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Article 14

CPLR 316: Mailing Requirement Interpreted

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the court cannot confer; only the defendant can authorize another to appear in his behalf.

CPLR 316: Mailing requirement interpreted.

In *Gross v. Gross*,[31] a divorce action, plaintiff-wife sought support and maintenance. Unable to effectuate personal service, she was granted an order to serve defendant by publication pursuant to the procedures of CPLR 316. The court first concluded that it was proper to assert in personam jurisdiction over the defendant as a resident of New York since the parties were married here and made their residence here. Although the defendant could not be found, no evidence was submitted that he was a non-resident and thus, a presumption of his residence continued.[32] The court then met a challenge that due process had not been fulfilled by substituted service, concluding that publication afforded defendant reasonable notice and a fair opportunity to be heard.[33]

This case may provide one of the few interpretations of 316's mailing requirement. Under 316, where service is by publication in a matrimonial action, a copy of the summons must be mailed to the defendant. The standard by which such a mailing's effectiveness is to be judged can possibly be gleaned from the provision under which such mailing may be dispensed with by the court. The section states that such mailing must be made "unless a place where such person *probably would* receive mail cannot with due diligence be ascertained." [34] This would seem to suggest that such mailing as establishes a probability that it will reach the defendant is sufficient. Here, the mailing of the summons to the husband in care of his father was held to be satisfactory.

N.Y. Const. art. VI, § 7(c): Court of Appeals clarifies breadth of supreme court's jurisdiction.

As a court of general original jurisdiction, the supreme court, in the past, has been held to have subject matter jurisdiction over all common-law actions [35] and all statutorily-established actions unless the Legislature in creating the latter specifically negatives this result.[36] The 1962 amendment to section 7 of the judiciary article of the New York Constitution has prompted recent review of the

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[31] 56 Misc. 2d 286, 288 N.Y.S.2d 674 (Sup. Ct. King's County 1968).
[32] Harris v. Harris, 83 App. Div. 123, 82 N.Y.S. 568 (2d Dep't 1903).
[33] McDonald v. Mabee, 243 U.S. 90 (1917); Rawstorne v. Maguire, 265 N.Y. 204, 192 N.E. 294 (1934).
[34] CPLR 316(b) (emphasis added).
[35] *In re* Steinway, 159 N.Y. 250, 255-58, 53 N.E. 1103, 1104-05 (1899).
[36] Thrasher v. United States Liab. Ins. Co., 19 N.Y.2d 159, 166, 225 N.E.2d 503, 506, 278 N.Y.S.2d 793, 798 (1967).