

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2005-000906-001 DT

02/28/2006

HON. MARGARET H. DOWNIE

CLERK OF THE COURT  
L. Rasmussen  
Deputy

FILED: 03/01/2006

STATE OF ARIZONA

CARON L CLOSE

v.

TRACEY ANN AGER (001)

JOHN P AGER

REMAND DESK-LCA-CCC  
SCOTTSDALE CITY COURT

**LOWER COURT REVERSED / REMAND**

**Lower Court Case No. PR200522887**

The Superior Court has jurisdiction over this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. §12-124(A). The court has considered the record from the Scottsdale Municipal Court and the Appellant's memorandum. The State chose not to file an appellate memorandum.

Appellant Tracey Ager was accused of speeding -- a civil traffic offense in violation of A.R.S. § 28-701(A). On appeal, Appellant claims that she was never properly served with the Arizona Traffic Ticket and Complaint. The process server's affidavit of service reflects that he went to a residence at 5511 E. Corrine Drive in Scottsdale on one occasion and "served" the required documents as follows:

Upon the Defendant TRACEY ANN AGER by leaving true copies at the Defendant's place of residence with an adult female who resides therein. She came to the door but refused to answer after stating my purpose. I had to secure papers to the door.

A default judgment was entered against the Appellant when she failed to appear in court. Appellant paid the fine and thereafter filed a timely notice of appeal. She contends that service was not properly effectuated on her. Rule 4.1(d), Arizona Rules of Civil Procedure, provides in pertinent part:

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MARICOPA COUNTY

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Service upon an individual . . . shall be effected by delivering a copy of the summons and of the pleadings to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the pleading to an agent authorized by appointment or by law to receive service of process.

Appellant was not properly served. The only description of the person at the residence is that she was a white female. There is no indication as to her approximate age or why the process server believed that she resided at the home. Moreover, even that individual was not served. The process server states that he affixed the papers in some unspecified fashion to the door of the home. This type of alternative service is not acceptable without pre-authorization by the court. *See* Rule 4.1(m), Ariz.R.Civ.P.

If a defendant is not properly served with process, any resulting judgment is void and must be vacated upon request. *Hilgeman v. American Mortgage Securities, Inc.*, 196 Ariz. 215, 994 P.2d 1030 (App. 2000).

IT IS ORDERED reversing the default judgment entered against Appellant. That judgment is void as a result of defective service of process.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale City Court with instructions to dismiss the citation against Appellant and to refund the fine previously paid.