

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

DEBRA ALLEN AND GARY ALLEN, AS : IN THE SUPERIOR COURT OF
EXECUTORS OF THE ESTATE OF : PENNSYLVANIA
ASHLEY ALLEN :

Appellant :

v. :

No. 1744 EDA 2025

JOSEPH A. CIRELLO, M.D., ATLANTIC :
MEDICAL GROUP, MATTHEW J. :
DOWNEY, M.D., AND NORTHEASTERN :
GASTROENTEROLOGY ASSOCIATES, :
PC :

Appeal from the Order Entered June 23, 2025
In the Court of Common Pleas of Pike County Civil Division at No(s):
2019-00684

BEFORE: KUNSELMAN, J., NICHOLS, J., and SULLIVAN, J.

MEMORANDUM BY NICHOLS, J.:

FILED OCTOBER 22, 2026

Appellants Debra and Gary Allen, executors of the estate of Ashley Allen (collectively referred to as the Estate or Appellants), appeal from the order sustaining the preliminary objections filed by Appellee Joseph A. Cirello and dismissing the Estate's amended complaint. The Estate claims that the trial court erred in granting Appellee's preliminary objections and that transfer of venue was improper. After careful review, we affirm.

The trial court set forth the underlying facts of this case as follows:

On May 24, 2019, [Appellants], executors of the Estate of Ashley Allen . . . filed a writ of summons against the following defendants: [Appellee], Atlantic Medical Group, Mathew J. Downey, M.D., and Northeastern Gastroenterology Associates, P.C.^[fn1] The Pike

County Sheriff's Office made attempts to serve [Appellee] on May 28, 2019, May 29, 2019, and June 3, 2019. On [the] June 3, 2019, service attempt, the Pike County Sheriff served the complaint on Marie Ellen Lucca, a registered nurse, [(Nurse Lucca)] at the office location of Atlantic Medical Group (hereinafter referred to as . . . Atlantic Medical)[, one of the other defendants in this matter].^[fn2]

^{fn1} When the writ of summons was filed, plaintiff Ashley Allen (hereinafter referred to as Allen) was alive and the plaintiff in the ligation. On June 20, 2019, defendants Mathew J. Downey, M.D., and Northeastern Gastroenterology Associates, P.C. filed a praecipe seeking a rule directing Allen to file a complaint. On that same day[,] the Pike County Prothonotary issued a rule directing Allen to file a complaint within twenty (20) days. On September 29, 2019, Allen having failed to file a complaint, a ten-day notice of intent to enter a judgment non pros was served upon Allen's counsel. Rather than filing a complaint on October 28, 2019, Allen's counsel filed a praecipe to discontinue the actions against defendants Mathew J. Downey, M.D., and Northeastern Gastroenterology Associates, P.C.

^{fn2} At the oral argument on June 16, 2025, the Estate conceded that it is asserting no claims against Atlantic Medical and that Atlantic Medical was included on the writ of summons merely as an address for [Appellee].

[Appellee] was never personally served with the writ of summons. [Appellee] did not learn of the writ of summons until November 2024, when he received a copy of the Estate's "amended" complaint. [Appellee] practices medicine at Atlantic Medical but he has no ownership interest in that business entity. [Nurse] Lucca was not an agent of [Appellee] nor was she a person in charge of Atlantic Medical. Finally, [Appellee] never authorized [Nurse] Lucca to accept service of the writ of summons on his behalf.

No further attempt was made to serve [Appellee] until [November 8,] 2024 when the "amended" complaint was mailed to [Appellee].^[fn3] The "amended" complaint has a count for wrongful death and a count for a survival action. Both counts of the "amended" complaint are lodged against [Appellee], and there is no cause of action alleged against Atlantic Medical.^[fn4]

^{fn3} On October 30, 2024, the Pike County Court of Common Pleas sent the Estate a notification that the case was going to be terminated for inactivity. The “amended” complaint was filed shortly after the notice of intent to terminate was sent out.

^{fn4} During the oral argument on June 16, 2025, the Estate again conceded that it was not asserting any claim against Atlantic Medical.

