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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3488-21**

**ACE HOLDING PARTNERS, LLC,
as assignee of ACE PLUS LLC,**

Plaintiff-Respondent,

v.

GERALDINE CORR,

Defendant-Appellant.

Argued June 6, 2023 – Decided July 27, 2023

Before Judges Gummer and Messano.

On appeal from the Superior Court of New Jersey,
Chancery Division, Ocean County, Docket No. F-
010010-20.

R.S. Gasiorowski argued the cause for appellant
(Gasiorowski & Holobinko, attorneys; R.S.
Gasiorowski, on the briefs).

Elliott J. Almanza argued the cause for respondent
(Goldenberg, Mackler, Sayegh, Mintz, Pfeffer, Bonchi
& Gill, attorneys; Keith A. Bonci, of counsel and on the
brief; Elliott J. Almanza, on the brief).

PER CURIAM

In this tax-foreclosure case, defendant Geraldine Corr appeals from a June 10, 2022 order denying her motion to vacate a July 23, 2021 final judgment by default entered in favor of plaintiff Ace Holding Partners, LLC. Perceiving no abuse of discretion in the judge's decision to deny plaintiff's motion, we affirm.

I.

The property at issue contains a single-family house and is located at 544 Azalea Drive, Brick. Defendant's mother purchased the property in July 1971 when defendant was six-years old. Defendant lived at the property for most of her life. She inherited the property in 2007, the year her parents died. After inheriting the property, defendant became delinquent in paying her property taxes and utilities. Defendant admits that after inheriting the property, she "never made a single real property tax payment," attributing that failure to her mistaken belief "that any taxes owed would just become a lien against the property held by the municipality and that the municipality would ultimately be paid at some unspecified time in the future, with interest, when the property was sold."

On April 13, 2010, the Brick Township tax collector sold tax sale certificate no. 2010-0236 to Ace Plus LLC (assignor), in connection with unpaid

municipal liens attached to the property, which then totaled \$449.09. In a letter dated November 17, 2020, counsel for the assignor notified defendant of her right to redeem the tax sale certificate by submitting \$102,961.76 to the Brick Township tax collecting office. She also notified defendant of the assignor's intent to file a foreclosure complaint based on the tax sale certificate within thirty days if defendant did not exercise her right of redemption. Counsel sent the letter by regular and certified mail to defendant at the property address. The copy of the letter sent by regular mail was not returned; the copy sent by certified mail was claimed and signed for on November 19, 2020.

After defendant failed to exercise her right of redemption, the assignor filed a foreclosure complaint on December 21, 2020. According to an affidavit of service, process server James Donnelly delivered a copy of the summons and complaint directly to defendant on December 24, 2020, at 2:09 p.m. The affidavit contains a description of the person accepting service: female, height between five feet and five feet three inches, weight between 131 and 160 pounds, white skin, blonde hair, and divorced. On the affidavit, a signature dated December 29, 2020, appears below this statement: "I, James Donnelly, was at the time of service a competent adult, over the age of [eighteen] and not having direct interest in the litigation. I declare under penalty of perjury that the

foregoing is true and correct." A notary stamp appears on the affidavit, indicating the notary public was Kimberly Grote. The notary signature line is dated December 29, 2020, and contains the handwritten initials "KG."

On April 9, 2021, counsel for the assignor filed a request to enter default against defendant and moved for an order setting the time, place, and amount of redemption. In her certification in support of the request to enter default, counsel referenced "the Sheriff's return of service" but attached to her certification a copy of Donnelly's affidavit of service. The clerk of the court entered default. In a May 3, 2021 order, the court established July 2, 2021, as the deadline for redemption and \$114,450.87 as the amount required to redeem the premises, representing the amount due on the tax sale certificate, subsequent taxes, interest, and costs of suit. The assignor's counsel sent a copy of the order to defendant by regular and certified mail. The copy sent by regular mail was not returned; the copy sent by certified mail was claimed.

