

IN THE SUPERIOR COURT OF DEKALB COUNTY

STATE OF GEORGIA

MESHANA SPIVEY and
CHRISTOPHER SPIVEY Individually
And as Next Friend for Kristina Spivey
Plaintiffs

vs

CHAMPION LAW GROUP, LLC, &
ATTORNEY SEAN R. CAMPBELL
A.K.A Sean Raymond Campbell-Champion
Defendants

* CIVIL ACTION NO. 20CV5552

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**ORDER DENYING DEFENDANT'S MOTION TO DISMISS
FOR LACK OF INSUFFICIENT SERVICE**

This above-captioned case came before the Court on April 6, 2023, for a hearing on Defendant's Motion to Dismiss the Plaintiff's Complaint. Having heard testimony and argument, and having reviewed the motion, the response and the entire record, the Court hereby makes the following finding of facts and conclusions of law:

I. FINDINGS OF FACT

1. Plaintiffs initiated this action on August 4, 2020. On September 14, 2020, individual Defendant, Sean Campbell, filed a special appearance answer asserting a lack of personal jurisdiction and insufficient service.
2. On December 2, 2020, Plaintiffs filed a Motion for Default Judgment for corporate Defendant, Champion Law Group, LLC. The Motion was denied on February 25, 2021, after a hearing wherein the Court found Plaintiffs failed to file proof of service for Champion Law Group, LLC. Thus, the time for corporate Defendant to respond had not begun to accrue.

3. Plaintiffs filed their proof of service for corporate Defendant into the record on March 25, 2021. On April 12, 2021, Defendants jointly filed another special appearance answer asserting insufficient service on behalf of individual Defendant Sean Campbell, but answering the Complaint and asserting no insufficiency defenses on behalf of corporate Defendant. The case then moved to a prolonged discovery period.
4. On March 15, 2022, Defendants jointly filed a Motion for Summary Judgment on other grounds and failed to assert any defense of insufficient service.
5. A hearing was held on June 8, 2022, wherein the Court denied Defendants' Motion for Summary Judgment, finding that material factual disputes existed. At the hearing, Defendant failed to mention any claims of defective service of process as to individual Sean Campbell.
6. On October 20, 2022, Sean Campbell moved to dismiss the suit, once again alleging deficient personal service. Plaintiff filed a response brief arguing that Defendant waived this defense when it was not asserted at the hearing on Defendant's Motion for Summary Judgment. After multiple continuances, a hearing was held on the instant Motion to Dismiss on April 6, 2023.

II CONCLUSIONS OF LAW

The standard to evaluate a subsequent waiver of a previously asserted defense is outlined in Wheeler's, Inc. v. Wilson, 196 Ga. App. 622 (1990). The Court must find that Defendant Campbell's failure to assert the defense "is so manifestly consistent with and indicative of an intention to voluntarily relinquish a . . . known right or benefit, that no other reasonable explanation of its conduct is possible" Wheeler's, 196 Ga.

App. at 624. See also Georgia Power Co. v. O'Bryant, 169 Ga. App. 491, 493 (1983) and Hodge v. Howes, 260 Ga. App. 107, 108 (2003). In both Wheeler's and Hodge, the Court of Appeals applied this same standard and found that moving for summary judgment without reasserting or reserving a jurisdictional defense subsequently waived that defense. In Wheeler, which is relied on by Plaintiffs, defendant made an insufficient service objection in its answer, but failed to reassert it in its motion for summary judgment filed a year later. Wheeler's Inc. 196 Ga. App at 624. The Court heard and ruled on the motion for summary judgment. The ruling was appealed and the remittitur was returned before defendant filed its motion to dismiss reasserting the service objection.

The motion to dismiss was then denied by the trial court. Id. In affirming the denial, the Court focused on the length and breadth of the litigation on the merits in deciding that defendant had waived its jurisdictional defense.¹ The Hodge case would seem to tighten the reigns even further as to what constitutes a waiver. In it, the Court found that by simply moving for summary judgment without reserving or reasserting the affirmative defense of lack of personal jurisdiction, waives the defense, regardless of whether the motion was ruled upon. Hodge 260 Ga. App at 108.

However, Defendant Campbell argues that Milam v. Terrell, 214 Ga. 199 (1958), stands for the contrary. In Milam, the Court found that in a will contest, a pleading contesting jurisdiction was not waived when a subsequent pleading was filed

¹ "Defendant went forward with an attack on liability, investing extensive time and money and requiring the same of its opponent, and invoking the time and attention of three courts and eleven judges to the merits and to its immunity defense. There is nothing equivocal about its actions here [.]” Id. at 625.

contesting capacity that failed to reiterate the jurisdictional objection. Id. at 201. This case is distinguishable, however, as there were no dispositive motions filed and therefore, no interim judgments on the merits. As the Court in Milam stated, “[i]f a defendant shall appear and plead to the merits, without pleading to the jurisdiction, and without excepting thereto, he shall thereby admit the jurisdiction of the court.” Id. at 200.

Accordingly, the Court finds that Defendant Sean Campbell waived his objections to service and personal jurisdiction by filing the motion for summary judgment and appearing on June 8, 2022, to argue it, without reasserting this defense. Further, this case is nearing three years old, and the Court cannot help but be concerned about preserving judicial economy. To allow Defendant Campbell to now reassert his affirmative jurisdictional objections would controvert the fundamental principle that “the resolution of disputes is to be by a process that is “speedy, efficient and inexpensive.” Wheeler’s Inc. 196 Ga. App. at 624. See also Ga. Const. Art. VI, § IX, Para. I. **WHEREFORE**, The Defendants Motion to Dismiss is **DENIED**.

This the 10th day of May, 2023



Judge Stacey K. Hydrick
Superior Court of Dekalb County