

ILLINOIS POLLUTION CONTROL BOARD  
July 13, 1989

IN THE MATTER OF: )

J & R LANDFILL, INC., )

AC 89-78  
(St. Clair County  
Docket No. 89-8SC)

DISSENTING OPINION (by B. Forcade):

I respectfully dissent from the majority opinion. I believe that the majority wrongly reads the applicable case law, the Act, and Board procedural rule 103.123, resulting in an erroneous conclusion: the Agency or State's Attorney can only effect service of an administrative citation on the registered agent of the corporation or an agent expressly authorized for receipt of administrative citation process. I believe that due process, the Act, and the Board's rules permit service on any authorized (actual) agent of the corporation, whether or not that authority expressly included receipt of service of process. I would have proceeded to hearing to determine whether service was proper.

The cases cited by the majority do not support a conclusion that Mr. Blevins could not, as a matter of law, receive service on behalf of J & R. Schoenberger v. Chicago Transit Authority, 84 Ill. App. 3d 1132, 405 N.E.2d 1076 (1st Dist 1980), has nothing, whatsoever, to do with receipt of service. That case involved an actual agent who usurped his actual authority. The issue was whether the third person dealing with that agent could have reasonably believed that the agent had apparent authority to bind the principal, or whether the principal had ratified the agent's unauthorized acts. 84 Ill. App. 3d at --, 405 N.E.2d at 1981-82. The other case, Slates v. International House of Pancakes, Inc., 90 Ill. App. 3d 716, 413 N.E.2d 457 (4th Dist 1980), does involve service of process, but it did not turn on the issue involved here. That case held that service on an employee of a franchisee was ineffective against the franchisor. After full consideration of the facts relating to the relationships between the franchisee and the franchisor, the court concluded that there was no agency relationship between them that would have rendered service effective. 90 Ill. App. 3d at --, 413 N.E.2d at 466. Interestingly, the court began its analysis with the observation, "While [the individual served] was admittedly an agent/employee of [the franchisee], there was no evidence presented that he maintained such a relationship with [the franchisor]." 90 Ill. App. 3d at --, 413 N.E.2d at 463 (emphasis added).

Where the facts indicate that one corporation  
so controls the affairs of another corporation

that the two entities are essentially one, the court will disregard the corporate entities and hold service of process on one corporation effective as to the other.

90 Ill. App. 3d at --, 413 N.E.2d at 464 (citation omitted).

Thus, had the facts indicated that the franchisee was the agent of the franchisor, the court may have come to a different result. Further, the franchisor never actually received the summons and complaint served on the franchisee's employee. 90 Ill. App. 3d at --, 413 N.E.2d at 460.

I believe that Illinois case law would support a conclusion that Board procedural rule 103.123 and Section 31.1(b) of the Act reaches as far as do the rules of civil procedure. Rule 2-204 of the Code of Civil Procedure, Ill. Rev. Stat. ch. 110, par. 2-204, authorizes service on the "registered agent or any officer or agent of the corporation found anywhere in the State ...." Board rule 103.123 allows service "on the respondent or his authorized agent ...." 35 Ill. Adm. Code 103.123 (1988); see 13 Ill. Reg. -- (July 21, 1989) (effective July 10, 1989; to be codified as 35 Ill. Adm. Code 101.141). In Illinois, service on a corporation is effective if on an actual agent of the corporation, but it is not effective if on an apparent agent of the corporation. Slates v. International House of Pancakes, 90 Ill. App. 3d at --, 413 N.E.2d at 466. Thus, the Board rule and the Act specify "authorized agent," because without express authorization to create the agency relationship, there is no actual agency. See Schoenberger v. Chicago Transit Authority, 84 Ill. App. 3d at --, 405 N.E.2d at 1080 ("The authority of an agent may only come from the principal and it is therefore necessary to trace the source of an agent's authority to some word or act of the alleged principal.")