On July 7, 2021, plaintiff took ownership of the tax sale certificate at issue as an assignee. The next day, counsel for plaintiff filed a motion to substitute plaintiff, which the court subsequently granted, and a motion to enter final judgment. Counsel notified defendant of those motions by regular and certified mail. The notice sent by regular mail was not returned. Defendant did not

oppose the application. The court entered final judgment on July 23, 2021, finding default had been entered against defendant and that she had not exercised her right of redemption. Plaintiff's counsel sent a copy of the order to defendant by regular and certified mail. The copy sent by regular mail was not returned.

Defendant was served with an order of eviction in December 2021. On February 1, 2022, the date of the scheduled eviction, defendant moved on an emergent basis to stay the eviction. The judge granted that motion, staying the eviction until April 1, 2022. Ultimately, defendant was evicted on April 4, 2022.

Some time on or after April 13, 2022, defendant moved to vacate the final judgment by default pursuant to Rule 4:50-1. In the certification she submitted in support of the motion, defendant admitted she had "never made a single real property tax payment" She denied she had been served with the lawsuit and asserted she had learned "there was an issue with the house . . . in December 2021 when [she] was first served with eviction papers." She did not dispute that the description of the person served set forth in the affidavit of service matched her description. Defendant also submitted the certification of her son in support of her motion. In his certification, he said he had "found out that there was an issue with the house . . . on March 20, 2022 when [defendant] admitted . . . what was going on." He repeated defendant's assertion that she had first learned

"there was a problem" when she was served with eviction papers in December 2021. He, however, did not corroborate her denial of service by, for example, testifying he had been with her on December 24, 2020, and confirming no one had served her that day, contrary to Donnelly's testimony in his affidavit of service.

During argument, defense counsel contended the court should vacate the judgment under Rule 4:50-1(d) because, according to defendant, she had not been personally served with the summons and complaint despite the affidavit of service submitted by plaintiff. Defense counsel argued Donnelly's affidavit of service was not entitled to a presumption of validity because Donnelly was a private process server, not a sheriff. Defense counsel also contended judgment should be vacated under Rule 4:50-1(a) because defendant's failure to pay taxes and utilities constituted "excusable neglect."

The motion judge rejected both arguments and issued an order on June 10, 2022, denying defendant's motion. The judge found "[d]efendant . . . [wa]s incorrect according to the law" regarding service set forth in Rule 4:4-3(a). The judge also concluded defendant had failed to establish excusable neglect.

On appeal, defendant argues the motion judge abused his discretion in not granting the Rule 4:50-1 motion and erred in refusing to conduct a plenary

hearing regarding defendant's challenge to the validity of Donnelly's affidavit of service and in holding a private process server's affidavit of service is entitled to the same presumption of validity conferred on a sheriff's affidavit of service.¹ We disagree and affirm.

II.

A motion to vacate a default judgment for lack of service is governed by Rule 4:50-1(d). BV001 REO Blocker, LLC v. 53 W. Somerset St. Props., LLC, 467 N.J. Super. 117, 125 (App Div. 2021); Jameson v. Great Atl. & Pac. Tea Co., 363 N.J. Super. 419, 425 (App. Div. 2003). A "trial court's determination under [Rule 4:50-1] warrants substantial deference and should not be reversed unless it results in a clear abuse of discretion." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012); see also BV001 REO Blocker, LLC, 467 N.J. Super. at 124. "An abuse of discretion 'arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Kornbleuth v. Westover, 241 N.J. 289,

¹ Defendant does not argue the motion judge erred in finding she had failed to establish excusable neglect and, thus, waives that issue on appeal. See N.J. Dep't of Env't Prot. v. Alloway Twp., 438 N.J. Super. 501, 505 n.2 (App. Div. 2015) (finding "[a]n issue that is not briefed is deemed waived upon appeal").

302 (2020) (quoting Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015)).

Under Rule 4:50-1(d), "a default judgment is void if 'taken in the face of defective personal service,' if the defect is so significant that it 'cast[s] reasonable doubt on proper notice.'" BV001 REO Blocker, LLC, 467 N.J. Super. at 125 (quoting Jameson, 363 N.J. Super. at 425); see also Sobel v. Long Island Ent. Prods., Inc., 329 N.J. Super. 285, 292-93 (App. Div. 2000) (finding default judgments "will not be vacated for minor flaws in the service of process" but should be set aside "for a substantial deviation from the service of process rules").

