

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2007-000030-001 DT

04/17/2007

HON. MARGARET H. DOWNIE

CLERK OF THE COURT
S. Bindenagel
Deputy

STATE OF ARIZONA

CARON L CLOSE

v.

RITA LEA LEDBETTER (001)

BRETT R RIGG

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

RECORD APPEAL REVERSED / REMAND

Lower Court Case No. PR2006098026

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 of the proceedings from the trial court, exhibits made of record, and the memoranda submitted.

On August 24, 2006, a photo radar installment photographed a vehicle owned by Appellant Rita Lee Ledbetter traveling at a speed of 77 mph in a zone marked 65 mph, in apparent violation of A.R.S. § 28-701(A) (speed not reasonable and prudent). A copy of the summons and complaint was mailed to Appellant's last known address in Cottonwood, Arizona. The summons and complaint stated that a civil traffic hearing was set for October 4, 2006 in Scottsdale City Court. On September 13, 2006, Appellant's counsel filed a motion to dismiss -- arguing that service by mail was insufficient and did not confer jurisdiction on the trial court. The civil traffic hearing previously set for October 4 was vacated, and oral argument on the motion to dismiss was scheduled for October 20, 2006. On October 18, 2006, Appellant's counsel filed a motion to continue because he would be out of state on October 20. On October 19, 2006, the trial court denied the motion to continue, but advised that it would permit substitute counsel to appear for the scheduled hearing. On October 20, 2006, no one appeared for the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2007-000030-001 DT

04/17/2007

scheduled hearing, and the trial court entered a default judgment against Appellant. Appellant filed a timely notice of appeal on October 27, 2006.

If a defendant is not properly served, any resulting judgment is void and must be vacated upon request.¹ The record from the trial court is devoid of any proof of service on Appellant – by mail or otherwise.² Appellant concedes that she was served by mail. As she correctly notes, however, service by mail is not adequate for an in-state resident. *See* Rule 4.1(d), Ariz.R.Civ.P.

IT IS ORDERED reversing the default judgment issued by the Scottsdale City Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale City Court with instructions to vacate the default judgment, refund any bonds, fines or penalties, and dismiss citation #06171012 with prejudice.

¹ *Hilgeman v. American Mortgage Securities, Inc.*, 196 Ariz. 215, 994 P.2d 1030 (App. 2000).

² There is also nothing in the trial court's record to support its log notation, "Personal Service Waived."