IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Wayne Thomas, Appellant | : | |
| v. | : | No. 846 C.D. 2025 |
| Augustus Floyd, et al. | : | Submitted: September 14, 2026 |

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE STELLA M. TSAI, Judge

***OPINION NOT REPORTED***

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: November 9, 2026

Wayne Thomas (Appellant) appeals *pro se* from the order entered in the Court of Common Pleas of Erie County (trial court) on March 14, 2025, denying his motion for extension of time to serve original process, sustaining the preliminary objections filed by Augustus Floyd, *et al.* to Appellant's complaint, and dismissing the action with prejudice. We affirm.

## Background

During the relevant time period, Appellant was incarcerated at the State Correctional Institution at Albion, and Mr. Floyd served as captain of the facility's security. Appellant filed a complaint on February 2, 2024, alleging that Mr. Floyd and two other unidentified prison employees (Appellees) confiscated his typewriter from his cell without legal justification while he was receiving treatment in the infirmary. He sought both monetary damages and declaratory relief. The certificate of service attached to Appellant's complaint indicated he "served [the complaint] upon the

attorney for the [Appellees] . . . via first class mail." (Original Record (O.R.) at 9.) Appellees filed preliminary objections (POs) to the complaint on May 31, 2024, asserting improper service[1] and the trial court's consequent lack of jurisdiction. (C.R. at 44.) On November 19, 2024, the trial court sustained the POs without prejudice for Appellant to cure the defect, and directed as follows:

> . . . [Appellant] shall have **60 days** from the date of this Memorandum Opinion and Order in which to effect service by sheriff at the proper addresses pursuant to Pa.R.C.P. 400(a). Alternatively, **if [Appellant] is unable to effect service by sheriff despite diligent efforts, he shall, within 60 days from the date of this Memorandum Opinion and Order, file a written and verified statement with the Court setting forth with particularity the efforts made to effect service in accordance with the Pennsylvania Rules of Civil Procedure. Failure to effect proper service, or to provide a sufficient explanation for failure do so, may result in dismissal of the action**.

(O.R. at 94) (emphasis added).

On December 13, 2024, Appellant filed a motion requesting the trial court to issue an order directing the sheriff to serve original process on Appellees. The trial court denied the motion on February 3, 2025, explaining that courts must remain neutral and cannot act as counsel for any party, and that Appellant must effectuate proper service himself.[2] The trial court did, however,

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[1] *See* Pa.R.Civ.P. 400 (providing "original process shall be served within the Commonwealth only by the sheriff[,]" except under certain limited circumstances not present here).

[2] In doing so, the trial court citied *Fraisar v. Gillis*, 892 A.2d 74, 77 (Pa. Cmwlth. 2006) (holding that trial court had no duty to effect service for a *pro se* litigant or to otherwise notify him that it would not do so on his behalf). The trial court additionally noted that, because Appellant was proceeding *in forma pauperis*, the cost of effectuating service was not a factor in his failure to comply with procedural rules. (O.R. at 129.)

> . . . **extend [Appellant] one final opportunity to comply with Rule 400(a)**. Accordingly, [Appellant] shall have 21 days from the date of this Order in which to effect service by sheriff at the proper addresses pursuant to Pa.R.C.P. 400(a). Alternatively, [Appellant] shall, within 21 days from this Order, file a written and verified statement with the Court setting forth with particularity what diligent efforts were made to effect service in accordance with the Pennsylvania Rules of Civil Procedure.
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> **If [Appellant] fails to properly effect service, as evidenced by a sheriff's return of service on the docket, or if the Court finds that [Appellant's] explanation is insufficient to constitute diligent (albeit technically non-compliant) efforts at service, or if [Appellant] otherwise fails to provide an explanation for his failure to comply within the aforementioned timeframe**, then the Attorney General's Preliminary Objections will be deemed renewed, **and the Court will proceed to dismiss the case with prejudice.**

(O.R. at 129-30) (emphasis added).