Therefore, I read "authorized agent" as synonymous with "actual agent," and I would permit service on any actual agent - whether or not that authority expressly embraces receipt of service. The majority unnecessarily limits the scope of effective service on a corporation. Illinois cases more clearly support this position than they support that adopted by the majority.

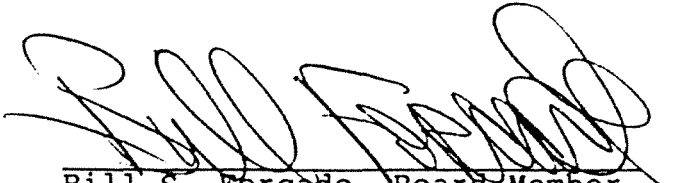
In Dobrowolski v. La Porte, 38 Ill. App. 3d 492, 348 N.E.2d 237 (1st Dist 1976), the court observed, "It must be recognized that the rules governing small claims actions are designed to provide an expeditious as well as a simplified and inexpensive procedure for the handling of small claims," 38 Ill. App. 3d at --, 348 N.E.2d at 239 (citations omitted). The court held that "the requisites of due process are satisfied if the manner of effecting service of summons gives reasonable assurance that

notice will actually be given and the person against whom the action is brought is given time to appear and defend on the merits." Id. After its examination of the facts of the case, the court concluded that service on an employee of a professional corporation was effective against a party associated with that corporation. 38 Ill. App. 3d at --, 348 N.E.2d at 238. Important was the fact that "the record clearly indicate[d] that defendant had actual notice of the service of summons and of the pendency of the proceedings and was given ample time to appear and defend on the merits." 38 Ill. App. 3d at --, 348 N.E.2d at 240 (citation omitted). Also important was the fact that the court did not want to complicate an expedited procedure with legal technicalities - so long as due process was fulfilled. These important factors are also present here: this is an expedited administrative proceeding, and J & R did have actual notice of its commencement and an adequate opportunity to defend.

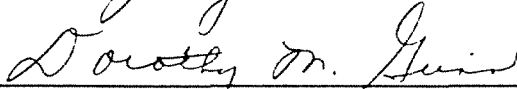
Similarly, service on a clerk-typist of the defendant corporation was held proper in Millard v. Castle Baking Co., 23 Ill. App. 2d 51, 161 N.E.2d 483 (1st Dist. 1959) (abstract only). The typist had received service in other suits in which the corporation appeared and defended. Also, in Megan v. L.B. Foster Co., 1 Ill. App. 3d 1036, 275 N.E.2d 426 (2d Dist. 1971), "service upon an intelligent clerk of a company who acts as a receptionist and who understood the purport of the service of summons was sufficient ...." 1 Ill. App. 3d at --, 275 N.E.2d at 427; but see Jansma Transport, Inc. v. Torino Baking Co., 27 Ill. App. 2d 347, --, 169 N.E.2d 829, 831 (1st Dist. 1960) (service was improper where the clerk was a recent immigrant who spoke little English and who had only worked for one month for the defendant).

The upshot of this analysis is that the majority has unnecessarily narrowed the scope of effective service as a matter of law. The majority has restricted the proper service of administrative citation to the authorized agent (an agent expressly authorized for receipt of such service) and the registered agent of a corporation. In so doing, the majority has needlessly reduced the effectiveness of an expedited administrative tool intended to encourage compliance without a full-blown enforcement action.

Illinois courts resolve the issue of effective service based on the facts of the individual case, as I would have done. I would have sent this proceeding to hearing to ascertain whether Mr. Blevins' was an actual agent (i.e., an "authorized agent") of J & R Landfill, Inc. and whether service on him gave "reasonable assurance that notice [would] actually be given [to J & R] and [that J & R was] given time to appear and defend on the merits." Dobrowolski v. La Port, 38 Ill. App. 3d 492, --, 348 N.E.2d 237, 239 (1st Dist. 1976) (citations omitted).

  
Bill S. Forcade, Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 24<sup>th</sup> day of July, 1989.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board