

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ELIANA YULIBIT OSORIO BASTARDO, : **No. 24-20132**
Plaintiff :
 :
vs. : **CIVIL ACTION - LAW**
 :
BENJAMIN DAVID GIMENEZ ALCINA, :
Defendant :

OPINION and ORDER

Presently before the Court is Plaintiff’s Petition for Special Relief. Specifically, Plaintiff is asking the Court for permission to forego service of original process or, in the alternative, allow service by alterative means.

The original Complaint for Custody in this case was filed on February 1st, 2024. The parties are the parents of C.D.G.O., born March 2nd, 2015 in San Felipe, Yaracuy, Venezuela. Mother left Venezuela in 2017 and eventually entered the United States in August 2022. Mother and Child finally arrived in Lycoming County in August of 2022 and continue to reside in the County. Mother then filed for asylum in 2023.

Prior to entering the United States, the parties signed a custody agreement in 2015 after the child was born and during the time both parties resided in Venezuela. Pursuant to this agreement, Defendant gave Plaintiff exclusive authority to render any and all decisions regarding the child. Despite this agreement, Plaintiff filed a Custody Complaint in Lycoming County requesting, inter alia, that an Order be entered granting her sole legal and physical custody of the minor child.

At this time, however, Plaintiff is unable to move forward with her Custody matter because Father resides outside of the United States, cannot be located and therefore cannot be served with the Custody Complaint.

During the Special Relief hearing held March 28, 2024, this Court received testimony that Plaintiff and child have resided in Lycoming County since approximately August, 2022. The minor child currently attends school in the Williamsport Area School District. The Court also heard testimony regarding the attempts Plaintiff has previously undertaken to perfect service of the Custody Complaint. These attempts included telephone calls, contacting Defendant’s employer,

inquiries made to Defendant utilizing Facebook, and emailing the last known email address associated with Defendant. Plaintiff's various attempts have led her and her counsel to conclude that Defendant resides in Panama. Plaintiff and her counsel have also concluded that Defendant is in fact gainfully employed in Panama and Plaintiff's counsel has secured a mailing address for Defendant's employer.

The Pennsylvania Rules of Civil Procedure require there to be service of original process of a complaint. Here, because Defendant is believed to be in Panama, Rule 404 of the Pa. Rules of Civil procedure and 42 Pa. C.S.A § 5323 are controlling.

Rule 404 states that service should be made,

“(1) by a competent adult in the manner provided by Rule 401(a); (2) by mail in the manner provided by Rule 403; (3) in the manner provided by the law of the jurisdiction in which the service is made for service in an action in any of its court of general jurisdiction; (4) in the manner provided by treaty; or (5) as directed by the foreign authority in response to a letter rogatory or request.”

42 Pa. C.S.A § 5323(a)(5) and (a)(3), concerning service of process on person outside this Commonwealth, provides that service may be made on persons outside this Commonwealth, “By any form of mail addressed to the person to be served and requiring a signed receipt”, or “As directed by a Court”. Further, also applicable in this case is Rule 430 of the Pa. Rules of Civil Procedure which allows for Service for Publication, upon a showing of a good faith effort to locate the Defendant.

In light of Plaintiff's well documented efforts to contact Plaintiff via various means coupled with the special circumstances of this case regarding Defendant's geographic location, this Court is of the opinion that service may be perfected pursuant to 42 Pa. C.S.A § 5323(a)(3) and (b). With respect to subpart (b), the proof of service shall include a receipt signed by the addressee.

In the event that Plaintiff is unable to perfect service pursuant to the requirements of 42 Pa. C.S.A § 5323(a)(3) and (b), Plaintiff is encouraged to praecipe this Court to request a hearing and describe her additional failed efforts to allow this Court to determine whether service pursuant to publication is appropriate.

ORDER

AND NOW, this **3rd** day of **May, 2024**, Plaintiff's petition for Special Relief is granted in part to allow the Plaintiff to serve Defendant consistent with the above and pursuant to 42 Pa. C.S.A § 5323(a)(3) and (b). Prior to mailing the Complaint to Defendant, Plaintiff shall first reinstate the Custody Complaint and obtain a new date and time for the custody conference that shall be scheduled before this Court.

By The Court,

Ryan C. Gardner, Judge

RCG/kbc

cc: William Miele, Esq.
Benjamin Alcina – unknown address
Gary Weber, Esq.