

**Reversed and Remanded and Opinion filed September 20, 2001.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-00-01287-CV**

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**RONALD A. CAMPBELL, Appellant**

**V.**

**STEPHANIE WHITE, Appellee**

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**On Appeal from the 308<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 99-56635**

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**OPINION**

In this paternity suit, Ronald A. Campbell appeals a default judgment in favor of Stephanie White on the grounds that: (1) the default judgment is void because the trial court lacked personal jurisdiction over Campbell since he was not properly served with citation; (2) the trial court erred in authorizing substituted service of citation under Texas Rule of Civil Procedure 106(b) because White failed to file a proper motion and supporting affidavit; and (3) the trial court erred in granting a default judgment against Campbell based on service

on a third party when the order authorizing substituted service named White, instead of Campbell, as the defendant.<sup>1</sup> We reverse and remand.

### **Background**

White brought a paternity suit to establish that Campbell was the father of her child. After attempts to serve Campbell failed, White filed a motion for substituted service. The trial court granted White's motion but issued an order for substituted service on White, instead of Campbell. When Campbell failed to appear at the paternity proceeding on March 2, 2000, the trial court entered a default judgment against him, declaring Campbell the father of White's child and ordering Campbell to pay child support and attorney's fees.

### **Standard of Review**

Campbell challenges the trial court's default judgment by restricted appeal. *See* TEX. R. APP. P. 30. A restricted appeal: (1) must be brought within six months of the date of judgment; (2) by a party to the suit; (3) who did not participate in the hearing that resulted in the judgment complained of; and (4) the error must be apparent from the face of the record. *Id.*; *Quaestor Invs. Inc. v. State of Chiapas*, 997 S.W.2d 226, 227 (Tex. 1999) (per curiam). Review by restricted appeal entitles the appellant to the same scope of review as is provided in an ordinary appeal. *Norman Communications v. Texas Eastman Co.*, 955 S.W.2d 269, 270 (per curiam). However, the error must appear on the face of the record, which for purposes of a restricted appeal consists of all the documents on file. *Id.*

In this case, Campbell satisfied the first three elements in that he brought his appeal within six months of the default judgment, he is a party to the suit since he was named as a defendant in White's petition, and he did not participate in the trial court proceedings. Thus, the only issue for our consideration is whether Campbell has shown error on the face of the record.

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<sup>1</sup> White concedes that service was not properly effected on Campbell and that the judgment should be reversed.

## Service of Process

Campbell's first issue argues that the default judgment against him is void for lack of personal jurisdiction because he was not personally served with process. A court must have jurisdiction over the parties or its acts are void. *Vance v. Davidson*, 903 S.W.2d 863, 865 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1995, no writ). Therefore, a judgment shall not be rendered against a defendant unless he was served with process as required by law, he voluntarily appeared, or he otherwise waived service. TEX. R. CIV. P. 124; *Werner v. Colwell*, 909 S.W.2d 866, 869-70 (Tex. 1995). Proper service of process generally requires delivery of a copy of the citation and petition to the defendant in person or by registered or certified mail. TEX. R. CIV. P. 106(a)(1). In this case, Campbell was never personally served with process, never appeared in the paternity proceeding, and did not otherwise waive service.

Campbell's second issue contends that the trial court erred in granting White's motion for substituted service because she submitted neither a signed and notarized motion nor a supporting affidavit, as required by Texas Rule of Civil Procedure 106(b). Upon proper motion, a court may authorize substituted service at a defendant's usual place of abode, usual place of business, or any other place where the defendant is likely to be found. TEX. R. CIV. P. 106(b). However, such a motion must be supported by affidavit, stating one of those locations and the facts showing previous unsuccessful attempts at personal service. TEX. R. CIV. P. 106(b); see *State Farm Fire & Cas. Co. v. Costley*, 868 S.W.2d 298, 299 (Tex. 1993) (per curiam). A failure to affirmatively show strict compliance with the Rules of Civil Procedure invalidates any attempted service of process. *Wilson v. Dunn*, 800 S.W.2d 833, 836 (Tex. 1990).<sup>2</sup> In this case, because the motion for substituted service is neither signed by White nor supported by a properly executed affidavit, substituted service was not authorized in this case.

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<sup>2</sup> Even actual notice to a defendant without proper service is insufficient to convey jurisdiction upon a court to render a default judgment. *Id.*

Campbell's third issue asserts that the default judgment is invalid because a third party, Raymond Bergeron, was served based on an order authorizing substituted service on White rather than Campbell. Under Rule 106(b), a court may authorize substituted service on a *defendant*. TEX. R. CIV. P. 106(b). In this case, the trial court's order authorized service only on White, who was the *plaintiff* in the suit, and not on Campbell, the defendant. Consequently, substituted service was not authorized for this reason as well. Because the record thus shows that White did not comply with the procedural requirements to effect valid personal or substituted service on Campbell, the default judgment entered against Campbell is void. Accordingly, the judgment of the trial court is reversed, and the case is remanded to the trial court for further proceedings.

/s/ Richard H. Edelman  
Justice

Judgment rendered and Opinion filed September 20, 2001.

Panel consists of Justices Yates, Edelman, and Wittig.

Do not publish — TEX. R. APP. P. 47.3(b).