IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

DCA CASE NO.: 3D18-1997
L.T. CASE NO.: 2014-021348 CA 01

JEFFREY EPSTEIN,

Appellant/Defendant,

vs.

JEAN-LUC BRUNEL, individually,
and MC2 MODEL & TALENT MIAMI, LLC,

Appellees/Plaintiffs.
_____/

REPLY BRIEF OF APPELLANT

On Appeal from a Non-Final Order of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida

---

Scott J. Link (FBN 602991)
Kara Berard Rockenbach (FBN 44903)
LINK & ROCKENBACH, PA
Counsel for Appellant
1555 Palm Beach Lakes Blvd., Suite 930
West Palm Beach, FL 33401
Tel.: [redacted]
Fax: [redacted]
Email: [redacted]
Email: [redacted]

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Other Authorities

PREFACE

Appellant, JEFFREY EPSTEIN, was the Defendant below and will be referred to in this brief as "Epstein." Appellees, JEAN-LUC BRUNEL, individually, and MC2 MODEL & TALENT MIAMI, LLC, were the Plaintiffs below and will be referred to in this brief as "Plaintiffs" or by name.

The appendix filed with Epstein's initial brief will be cited as (App.__). "IB" refers to Epstein's initial brief. "AB" refers to Plaintiffs' answer brief. Short-form citations are used for cases cited in the initial brief.

INTRODUCTION

Plaintiffs concede that Epstein "is not the owner of a sole proprietorship." (AB. 11.) Because of this admission, Plaintiffs' attempt to serve Epstein under section 48.031(2)(b), Florida Statutes was void as a matter of law. On this admission alone, which is tantamount to a confession of error, the lower court's order asserting personal jurisdiction over Epstein must be reversed.

In addition, the failure by Plaintiffs' process server to note the date and hour of service and include the process server's identification on the service papers rendered service invalid as a matter of law. In seeking to excuse this incurable violation, Plaintiffs ask this Court to rewrite the legion of longstanding case law requiring "strict construction" and imposing on Plaintiffs the burden of proving "strict compliance" with the service of process statutes. The statute's requirements are crystal clear and Plaintiffs could not and did not satisfy their burden *at the hearing.* Instead, at the appellate stage, they improperly seek to inject a legally indefensible argument that, while the "proof" of service they filed does not establish their strict compliance, it does not rule out the "possibility" that service might have been proper. However, there is simply no legal support for the proposition that one may satisfy his burden of strict construction and strict compliance with section 48.031, Florida Statutes by "proof" of service that "does not definitively rule out"

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: [redacted] – Fax: [redacted] – www. [redacted]

statutory compliance or that "does not definitively reflect" that the service was not in statutory compliance.

This Court must likewise reject Plaintiffs' nonsensical argument that they should not be saddled with the burden of proving compliance with section 48.031(1)(a), Florida Statutes, where that section does not "expressly require" an affidavit of service reciting such compliance. Specifically, Plaintiffs ask this Court to ignore the express requirement in connection with substitute service under section 48.031(1)(a) that the process server inform the recipient of the contents of the process served because there is no requirement in section 48.031(1)(a) for an affidavit of service stating that the recipient be so informed. Plaintiffs' attempt to establish new legal standards for section 48.031, Florida Statutes ignores express, compulsory statutory language and long-standing Florida Supreme Court precedent and must be rejected.

Equally unavailing is Plaintiffs' unpreserved request for a second chance to submit evidence. The time for the submission of any such evidence has long since come and gone. Moreover, no submission of evidence by Plaintiffs can cure Plaintiffs' admittedly defective service attempt under section 48.031(2)(b), Florida Statutes.

Accordingly, Plaintiffs' admittedly defective substitute service of process mandates reversal of the trial court order asserting jurisdiction over Epstein.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: [redacted] – Fax: [redacted] – www. [redacted]

ARGUMENT

Plaintiffs completely ignored Epstein's citation to binding case law from this Court that required Plaintiffs to strictly comply with section 48.031, Florida Statutes, as well as the Florida Supreme Court precedent requiring Plaintiffs to bear the burden to prove proper service. *See Robles-Martinez v. Diaz, Reus & Targ, LLP*, 88 So. 3d 177 (Fla. 3d DCA 2011); *Koster v. Sullivan*, 160 So. 3d 385, 388 (Fla. 2015).

I. Plaintiffs Have De Facto Confessed That They Utilized the Wrong Substitute Service of Process Statute

Buried near the end of Plaintiffs' Answer Brief, Plaintiffs make the fatal admission that Epstein "is not the owner of a sole proprietorship." (AB. 11.) Plaintiffs explain that they used the "sole proprietorship" statute because they believe Epstein is "de facto avoiding proper service of process by his self-imposed lifestyle" of traveling by private jet. (AB. 11.) However, the purported ownership of an airplane does not justify service under section 48.031(2)(b), which by its terms is only applicable when serving an individual doing business as a sole proprietorship. There is no special "self-imposed lifestyle" exception under section 48.031(2)(b), and Plaintiffs' concession that they attempted service under this statutory provision despite its admitted inapplicability mandates reversal of the lower court's ruling. Moreover, if Plaintiffs believed that Epstein's self-imposed lifestyle effectively concealed his whereabouts, there are other substitute service statutes that specifically address the conditions to be satisfied for serving nonresidents and those with

concealed whereabouts.[1] Plaintiffs cannot excuse a refusal or inability to seek recourse under potentially applicable statutes by resorting to one which is admittedly inapplicable.

Because the substitute service statutes are in derogation of common law, strict construction and compliance with the service statutes is long-steeped in jurisprudential due process. *Demir v. Schollmeier*, No. 3D17-2578, 2018 WL 6186233, at *2 (Fla. 3d DCA Nov. 28, 2018) ("It is well-settled: 'Where substitute service of process is used, strict compliance with the statutes governing this form of service is essential to obtaining valid personal jurisdiction over the defendant(s).'") (citation omitted); *Standley v. Arnow*, 13 Fla. 361, 365–66 (1869) ("The doctrine that no person shall be deprived of property unless by due process of law, reiterated in all American constitutions, gives every person the right to demand that the law shall be strictly complied with in all proceedings which may affect his title to his property.").

Plaintiffs unequivocally conceded that Epstein is not the owner of a sole proprietorship and therefore, the substitute service of process attempted under section 48.031(2)(b), Florida Statutes is void as a matter of law. *See generally Demir*, 2018 WL 6186233, at *2; *Stettner v. Richardson,* 143 So. 3d 987 (Fla. 3d

[1] For example, section 48.161, Florida Statutes governs substituted service of process on a nonresident or a person who conceals his whereabouts by serving the public officer designated by law.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: [redacted] – Fax: [redacted] – www. [redacted]

DCA 2014) (judgment is void due to defective service because substitute service of process must be strictly complied with and provisions strictly construed). Because Plaintiffs now admit that they did not strictly comply with the substitute service provisions under section 48.031(2)(b), Florida Statutes, and consequently the substitute service attempt was void as a matter of law, due process requires this Court's reversal of the order asserting personal jurisdiction over Epstein based on that defective substitute service attempt.

II. Plaintiffs' Untimely Request for an Evidentiary Hearing to Comply with an Inapplicable Statute is Unpreserved, Unpersuasive, and Must be Rejected

Plaintiffs ask this Court for remand and an evidentiary hearing that they never requested below in an effort to cure fatal defects in their "proof" of service. (AB. 7-10.) It is an axiomatic appellate tenet that failure to request relief below precludes an appellate court from granting the same. *Dober v. Worrell*, 401 So. 2d 1322, 1323 (Fla. 1981) (in many areas of the law, the Florida Supreme Court has "held it inappropriate to raise an issue for the first time on appeal"). Plaintiffs' untimely request for the evidentiary hearing on appeal cannot and will not cure their failure to request the evidentiary hearing below, as a result of which they forfeited any claim for such relief. *See Ascontec Consulting, Inc. v. Young*, 714 So.2d 585, 587 (Fla. 3d DCA 1998) (request for new evidentiary hearing "not preserved for appellate review because [party] did not present this request in the first instance to the trial court.").

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: [redacted] – Fax: [redacted] – www. [redacted]

From the date that Plaintiffs filed the Amended Complaint which first identified Epstein as a defendant, Plaintiffs had over two years, including a four-month extension of time from the trial court, to properly effect service of process. Plaintiffs made a solitary deficient service attempt during the four-month extension granted by the trial court, which they never sought to correct despite having timely notice of the deficient service. In the nearly two years that followed their deficient service attempt, Plaintiffs filed and briefed two motions with the trial court but never once sought an evidentiary hearing or raised the issues they now improperly seek to inject on appeal. Moreover, even were there to be an evidentiary hearing on those issues, no evidence that they could proffer could do anything to cure what Plaintiffs now admit was defective service under section 48.031(2)(b). An evidentiary hearing would therefore be an exercise in futility and a needless waste of judicial resources, and should be denied.

III. Plaintiffs' Process Server's Return of Service was Invalid for Failure to Place the Date and Hour of Service with the Process Server's Identification Number and Initials on the Summons and Complaint and Orally Inform of the Contents

Significantly, the Florida Supreme Court, melding the requirements of substitute service of process generally (section 48.031(1)(a)) with the return of execution of process statute (section 48.21), recognized that the Florida Legislature identified four factual recitations that must be included in each and every return of process without exception: (1) the date and time that the pleading comes to hand or

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: [redacted] – Fax: [redacted] – www. [redacted]

is received by the process server, (2) the date and time that process is served, (3) the manner of service, and (4) the name of the person served and, if the person is served in a representative capacity, the position occupied by the person. *See Koster v. Sullivan,* 160 So. 3d 385, 389 (Fla. 2015). So important are these recitations that their requirement is repeated in the subsection of the service of process statute on review in this appeal, subsection (5) of 48.031:

> A person serving process shall place, on the first page of at least one of the processes served, the date and time of service and his or her identification number and initials for all service of process. The person serving process shall list on the return-of-service form all initial pleadings delivered and served along with the process. The person requesting service or the person authorized to serve the process shall file the return-of-service form with the court.

