

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2009-000265-001 DT

08/11/2009

HONORABLE ROBERT C. HOUSER

CLERK OF THE COURT
T. Melius
Deputy

STATE OF ARIZONA

CARON L CLOSE

v.

KENNETH F LIND (001)

KENNETH F LIND
9119 E CAMINO DEL SANTO
SCOTTSDALE AZ 85260

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

RECORD APPEAL RULE / REMAND

Lower Court Case No.: PC200013038

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 April 10, 2000, a photo radar installment photographed a vehicle owned by Appellant Kenneth F. Lind traveling at a speed of 47 mph in a zone marked 35 mph, a violation of A.R.S. §28-701(A) (speed not reasonable and prudent). A copy of the Summons and Complaint was mailed to Appellant. According to the trial court's Register of Actions, after a second notice was sent out on May 1, 2000, the State was directed to effectuate personal service upon Appellant. The Register of Actions shows that Appellant was served with process on or before June 22, 2000. When Appellant failed to appear for the August 23, 2000 hearing, the trial court entered a default judgment against Appellant. Appellant allegedly learned of this violation and the default judgment on December 24, 2008. On the following day, Appellant made an oral Motion to Set Aside Default Judgment. After a hearing, the trial court denied the Motion. Appellant now appeals from the trial court's decision.

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Appellant contends that he was not properly served with process. A court does not acquire personal jurisdiction over a person who is not properly served with the summons and complaint, and any resulting default judgment is void. *Sprang v. Petersen Lumber, Inc.*, 165 Ariz. 257, 262, 789 P.2d 395, 400 (App. 1990); *Martin v. Martin*, 182 Ariz. 11, 15, 893 P.2d 11, 15 (App. 1994). When a judgment is void, the court has no discretion and must vacate the judgment. *Martin*, 182 Ariz. at 14, 893 P.2d at 14. *See also Barlage v. Valentine*, 210 Ariz. 270, 272, 110 P.3d 371, 373 (App. 2005). Although the trial court's Register of Actions shows that Appellant was served with process on or before June 22, 2000, there is no Certificate of Service in the record. A process server's affidavit of service creates a presumption of service that can be rebutted through clear and convincing evidence. *Riggs v. Huachuca Inv. Co.*, 2 Ariz. App. 527, 529, 410 P.2d 149, 151 (App. 1966). A trial court's notes may add additional weight to evidence concerning service, but they will not replace an affidavit of service to show that a defendant has been properly served. Accordingly, the trial court erred when it denied Appellant's motion to dismiss.

Now, therefore,

IT IS ORDERED vacating the decision of the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for all further appropriate proceedings.