Michigan Law Review

Volume 34 | Issue 8

1936

CONSTITUTIONAL LAW-DUE PROCESS--NONRESIDENT MOTORIST STATUTE

Follow this and additional works at: https://repository.law.umich.edu/mlr

 Part of the Constitutional Law Commons, Fourteenth Amendment Commons, State and Local Government Law Commons, and the Transportation Law Commons

Recommended Citation

CONSTITUTIONAL LAW-DUE PROCESS--NONRESIDENT MOTORIST STATUTE, 34 MICH. L. REV. 1227 (1936).

Available at: https://repository.law.umich.edu/mlr/vol34/iss8/15

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

CONSTITUTIONAL LAW—DUE PROCESS—NONRESIDENT MOTORIST STATUTE—Petition for writ of prohibition on the ground that the notice provided by the Arkansas nonresident motorist statute [1] did not meet the requirements of

[1] The Arkansas statute reads in part as follows: "Service of process shall be made by serving a copy of the process on the said Secretary of State and such service shall

the due process clause of the Fourteenth Amendment. The statute required that service of process be had on the secretary of state and that the plaintiff send notice of such service to the nonresident defendant at his last known address by registered letter, and required that the defendant's return receipt or the affidavit of the plaintiff of compliance with the statute be filed in the office of the clerk of court. *Held*, the statute is constitutional. *Kelso v. Bush*, 191 Ark. 1044, 89 S. W. (2d) 594 (1935).

A statute which provides for actual notice to a nonresident motorist does not violate the due process clause of the Fourteenth Amendment.[2] A nonresident motorist statute which makes no provision for notice to the defendant does violate the due process clause.[3] It is generally said that the United States Supreme Court, in the case of *Wuchter v. Pizzutti*, laid down as requirement for the constitutionality of such a statute, that it must provide for such notice as will in reasonable probability actually reach the defendant.[4] The Arkansas statute does not provide for actual notice to the defendant. The language of the statute is satisfied if the plaintiff sends notice by registered letter to the defendant at his last known address and if the plaintiff files an affidavit that he has done so. The provision for sending notice to the defendant's "last known address" is indefinite. Last known by whom? How careful a search must be made to determine this address? By whom? Without being strengthened by interpretation it may be doubted whether this statute provides for a reasonable probability that actual notice will reach the defendant. The New York Supreme Court[5] denied the constitutionality of a similar Connecticut statute on this ground, but subsequently the Connecticut Supreme Court[6] upheld the statute after reading into the

be sufficient service upon the non-resident owner, provided that notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff or his attorney to the defendant at his last known address, and the defendant's return receipt or the affidavit of the plaintiff or his attorney of compliance herewith are appended to the writ or process and entered and filed in the office of the Clerk of the Court wherein said cause is brought. . . . " Ark. Acts (1933), No. 39, § 1, pp. 112-3.

[2] Hess v. Pawloski, 274 U. S. 352, 47 S. Ct. 632 (1927).

[3] Wuchter v. Pizzutti, 276 U. S. 13, 48 S. Ct. 259 (1928).

[4] Wuchter v. Pizzutti, 276 U. S. 13, 48 S. Ct. 259 (1928); Washington v. Superior Court, 289 U. S. 361 at 365-6, 53 S. Ct. 624 (1933); Doherty & Co. v. Goodman, 294 U. S. 623 at 628, 55 S. Ct. 553 (1935); Culp, "Process in Actions against Non-Resident Motorists," 32 MICH. L. REV. 325 at 337 (1934); 22 VA. L. REV. 477 at 479 (1936).

The United States Supreme Court has not expressly decided that a nonresident motorist statute which provides only for reasonable probability of actual notice to the defendant is constitutional. The Arkansas Supreme Court assumed that if the statute provides for a reasonable probability of actual notice to the defendant, it is constitutional in this respect. The constitutionality of nonresident motorist statutes with "last known address" clauses has been upheld by federal district courts without discussing the degree of probability of actual notice assured by such statute. Carr v. Tennis, (D. C. Pa. 1933) 4 F. Supp. 142; Jones v. Paxton, (D. C. Minn. 1928) 27 F. (2d) 364.

[5] Freedman v. Poirier, 134 Misc. 253, 236 N. Y. S. 96 (1929), affd. 227 App. Div. 320, 237 N. Y. S. 618 (1929).

[6] Hartley v. Vitiello, 113 Conn. 74, 154 A. 255 (1931).

"last known address" clause the requirement that the plaintiff must learn at his peril the defendant's actual address, unless the defendant has disappeared and his address is unknown to those who would ordinarily know it, in which case the plaintiff must obtain his last address so far as it is reasonably possible to ascertain it. The Supreme Court of Wisconsin[7] has placed a similar interpretation upon a statute of that state. The Supreme Court of Arkansas is silent on the meaning of the "last known address" clause, merely saying that the statute expressly provides for evidence of actual notice to the defendant, either by the receipt of the defendant or by the affidavit of the plaintiff, and is therefore constitutional. But it is to be noted that the problem is not one of proof of notice, but of giving notice.[8] If proof of actual notice is required by the statute, it follows, of course, that actual notice must be given.[9] If proof is required which makes it reasonably probable that the notice was actually received, it seems fair to say that the statute provides for a reasonable probability of actual notice. But the Arkansas statute does not require a statement in the affidavit that the notice was sent to the defendant's actual address, but only to his "last known address." Unless the plaintiff has made reasonable efforts to discover the defendant's actual address, there is no reasonable probability that the notice was received.[10] A statement in the affidavit that the notice was not returned to the sender would remedy this defect, but no such statement is required.

J. H. R.

[7] State ex rel. Cronkhite v. Belden, 193 Wis. 145, 211 N. W. 916 (1927).

[8] Jones v. Bibb Brick Co., 120 Ga. 321, 48 S. E. 25 (1904).

[9] Hess v. Pawloski, 274 U. S. 352, 47 S. Ct. 632 (1927).

[10] The Supreme Court of Arkansas said in the principal case (89 S. W. (2d) 594 at 596): "It is a rule of universal application that, where a letter is addressed to the last known address of a person properly stamped and not returned in response to a return direction, it is presumed that it was received by the addressee." There is some authority for the rule as thus stated [see Marston v. Bigelow, 150 Mass. 45, 22 N. E. 71 (1889)], but it should be noted that this rule requires a showing that the letter was not returned in response to a return direction. There is a presumption that a letter which was properly addressed, stamped and mailed was received by the addressee, but as the rule is generally stated nothing is said about a presumption arising from sending the letter to the "last known address." See 1 WIGMORE, EVIDENCE, 2d ed., § 95 (1923); 22 C. J. 96, § 36 (1920).