On January 22, 2025, [Appellee] and Atlantic Medical filed preliminary objections to the Estate’s “amended” complaint. . .
[^{fn5}]

^{fn5} The Estate was questioned as to whether the Estate believed that the record was sufficient to decide the outstanding preliminary objections. Counsel for the Estate indicated that the Estate was satisfied with the current record unless the court determined that more evidence was necessary.

Trial Ct. Op., 6/23/25, at 1-3 (citations omitted and some formatting altered).

The Estate filed a timely notice of appeal and both the Estate and the trial court complied with Pa.R.A.P. 1925.

On appeal, the Estate presents the following issues:

1. Whether the trial court made an error of law in granting preliminary objections in favor of Appellee when sufficient evidence existed to demonstrate service was satisfied under Pennsylvania Rules of Civil Procedure?
2. Whether the transfer of jurisdiction from Pike County to Susquehanna County was consummated in a way to afford appropriate access to justice by [the Estate]?

Estate’s Brief at 6 (some formatting altered).

Preliminary Objections

In its first issue, the Estate argues that it effectuated proper service of process on Appellee and therefore the trial court erred in sustaining Appellee’s

preliminary objection to the Estate's service of process attempt. **See** Estate's Brief at 11-22. Specifically, the Estate claims that the Pike County Sheriffs' Office properly served Appellee by handing the Estate's complaint to Nurse Lucca at Appellee's "office or place of business," satisfying Rule 402(a)(2)(iii). **See id.** at 15. The Estate argues that Nurse Lucca was authorized to accept service on Appellee's behalf under Rule 402(a)(2)(iii) because there was a sufficient connection between Nurse Lucca and Appellee and Appellee had more control over the office as its sole practitioner. **See** Estate's Brief at 19-21; **see also** N.T., 6/16/25, at 15-16. Additionally, the Estate claims that the return of service was not facially defective despite the fact that the return of service indicates that service was given at Appellee's "place of abode." **See** Estate's Brief at 19; **see also** N.T., 6/16/25, at 11. The Estate concludes that the trial court erred in sustaining Appellee's preliminary objections and in dismissing the action based on lack of person jurisdiction for failure to effectuate proper service of process. **See** Estate's Brief at 19-22, 27.

We review a trial court's ruling on preliminary objections for an error of law. **See Knight v. Springfield Hyundai**, 81 A.3d 940, 947 (Pa. Super. 2013). This Court has explained:

In so doing, we employ the same standard as the trial court, *to wit*, all material facts set forth in the amended complaint and inferences reasonably drawn therefrom are admitted as true. Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief.

Id. at 947 (citations and quotation marks omitted, some formatting altered).

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. Without valid service, a court lacks personal jurisdiction of a defendant and is powerless to enter judgment against [the defendant].

Thus, improper service is not merely a procedural defect that can be ignored when a defendant subsequently learns of the action. . . . However, the absence of or a defect in a return of service does not necessarily divest a court of jurisdiction of a defendant who was properly served. [T]he fact of service is the important thing in determining jurisdiction and . . . proof of service may be defective or even lacking, but if the fact of service is established jurisdiction cannot be questioned.

Cintas Corp. v. Lee's Cleaning Services, 700 A.2d 915, 917-18 (Pa. 1997)

(citations and quotation marks omitted).

"Proper service is not presumed; rather, the return of service itself must demonstrate that the service was made in conformity with the Pennsylvania Rules of Civil Procedure." ***Phillips v. Triple G. Farms, Inc.***, 514 MDA 2019, 2019 WL 5401109, at *2 n.4 (Pa. Super. filed Oct. 22, 2019) (unpublished mem.).¹

The Pennsylvania Rules of Civil Procedure govern service of process and provide the following:

Rule 402. Manner of Service. Acceptance of Service.

¹ Pursuant to Pa.R.A.P. 126(b), we may cite unpublished memorandum decisions of the Superior Court filed after May 1, 2019, for their persuasive value.

(a) Original process may be served

(1) by handing a copy to the defendant; or

(2) by handing a copy

(i) at the residence of the defendant to an adult member of the family with whom he resides; but if no adult member of the family is found, then to an adult person in charge of such residence; or

(ii) at the residence of the defendant to the clerk or manager of the hotel, inn, apartment house, boarding house or other place of lodging at which he resides; or

(iii) at any office or usual place of business of the defendant to his agent or to the person for the time being in charge thereof.

Pa.R.C.P. 402(a).

Rule 405. Return of Service.

(a) When service of original process has been made the sheriff or other person making service shall make a return of service forthwith. If service has not been made and the writ has not been reissued or the complaint reinstated, a return of no service shall be made upon the expiration of the period allowed for service.

* * *

(b) A return of service shall set forth the date, time, place and manner of service, the identity of the person served and any other facts necessary for the court to determine whether proper service has been made.

Pa.R.C.P. 405(a)-(b).

Further, it is well settled that “[w]hen a defendant presents a factual dispute as to whether a plaintiff fulfilled [her duty to prove that she made a good-faith effort to effectuate service of process in a timely manner], the plaintiff carries an evidentiary burden to demonstrate that she met her good-

faith mandate.” ***Gussom v. Teagle***, 247 A.3d 1046, 1057 (Pa. 2021) (citation omitted).

Here, the trial court explained:

In this case, the return of service indicates that service was effectuated upon [Nurse Lucca] and that she was “a person of suitable age and discretion then residing in the defendant’s usual place of abode.” Thus, the return of service appears to seek to effectuate service under Rule 402(a)(2)(i), which permits service of process upon a defendant through a third party at **a defendant’s residence**, provided that the third party is an adult person in charge of the residence, not under Rule 402(a)(2)(iii), relating to service of process at a defendant’s place of business to defendant’s agent or person in charge of the business.^[fn7]

^[fn7] Rule 402(a)(2)(i) permits service of process at a defendant’s residence to “an adult person in charge of such residence.” The return of service in this case does not contain any language that [Nurse] Lucca was in charge of [Appellee’s] residence; rather, it simply notes that she was an adult, she was residing at the location, and that the location was [Appellee’s] usual place of abode. Thus, the return of service likewise fails to satisfy Rule 402(a)(2)(i) in that it fails to verify that [Nurse] Lucca was in charge of [Appellee’s] “residence” when service was made.

* * *

[Here], the return of service is facially defective. While it provides information regarding service to a third party, [Nurse] Lucca, it makes clear that the service occurred at “Atlantic Medical Group, Milford Medical Group, 111 E. Catherine Street, Suite 210, Milford, PA 18337.” The only identifying information for [Nurse] Lucca is that she was “a person of suitable age and discretion then residing in the defendant’s usual place of abode.” From the face of the return of service, the address where service was effectuated was a business address—not a place of abode. Neither [Nurse] Lucca nor [Appellee] resided there, and it was not [Appellee’s] “usual place of abode.” Thus, the return of service is facially defective and fails to demonstrate that proper service was made upon [Appellee].

To the extent that the Estate seeks to rely upon Rule 402(a)(2)(iii) to demonstrate proper service of the writ of summons, the return of service is again facially defective. The return of service provides no explanation whatsoever as to [Nurse] Lucca's relationship with [Appellee] that would empower her to accept service on his behalf. There is no verification in the return of service that [Nurse] Lucca was [Appellee's] agent nor was there any verification that [Nurse] Lucca was the person in charge of Atlantic Medical Group when service was made. As in [**City of Philadelphia v. Berman**, 863 A.2d 156, 160 (Pa. Commw. Ct. 2004)²], no acceptance of service form was used as permitted under Rule 402(b). In other words, the return of service is woefully defective in that it relies upon the wrong subsection of Rule 402 (relating to service at a defendant's residence) when service was made to a business address, and, even if this error is overlooked, the return of service fails to provide sufficient information to demonstrate effective service under Rule 402(a)(2)(iii). [Appellee's] preliminary objection will be sustained based upon the deficiencies in the return of service that fail to demonstrate effective service under Rule 402(a)(2).

Even setting aside the facial[] deficiencies in the return of service, [Appellee] submitted an affidavit providing the following evidentiary support for his preliminary objection: (1) [Appellee] practiced medicine at Atlantic Medical's Milford office; (2) [Appellee] has no ownership interest in Atlantic Medical; (3) [Nurse] Lucca was not an agent of [Appellee]; (4) [Nurse] Lucca was not a person in charge of Atlantic Medical; and (5) [Appellee] never authorized [Nurse] Lucca to accept service on his behalf. Having submitted this evidentiary basis for his challenge to effective service under Rule 402(a)(2)(iii), the burden shifted to the Estate to demonstrate that service was proper under Rule 402(a)(2)(iii).

As noted, Rule 402(a)(2)(iii) permits service of process at a defendant's "office or usual place of business" to the defendant's agent or to the person in charge of the business provided that the defendant is more than an average employee, *i.e.*, the defendant must have more responsibility and control than the average employee. At this point, the undisputed record reveals that

² We note that we may rely on decisions of the Commonwealth Court as persuasive authority. **See Turner v. Estate of Baird**, 270 A.3d 556, 561 n.3 (Pa. Super. 2022).

[Appellee] practiced medicine at Atlantic Medical's Milford office, but [Appellee] possessed no ownership interest in Atlantic Medical. Given [Appellee's] evidentiary submission, the burden shifted to the Estate to demonstrate that [Appellee] occupied a position with his employer that involved more control and responsibility than the average employee. In its answer, the Estate provided no evidence whatsoever regarding [Appellee's] role with Atlantic Medical. At the argument on the preliminary objections, the Estate indicated that it was satisfied with the record and did not supplement it. Given that the Estate has failed to demonstrate that [Appellee] had greater responsibilities than an average employee, proper service could not be effectuated under Rule 402(a)(2)(iii) . . . [Appellee's] preliminary objection will [also] be sustained upon the failure of the Estate to demonstrate that [Appellee] was more than an "average employee" of Atlantic Medical.

Further, the Estate has failed to present any evidence to meet its burden of demonstrating that [Nurse] Lucca was [Appellee's] agent or a person in charge of Atlantic Medical to permit her to accept service for [Appellee] under Rule 402(a)(2)(iii). Instead, the current record, as demonstrated by [Appellee's] affidavit, provides that [Nurse] Lucca was not [Appellee's] agent, was not the person in charge of Atlantic Medical's Milford Office, and was not authorized to accept service on behalf of [Appellee]. The Estate has produced no evidence to counter [Appellee's] affidavit. . . . [Accordingly, Appellee's] preliminary objection will be sustained.

Trial Ct. Op., 6/23/25, 5-11 (some citations omitted, emphasis added, and some formatting altered).

Following our review of the record, we conclude that the trial court did not err in sustaining Appellee's preliminary objections based on improper service. **See Knight**, 81 A.3d at 947. As noted by the trial court, "the address where service was effectuated was a business address—not a place of abode," and, therefore, service of process was facially defective under Rule 402(a)(2)(i) and 402(a)(2)(ii) for service at a residence. **See Carter v. B.**

Game I, LLC, 1338 EDA 2022, 2023 WL 1795178 at *3-4 (Pa. Super. filed Feb. 7, 2023) (unpublished mem.) (stating that a return of service is facially defective where it fails to properly identify the location as an “office or usual place of business”); **see also Berman**, 863 A.2d 156, 160; Pa.R.C.P. 402(a)(2)(i)-(ii) (providing for two methods to effectuate service of process at the defendant’s residence). Since the Estate made no claim that service was effectuated at Appellee’s residence, the trial court was correct in concluding that the Estate failed to satisfy Rule 402(a)(2)(i) or 402(a)(2)(ii). **See Knight**, 81 A.3d at 947.

We also agree with the trial court that the Estate’s service was facially defective under Rule 402(a)(2)(iii) as the return of service sets forth information suggesting Appellee was served at his residence when Appellee was served at a business address and it does not explain whether Nurse Lucca was empowered to accept service on Appellee’s behalf. **See id.**

Additionally, Appellee attested that, although he was employed by Atlantic Medical, he did not have any ownership interest in the medical practice; Nurse Lucca was not his agent; and he had not authorized Nurse Lucca to accept service on his behalf. **See** Appellee’s Affidavit, 1/22/25, at 1-2 (unpaginated). As the trial court stated, the Estate did not provide any evidence contradicting Appellee’s affidavit.³

³ As we will discuss below, the Estate did not attempt to depose Nurse Lucca or otherwise elicit information from her about her role at the business, whether
(Footnote Continued Next Page)

Accordingly, the trial court correctly concluded that the Estate failed to prove that Appellee had more proprietary responsibility and control over the business than that possessed by the average employee, as required to establish service under Rule 402(a)(2)(iii). **See *Mazzuca v. Abreu***, 310 A.3d 775,788 n.10 (Pa. Super. 2024).⁴ Further, the trial court correctly concluded that the Estate failed to meet its burden of demonstrating that Nurse Lucca was authorized to accept service for Appellee under Rule 402(a)(2)(iii) either as Appellee's agent or as a person in charge of Atlantic Medical. **See *Knight***, 81 A.3d at 947; **see also *Gussom***, 247 A.3d at 1057.

Therefore, because the Estate failed to establish that proper service of process was effectuated on Appellee under any of the subsections of Rule 402(a)(2), we conclude that the trial court did not err in sustaining Appellee's preliminary objections based on improper service. **See *Knight***, 81 A.3d at

she was Appellee's agent, or whether Appellee had "more responsibility and control over the business" than the average employee. **See *Mazzuca***, 310 A.3d at 788 n.10 (stating that "service of an individual at his or her office or usual place of business is only appropriate when the person to be served has more proprietary responsibility and control over the business than that possessed by the average employee" (citation and internal quotation marks omitted)); Pa.R.C.P. 402(a)(iii).

⁴ We also note that while Atlantic Medical was Appellee's usual place of employment, that determination is not interchangeable with whether Atlantic Medical also serves as Appellee's "office or usual place of business" under Rule 402(a)(2)(iii). **See *Cintas Corp.***, 700 A.2d at 919 (explaining that the distinction "place of employment" and "office or usual place of business" is not merely semantic, as it carries legal significance) (citing ***Sharp v. Valley Forge Med. Ctr. & Heart Hosp., Inc.***, 221 A.2d 185, 186-87 (Pa. 1966) (interpreting former Rule 1009(b)(2)(iii), now Rule 402(a)(2)(iii))).

947; **Mazzuca**, 310 A.3d at 788; **Phillips**, 2019 WL 5401109 at *2 n.4; Pa.R.C.P. 402(a)(2). For these reasons, the Estate is not entitled to relief on this issue.

Transfer of Venue

In its second issue, the Estate argues that the manner in which the trial court in Pike County transferred venue to Susquehanna County “led to a denial of appropriate access to justice for [the Estate] for further consideration of the underlying preliminary objections.” Estate’s Brief at 23. Specifically, the Estate argues that it was required to file its documents with Pike County, which would in turn forward the motion to Susquehanna County, and this procedure resulted in the Estate’s motion to supplement the record arriving in Susquehanna County after the trial court entered its dismissal order. **Id.** at 23-25. The Estate claims that had its motion to supplement been timely delivered to the trial court in Susquehanna County before the matter was dismissed, it may have had the opportunity proffer additional evidence to establish that it had properly served Appellee. **Id.** at 25-26.

Our Supreme Court has held that “trial courts have the inherent discretion to reopen the record on their own and to grant the parties leave to supplement it with evidence regarding a particular issue, as long as neither party is prejudiced.” **Commonwealth v. Safka**, 141 A.3d 1239, 1249–50 (Pa. 2016). Additionally, while a trial court has the authority to reopen the record by granting a motion to supplement the record, it is under no obligation

to do so. **See Cnty. of Bucks v. Brock**, 531 C.D. 2023, 2025 WL 1982440, at *8 (Pa. Cmmw. Ct. filed July 17, 2025) (unpublished mem.).

On this issue, the trial court explained:

[During the hearing the] Estate expressed a willingness to seek to supplement the record if the court believed it was necessary. [However,] [u]pon [Appellee] presenting his affidavit . . . the burden shifted to the Estate to present evidence to demonstrate that service was effective. The Estate has simply failed to present any evidence whatsoever to rebut the claims made by [Appellee's] affidavit. The court must simply review the record presented and not act as an advocate for the Estate to determine whether the Estate should or should not be presenting more evidence. Thus, it was the Estate's obligation, not the court's obligation, to determine whether the Estate wanted to supplement the record. When pressed on this issue, the Estate indicated that it was satisfied with the current record.

Trial Ct. Op., 6/23/25, at 9, n.8.

Initially, we note that even if the motion to supplement had been received by the trial court in Susquehanna County prior to the dismissal order of June 23, 2025, it does not then follow that the court would have reopened the matter to permit additional evidence on the question of effective service. **See Safka**, 141 A.3d at 1249–50; **Brock**, 2025 WL 1982440 at *8. As the trial court noted, the Estate gave clear indication at the hearing that it did not intend to supplement the record, and that it was satisfied with the current record. **See** N.T., 6/16/25, at 16. The trial court was under no obligation to reopen the matter to permit the Estate to supplement the record since the decision of whether to do so is a discretionary action. **See Safka**, 141 A.3d at 1249–50; **Brock**, 2025 WL 1982440 at *8.

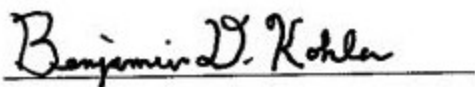
Further, a review of the Estate's motion shows that the Estate's proposed supplemental evidence would not have been sufficient to defeat the defects in service on Appellee. Notably, the Estate's motion to supplement did not seek to depose Appellee or Nurse Lucca to establish that Nurse Lucca was, as Rule 402(a)(2)(iii) requires, qualified to accept service on behalf of Appellee or that Appellee had proprietary responsibility and control over the business. **See** Pa.R.Civ.P. 402(a); **see also Knight**, 81 A.3d at 947; **Mazzuca**, 310 A.3d at 788 n.10. Instead, the record reflects that the Estate sought to supplement the record with information to be elicited by deposing Sheriff Hernandez about service of the writ of summons to Nurse Lucca, information from Appellee and Atlantic Medical's website about Appellee's role as the sole physician at the practice as of June 2025, and with an affidavit from an expert who would explain that the current website information would also apply back to the alleged date of service on June 3, 2019. **See** Mot. to Supplement, 6/23/25, at 2 (unpaginated). While the Estate's proposed evidence attempts to shed light on its service attempt on Appellee, this evidence does not rebut Appellee's affidavit establishing that Nurse Lucca was not authorized to accept service on Appellee's behalf and that Appellee did not have more proprietary responsibility and control over the business than that possessed by the average employee. **Cf. Hollinger v. Hollinger**, 206 A.2d 1, 3 (Pa. 1965) (stating that when a sheriff completes a return of service the place and time of the service is within the personal knowledge of the sheriff but the sheriff does not have personal knowledge of facts stated in the return

obtained through hearsay or statements made by third persons such as whether the address is a dwelling house or residence of the party being served); **see also** Mot. to Supplement, 6/23/25, at 6-15 (unpaginated) (showing that the website descriptions do not establish Appellee's proprietary responsibility and control over the business despite the Estate's claim).

Therefore, we conclude that even if the trial court had received the supplementation motion prior to dismissing the action and granted the motion to supplement the record, the Estate's proposed evidence was not sufficient to satisfy the Estate's evidentiary burden. **See Gussom**, 247 A.3d at 1057; **Knight**, 81 A.3d at 947; **Mazzuca**, 310 A.3d at 788 n.10. In sum, the evidence the Estate sought to supplement the record within its motion would not have established that the Estate effectively served Appellee, and, therefore, the Estate is not entitled to relief on this issue. Accordingly, we affirm.

Order affirmed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in cursive script that reads "Benjamin D. Kohler". The signature is written in black ink and is positioned above a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/22/2026