On February 21, 2025, one year after he filed the complaint, Appellant filed a motion requesting another extension of time in which he indicated:

> **The [Appellant] has only just recently sought out court-forms [from the] Erie County Sheriff** [a]nd requests this Court for an extension of time for a further 21 days, so to permit [P]etitioner an fair opportunity to effectuate service of process in record.

(O.R. at 133) (emphasis added).

The trial court denied Appellant's motion on March 14, 2025, sustained Appellants' POs and dismissed the case with prejudice. In doing so, the trial court noted that, during the lifespan of the case, Appellant failed to provide a sheriff's return of service of the complaint, or detail any diligent efforts he made to effectuate service.

(O.R. at 223.) Appellant filed a motion for reconsideration, which the trial court denied on April 7, 2025. This appeal followed.[3] Appellant filed a court-ordered Concise Statement of Errors Complained of on Appeal, and the trial court entered an opinion on June 2, 2025. *See* Pa.R.A.P. 1925(a)-(b).

**Issue**[4]

On appeal, Appellant contends the trial court erred in dismissing his complaint on the basis of a defect in service of process.[5] Appellant characterizes his failure to effect service on Appellees as a mere technicality, and requests that we remand this case to the trial court for re-filing of his complaint. (Appellant's Br., at 3.)

**Analysis**

It is well settled that "[s]ervice of process is a mechanism by which a court obtains jurisdiction of a defendant, and therefore, the rules concerning service of process must be strictly followed." *Ferraro v. Patterson-Erie Corp*., 313 A.3d 987, 999 (Pa. 2024). "Importantly, without valid service, a court lacks personal jurisdiction of a defendant and is powerless to enter judgment against him or her[.]" *Id.*

[3] While Appellant initially filed his appeal in the Superior Court, our sister court transferred the matter to this Court on July 11, 2025.

[4] "Where a trial court dismisses a complaint based on preliminary objections, our review is limited to determining whether the trial court committed an error of law or an abuse of discretion." *Kittrell v. Watson*, 88 A.3d 1091, 1095 (Pa. Cmwlth. 2014). Additionally, "[w]hether a court may disregard a litigant's defective service of process or violation of its order is vested within the sound discretion of that court." *Konya v. District Attorney of Northampton County*, 669 A.2d 890, 892 (Pa. 1995).

[5] While Appellant frames his issue as challenging the trial court's grant of Appellees' "motion for summary judgment" in his brief, we liberally construe his argument to contest the court's dismissal of his complaint. (Appellant's Br., at 1, 3); *see also Ali v. Unknown CERT Team Members*, 334 A.3d 953, 956 (Pa. Cmwlth. 2025) (explaining that while *pro se* status confers no special benefit upon a party, "courts may liberally construe materials filed by a *pro se* litigant" to address issues "fairly conveyed in the [filing.]").

Accordingly, "[v]alidity of service is essential, and failure to perfect service is fatal to a lawsuit." *Id.*

As noted, the prescribed manner of service is controlled by Rule 400, which provides that "original process shall be served within the Commonwealth only by the sheriff." Pa.R.Civ.P. 400(a). "Proper service is not presumed; rather, the return of service itself must demonstrate that the service was made in conformity with the Civil Rules." *Pioneer Construction Company v. Insight Pharmaceuticals, LLC*, 338 A.3d 234, 241 (Pa. Cmwlth. 2025). Where service of process is defective, as was the case here, the remedy is to set aside the service. *Id.* However, under such circumstances, the action remains open "and the court must allow the plaintiff to attempt to make proper service of process on the defendant which would properly vest jurisdiction in the court." *Id*; *see also* Pa.R.Civ.P. 126(a) (requiring liberal application of civil rules of procedure to secure just, speedy, and inexpensive determination of every action to which they are applicable).

