

In the Age of Airbnb, the Seventh Circuit Explains the “Reasonable Diligence” Required for Personal Service in Wisconsin



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Wis. Stat. § 801.11(1)(c) allows a plaintiff to resort to service by publication when, through efforts that amount to “reasonable diligence,” he has been unable to serve the defendant in person.

The Seventh Circuit’s recent decision in [Cunningham v. Montes, No. 17-2516 \(7th Cir. Feb. 21, 2018\)](#), written by Judge Frank Easterbrook, considered whether the plaintiff had exercised “reasonable diligence” in the context of a defendant who had two known homes, one in California and the other in Wisconsin, and had listed the California home for rent by the week on the Internet. Attempting personal service at only one of those homes, the court held, did not amount to “reasonable diligence.”

Cunningham’s process server had been unable to locate the defendant, Montes, at his home in Wisconsin, and Montes refused to provide his location when he answered the phone. Regardless, the Seventh Circuit held that Montes’s refusal to provide his whereabouts to a process server over the phone did not amount to evading service; and “Wisconsin,” the court explained, “requires a plaintiff who knows or readily can learn that a defendant has multiple addresses to attempt to serve the defendant at each address.” Slip op. 3.

Cunningham claimed at oral argument that he chose not to attempt service at Montes's home in California because he saw on the Internet that the California home was available for rent by the week. Cunningham concluded, based on those listings, that Montes didn't live in California at all. That, according to the court, was "not a good inference," particularly in the age of Airbnb. "It would not be sound to treat as unoccupied (by the owner) any house available to rent by the day or week." *Id.* Cunningham should have attempted service at the California home before resorting to service by publication.

The Seventh Circuit reversed the district court's entry of a default judgment, which erroneously relied on service under Wis. Stat. § 801.11(1)(c). Montes, who had sought to reopen the default in the court below not long after it was entered, was entitled to litigate the case on its merits.

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