"The primary method of obtaining in personam jurisdiction over a defendant in this State is by causing the summons and complaint to be personally served within this State pursuant to [Rule] 4:4-3." U.S. Bank Nat'l Ass'n v. Curcio, 444 N.J. Super. 94, 105 (App. Div. 2016) (quoting R. 4:4-4(a)). Pursuant to Rule 4:4-3(a), a summons and complaint "shall be served . . . by the sheriff, or by a person specially appointed by the court for that purpose, or by plaintiff's attorney or the attorney's agent, or by any other competent adult not having a direct interest in the litigation." The person who served the complaint

and summons must submit proof of service in the form of an affidavit. Rs. 4:4-3(a) and -7.

Proof of service consistent with Rule 4:4-7 "raises a presumption that the facts recited therein are true." Resol. Tr. Corp. v. Associated Gulf Contractors, Inc., 263 N.J. Super. 332, 343 (App. Div. 1993) (quoting Garley v. Waddington, 177 N.J. Super. 173, 180 (App. Div. 1981)); see also Jameson, 363 N.J. Super. at 426 (finding the submission of competent evidence in the form of an affidavit of service showing "compliance with the pertinent service rule" is "prima facie evidence that service was proper"). The presumption can be "rebutted only by clear and convincing evidence that the return is false." Resol. Tr. Corp., 263 N.J. Super. at 344 (quoting Garley, 177 N.J. Super. at 180-81). The "uncorroborated testimony of the defendant alone is not sufficient to impeach the return." Ibid. (quoting Goldfarb v. Roeger, 54 N.J. Super. 85, 90 (App. Div. 1959)).

Defendant urges us to find that that presumption applies only to a sheriff's affidavit of service and not to a private process server's affidavit. Rule 4:4-3 was amended in 2000 to permit service by private process servers who do not have an interest in the litigation. See Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 4:4-3 (2023). Consistent with that policy decision to entrust

disinterested people with the responsibility to serve process, we conclude the presumption of veracity extends to their affidavits as well. Defendant's bald, uncorroborated assertion that she was not served with the complaint and summons is insufficient to contradict Donnelly's filed and detailed affidavit of service confirming personal service.

We also find unpersuasive defendant's assertion that the notary's use of initials renders invalid Donnelly's affidavit of service. For purposes of a notarial act, "[s]ignature' means a tangible symbol." N.J.S.A. 52:7-10.1(m). Initials are a tangible symbol. Even if the better course by the notary was to sign her full name, the use of initials by the notary was, at most, a "minor flaw[]" and not "a substantial deviation from the service of process rules" requiring vacation of the judgment. Sobel, 329 N.J. Super. at 292-93. The notary's use of initials also did not merit a plenary hearing, especially when defendant had not requested one. See Curcio, 444 N.J. Super. at 111 (rejecting defendant's argument court should have held a plenary hearing to determine whether she had been properly served when she "never asked [the court] to hold a plenary hearing").

Defendant asserts, for the first time on appeal and with no supporting briefing, her motion should have been granted under Rule 4:50-1(f). However, defendant failed to substantiate "any other reason justifying relief from the

operation of the judgment or order" under Rule 4:50-1(f) to set aside default judgment. See Guillaume, 209 N.J. at 484 (rejecting defendants' Rule 4:50-1(f) argument when they failed to demonstrate exceptional circumstances). Perceiving no abuse of discretion in the judge's denial of defendant's motion, we affirm.

We acknowledge defendant's post-argument submission of Tyler v. Hennepin County, ___ U.S. ___ (2023). Tyler, unlike this case, involved allegations of a governmental entity's unconstitutional taking of property without just compensation in violation of the Fifth Amendment. In this case, unlike in Tyler, default judgment had been entered against the former property owner. Given these differences, defendant's reliance on Tyler is misplaced.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION