

Vehicle and Traffic Law § 253: Actual Notice Not Necessary Where Defendant Gave False Address

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ex parte an order directing the payment of money as a judgment is circumscribed by the specific provisions of Section 244 of the Domestic Relations Law. This latter provision requires an application to the court, on appropriate notice to the defendant, for an order directing entry of an arrears judgment arising out of a matrimonial action. Section 244 was previously held to be the exclusive remedy in the enforcement of matrimonial payments.²⁶⁸

The primary importance of the instant case is that it is the first to construe CPLR 2222 as inapplicable in matrimonial actions. Thus, the provisions of CPLR 2222, which in general facilitate and liberalize the docketing of orders as judgments are overridden by the specific provisions of section 244, which require a hearing before the court on proper notice to the defendant. The discretion of the court in enforcing the non-payment of orders in a matrimonial action is unaffected by CPLR 2222, and Section 244 of the Domestic Relations Law is still the exclusive remedy.

VEHICLE AND TRAFFIC LAW

Vehicle and Traffic Law § 253: Actual notice not necessary where defendant gave false address.

Constructive service on a nonresident motorist pursuant to Section 253 of the Vehicle and Traffic Law requires service on the Secretary of State *and* service on the defendant at his last-known address by registered mail. In addition, plaintiff must file either the return receipt or notice of defendant's refusal to accept delivery. It is well established that the import of the registered mail and filing requirements is that the defendant must have received actual notice of the service.²⁶⁹ However, in *Greenwood v. White*,²⁷⁰ service was validated even though there was no actual notice.

There, the defendant, a nonresident motorist involved in an accident in New York, gave the sheriff an improper Florida address. The registered letter was returned marked "No such address" "Unknown." In upholding the service, the court recognized that there was a lack of compliance with the provisions of the statute, but nevertheless held that the defendant, by giving an incorrect address and rendering compliance impossible, was *estopped* from asserting that a return receipt had not been filed.

It appears that *Greenwood* is the first case to uphold constructive service pursuant to Section 253 of the Vehicle and Traffic

²⁶⁸ Kahn v. Sampson, 23 App. Div. 2d 539, 255 N.Y.S.2d 963 (1st Dep't 1965); Snow v. Snow, 8 App. Div. 2d 516, 170 N.Y.S.2d 902 (2d Dep't 1959); Leitman v. Leitman, 21 Misc. 2d 653, 190 N.Y.S.2d 188 (Sup. Ct. Kings County 1959).

²⁶⁹ Shusheraba v. Ames, 255 N.Y. 490, 175 N.E. 187 (1931); Bauman v. Fisher, 12 App. Div. 2d 32, 208 N.Y.S.2d 317 (3d Dep't 1960).

²⁷⁰ 25 App. Div. 2d 73, 266 N.Y.S.2d 1012 (3d Dep't 1966).

Law in spite of the lack of actual notice given to the nonresident defendant. This does not mean, however, that the prior cases are overruled, for they are distinguishable on the facts.

In *Bernardt v. Scianimanico*,²⁷¹ plaintiff sent the letter to the address at which he believed the defendant resided. In this case there is dictum to the effect that it is immaterial that a nonresident defendant can thwart service simply by moving and leaving no forwarding address;²⁷² actual notice is necessary. In another case,²⁷³ similar to *Bernardt* except for the fact that plaintiff knew the defendant had moved, the court interpreted the statute to require actual notice. Thus, the fact that plaintiff knew or did not know that the defendant had moved seems to make no difference when the requirement is that of actual notice.

While *Greenwood* does not abrogate the actual notice interpretation of section 253, it does find a way to circumvent it by applying the theory of estoppel. It might be that the facts in *Greenwood* lend more easily to the use of estoppel, but considering the dictum in *Bernardt*, it would seem that *Greenwood* represents a trend toward a more realistic and non-literal reading of the requirements of section 253.

²⁷¹ 21 Misc. 2d 182, 192 N.Y.S.2d 1018 (Sup. Ct. Queens County 1959).

²⁷² *Id.* at 184, 192 N.Y.S.2d at 1022.

²⁷³ *Bauman v. Fisher*, *supra* note 269.