



## COA affirms default judgment against Menards in injury lawsuit

Olivia Covington February 1, 2017

A summons and complaint in a personal injury claim were adequately served on a Menards store in Gary, the Indiana Court of Appeals found Wednesday, so the store cannot seek relief from default judgment entered against it on the basis of the service of process.

After suffering injuries due to a malfunctioning shopping cart at the Menards store in Gary, Reba Lane filed a personal injury claim against Menard Inc. in 2013. As part of her case, Lane sent a summons to Menards' former registered agent, CT Corporation, who responded that it had not worked with Menards for more than five years and had no forwarding address to which to send the summons.

Instead, Sgt. Brian Coubal with the Lake County Sheriff's Department served the summons at the Gary store and via certified mail, each of which were addressed to "Attn: Highest Executive Officer Found on Premises." He received a return receipt from the mail correspondence.

In 2014, Lane moved for default judgment because Menards had not yet answered her complaint. The Lake Circuit Court granted her request and awarded her \$500,000 in damages.

Lane then moved to enforce judgment by proceedings supplemental and sent a copy of the motion to the Menards store in Gary. Counsel for Menards appeared in August 2014 and asked the court to set aside default judgment, arguing that it was void under Indiana Trial Rule 60(b)(6) for lack of personal jurisdiction. Further, Menards counsel argued that the default judgment was "tainted" by attorney misconduct and was a product of excusable neglect.

The trial court denied Menards' motion in May 2016, prompting the appeal in *Menard, Inc. v. Reba Lane*, 45A03-1606-CT-1283. On appeal, Menards claims that it did not receive the summons delivered by Coubal in person or the summons sent via mail and, further, that the service of process was not reasonably calculated to reach the highest executive officer on the premise.

But in a unanimous opinion, a panel of the Indiana Court of Appeals found that a stamp indicating Coubal had delivered the summons and complaint and the return receipt from the copy of the summons sent by mail indicate that he followed Trial Rule 4.1(B), which regulates the service of process.

Further, Judge Melissa May rejected Menards' argument that Lane's attorney committed misconduct because she should have attempted to notify two other law firms who had represented Menards in personal injury claims in the past of Lane's complaint.

Finally, the panel held that any breakdown in communication between the time when the summons was served on the store in person and via mail to the time when it reached the appropriate executive officer was the result of neglect, but not excusable neglect, because the panel concluded that Menards did receive service of process of the summons and complaint. Thus, the trial court did not abuse its

discretion when it denied Menards' motion to relief from default judgment.