on return of process." Quoting *Shelansky v. Roivisto*, 1995

Conn. Super. LEXIS 603, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. CV930533137 (February 27, 1995) (13 Conn. L. Rep. 532). We are not persuaded.

Allowing an amendment of the return date under the circumstances of the present case does not render § 52-46a meaningless.¹¹ A return date may be amended but it still must comply with the time limitations set forth in § 52-48 (b). *HNI4 Section 52-48 (b)* requires that "all process shall be made returnable not later than two months after the date of the process . . ." *Section 52-48 (b)*, [*667] therefore, with its two month limit, circumscribes the extent to which a return date may be amended.¹²

***16 The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to remand the case to the trial court with direction to grant the plaintiff's motion to amend the complaint and for further proceedings.

In this opinion the other justices concurred.

¹¹ Amended process must still comply with § 52-46a and be returned at least six days before the return date.

¹² We note that, in the present case, the plaintiff's amended return date does not violate the provisions of § 52-48 (b). The writ of summons and complaint were dated June 25, 1995, and the plaintiff's amended return date was August 22, 1995, thus complying with the two month limitation of § 52-48 (b).