Additionally, our caselaw requires plaintiffs to make "a good-faith effort to effectuate notice of commencement of the action." *Miller v. Klink*, 871 A.2d 331, 335 (Pa. Cmwlth. 2005). "Where a plaintiff does not make a good faith effort at service of original process, an action which was otherwise timely commenced by filing a [complaint] within the statutory period will be deemed untimely and barred by the statute of limitations." *Id.* The plaintiff bears the burden of establishing a good faith effort, and whether he or she has satisfied this burden "is determined by the trial court using its sound discretion on a case-by-case basis." *Id.* at 336. "A plaintiff need not intentionally delay notifying a defendant of a lawsuit in order for a court to find a lack of good faith; rather, **simple neglect or mistake** can support such a finding." *Id.* (emphasis added).

Where a plaintiff **makes diligent** but technically improper efforts to timely serve process, and a defendant receives actual notice of the filing during the statute of limitations period, the complaint will not be dismissed for technical non-compliance with service requirements. *Ferraro,* 313 A.3d. at 1011.[6] However, "[p]laintiffs cannot opt out of the Rules to give notice of the commencement of a lawsuit by informal means." *Id.* "Removing these formalities does not promote the just, speedy, or inexpensive determination of actions since notice to a defendant by methods at plaintiff's option would foment additional litigation." *Id.* Furthermore, to excuse a plaintiff's "failure to comply with a court order and to accept service which is filed beyond the court-ordered extended deadline for amended service would be to countenance the dilatory actions of litigants who blatantly disregard court orders." *Konya*, 669 A.2d at 892. To do so "would be hindering the orderly disposition of cases before the courts of the Commonwealth and injecting into well-grounded procedure an element of uncertainty where there should be none." *Id.*

Here, the trial court initially chose to overlook Appellant's defective service and entered an order allowing him to effect proper service within 60 days, or to "provide a sufficient explanation" for his failure to do so. (O.R. at 94.) Despite the court's generous extension of time and thorough explanation as to how to comply with the order, Appellant disregarded the directive, and instead filed a motion requesting the court to effectuate service on his behalf. In denying the motion, the trial court extended

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[6] Apparently, Appellees here somehow eventually received actual notice, as they filed POs to the complaint in May of 2024. However, this is not dispositive. Our Supreme Court has explained that "[s]ervice of process is a mechanism by which a court obtains jurisdiction of a defendant, and therefore, the rules concerning service of process must be strictly followed. Without valid service, a court lacks personal jurisdiction [over] a defendant and is powerless to enter judgment against him or her. Thus, improper service is not merely a procedural defect that can be ignored when a defendant subsequently learns of the action against him or her." *Cintas Corp. v. Lee's Cleaning Services*, 700 A.2d 915, 917-18 (Pa. 1997) (internal citations omitted).

Appellant an additional 21 days to comply with service requirements or, alternatively, to file a written statement detailing the diligent efforts he undertook to effect service. The trial court also expressly advised Appellant that it was extending him "one final opportunity" to comply with Rule 400, and of the consequence of dismissal of the case with prejudice if he failed to effectuate service or detail his efforts to do so. (O.R. at 129.) Appellant again ignored the court's directive and, more than one year after he filed his complaint and over one month beyond the 60 days provided to him by the trial court to effectuate service, he requested yet another extension, offering by way of explanation that he had "only just recently sought out court forms [from the] Erie County Sheriff." (O.R. at 133.)

Based on the foregoing, and in light of Appellant's repeated failure to comply with the trial court's orders, even after receiving numerous opportunities by the trial court to remedy the defects in service, we cannot conclude the trial court abused its discretion to dismiss his complaint against Appellees. Because the record clearly reflects Appellant failed to make a good faith effort to diligently and timely serve process, despite the trial court's allowance of additional time to do so, the trial court was not required to overlook his "failure to comply with a court order and to accept service which is filed beyond the court-ordered extended deadline[.]" *Konya*, 669 A.2d at 892. Accordingly, we discern no abuse of discretion by the trial court in dismissing Appellant's complaint with prejudice.

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PATRICIA A. McCULLOUGH, Judge

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***ORDER***

AND NOW, this 9th day of November, 2026, the order entered in the Court of Common Pleas of Erie County on March 14, 2025, is hereby AFFIRMED.

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PATRICIA A. McCULLOUGH, Judge