Mullane vs Central Hanover Bank & Trust Co
United States Supreme Court (1950)
339 U.S. 306

FACTS

Central Hanover Bank, the plaintiff, was the trustee of a common trust fund formed by pooling the assets of several smaller trusts. Central Hanover Bank petitioned to the New York Surrogate's Court for a judicial settlement of the trust. The only notice provided to beneficiaries was via publication in a New York newspaper. Mullane was appointed attorney and special guardian for a number of beneficiaries (aka defendants) who either were unknown or did not appear. Some of their addresses were known and some were not.

Many of the beneficiaries Mullane represented resided outside the state of New York. He argued the possibility of their receiving notice via publication was nearly nil because the notices were published in New York newspapers.

NOTE

Central Hanover Bank followed the letter of New York law regarding the way in which they served the beneficiaries by publication. Therefore this case was not one of following the written law but of the validity of the law itself.

JUDICIAL HISTORY

Mullane objected to the statutory provision for notice by publication, arguing that it was unconstitutional for lack of due process under the Fourteenth Amendment. The Surrogate's Court overruled Mullane's objection and the ruling was affirmed on appeal to the New York Supreme Court Appellate Division and the New York Court of Appeals. The United States Supreme Court granted review.

SPECIFIC ISSUE

Is notice given to parties by publication in a newspaper, when the parties' addresses are known, constitutional in light of the Due Process Clause of the Fourteenth Amendment?

HOLDINGS

No. Notice given to parties by publication in a newspaper, when the parties' addresses are known, is unconstitutional in light of the Due Process Clause of the Fourteenth Amendment.

REASONING

Notice must be reasonably calculated to inform known parties affected by the proceedings. However, constructive notice by publication is acceptable with regard to missing or unknown parties or for those whose whereabouts cannot be determined by due diligence or for whom future interests are too vague to be known with any certainty.

C4PSE COMMENT

This is one of the most important cases in the history of service of process. The US Supreme Court ruled the method of service created in New York

law was in violation of the Fourteenth Amendment and was therefore unconstitutional.

This decision sets a floor for Congress, state legislatures, and courts in regards the method and manner in which service of process may be accomplished. It will not allow as valid any and all conceivable methods of giving notice but creates the Mullane Test which must be met by any statute or rule written for the purpose of giving notice to parties in a civil action.

In other words, there must be a statute or other procedure that provides for a constitutionally allowed form of notice and that notice which is provided for must be used. This helps explain the why there are so many differences between the rules of service in the various states.

For example, and to use an extreme example, a state legislature may write a statute which allows for service of a summons on a defendant when the summons is read out loud on the courthouse steps. Such a procedure would certainly not pass the Mullane Test and would be unconstitutional.

Interestingly enough, Mullane can create situations which seem, at first, contradictory but are in fact quite logical.

For instance, Mullane is generally interpreted to mean that actual notice is not always necessary. Therefore, alternative service, such as service by publication, is allowed but only in certain circumstances. In a situation where a plaintiff is, after due and diligent search, unable to locate a defendant for service then it is possible to serve the defendant by

publication or some other form of alternative service. This can result in a judgment being taken against the defendant even though the defendant never saw the summons.

Mullane is also interpreted to mean that actual notice of a case may not be sufficient to give the court jurisdiction over the defendant. This is actually a situation which occurs more often than is appreciated by plaintiff's attorneys. Mullane requires that if there is a constitutionally adequate method of notice created by statute or court rule then that method must be used to give notice. If it isn't, even though the defendant may ultimately receive the summons, then service has not been perfected and the court does not have jurisdiction.

Justice Jackson wrote the opinion for the majority. He pointed out that the beneficiaries' property rights were at stake here, and without proper notice, the "right to be heard" provided by the Fourteenth Amendment was being withheld from those who had not been served or otherwise given notice.

In this case, publication in a New York newspaper did not give the New York court jurisdiction over out of state defendants whose addresses were known because it was so unlikely they would see the published summons.

Constructive service via newspaper publication, wrote Jackson, was an unreliable method of giving notice, because newspapers have limited circulation and even then, many people do not examine the legal notices, which are usually in small typeface on the back pages. In this case, the legal notice at issue did not even mention the names of the beneficiaries.

Furthermore, under normal circumstances, property holders are directly aware of legal proceedings regarding their property, either directly or through a caretaker. But in this case, which was in no way a normal circumstance, the caretaker was the beneficiaries' adversary - the trustee itself, Central Hanover Bank & Trust - which could not be expected to give them reasonable notice, and the special guardian was also not required to give notice.

Jackson held that notice must be "reasonably calculated" to inform known parties affected by the proceedings. Thus the section of the statute which dealt with notice to beneficiaries was unconstitutional.

He further held that notice by publication was acceptable for missing or unknown parties, for those whose whereabouts could not be ascertained by due diligence, and for those whose future interests were too vague to be known with any certainty. However, Jackson noted that in many cases, notice to the known parties would help the information of the proceedings to reach those who were unknown by the trustee.

TAKE AWAY

1. Any law or rule relating to the giving of notice must be reasonably calculated to provide notice to the known parties to the action.
2. Giving notice via alternative methods, such as by publication, may be allowed for unknown parties or for parties whose location is not known.
3. The method proscribed, assuming it passes the Mullane Test, must be used in giving notice.