Section 48.031(5), Fla. Stat. (2018). The general "return of execution of process" statute requires the process server to "note on a return-of-service form attached thereto, the date and time when it comes to hand, the date and time when it is served, the manner of service, the name of the person on whom it was served…." Section 48.21(1), Fla. Stat. (2018). "[F]ailure to state the facts or to include the signature required by subsection (1) invalidates the service…." Section 48.21(2), Fla. Stat. (2018). Finally, Florida Rule of Civil Procedure mandates that the "date and hour of service shall be endorsed on the original process and all copies of it by the person making the service." *See* Fla. R. Civ. P. 1.070(e).

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: [redacted] – Fax: [redacted] – www. [redacted]

The record is clear and it is indisputable that Plaintiffs' process server failed to comply with these absolute requirements. Mr. Richardson failed to place the date and time of service and his identification number and initials on the first page of either the Summons or the Amended Complaint. (App. F, pp. 52-54.) The "SERVICE" box on the Civil Action Summons is blank. *Id.* Compliance with this component of section 48.031(5) is critical when attempting to effect substitute service, and its absence renders service defective on its face as a matter of law, requiring reversal. *Brown v. U.S. Bank Nat'l Ass'n*, 117 So. 3d 823 (Fla. 4th DCA 2013); *Walker v. Fifth Third Mortg. Co.*, 100 So. 3d 267 (Fla. 5th DCA 2012); *Nirk v. Bank of Am.*, 94 So. 3d 658 (Fla. 4th DCA 2012).

Further, Plaintiffs failed to comply with the requirement of "informing the person of their contents" as required by section 48.031(1)(a), Florida Statutes. Plaintiffs' argument on this point is apparently that they are not required to satisfy their burden of proof with regard to this express requirement under section 48.031(1)(a) because that provision does not specify that compliance with this requirement be recited in an affidavit of service. Not only does Plaintiffs' nonsensical argument lack citation to *any* case law in support of it, but it ignores binding precedent imposing on Plaintiffs the burden of proving strict compliance with the service of process statute, including precedent requiring that a process server inform the recipient of the contents of the process served. *See Hauser v.*

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: [redacted] – Fax: [redacted] – www. [redacted]

Schiff, 341 So. 2d 531, 532 (Fla. 3d DCA 1977) (defective substitute service of process with "a conclusive showing that the process server failed to inform the secretary as to the contents of the papers"); *Vidal v. SunTrust Bank*, 41 So. 3d 401, 403 (Fla. 4th DCA 2010) (when a defendant is not personally served, "the statute requires that the process server orally inform the person who receives service of the contents of the complaint. These requirements ensure that notice is conveyed to the defendant."); *see also Barwick v. Rouse*, 43 So. 753, 753 (Fla. 1907) ("[W]hen another than the defendant himself is served, the law is not satisfied by merely delivering a true copy of the writ. It is further required that such other person be informed of the contents thereof.").

There is simply nothing in the record of this case to establish that the process server, Mr. Richards, informed Ms. Brenna of the contents of the process he attempted to deliver. Neither Mr. Richards' affidavit, nor that of his affiliate, Mr. Corasmin, include a single averment that either of them informed Ms. Brenna of the papers' contents. (App. F, p. 52; App. G, pp. 92-94.). It was Plaintiffs' burden to establish compliance with this express requirement of section 48.031(1)(b), Florida Statutes, and Plaintiffs failed to do so, rendering Plaintiffs' service defective.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: [redacted] – Fax: [redacted] – www. [redacted]

IV. Plaintiffs' Process Server's Return of Service Fails to Strictly Comply with the Clear Statutory Requirement of Two Prior Attempts to Serve the Owner at the Place of Business

Assuming this Court can somehow look past the long list of defects in Plaintiffs' proof of service to reach an evaluation of whether Plaintiffs carried their burden to prove strict compliance with the procedural requirements of section 48.031(2)(b), Florida Statutes, the Court cannot avoid the inescapable conclusion that Plaintiffs' attempted service suffers from a fundamental incurable procedural defect. Plaintiffs concede that the statute requires two prior attempts to serve the owner at the place of business. (AB. 8.) However, Plaintiffs failed to do so and made no showing that they did at the lower court. Plaintiffs oddly attempt to shoehorn their *one and only* failed service attempt at this address with a vague reference in the process server's affidavit to there having been an attempt to serve "Epstein's place of business in the Virgin Islands." *Id.* Although there is simply nothing in this reference to establish that two specific prior attempts were made to serve Epstein at that address, Plaintiffs claim this statement in the affidavit "does not definitively rule out the possibility that two prior attempts were made…." Plaintiffs cite no case law to support the flagrant disregard for their burden to prove strict compliance with the statute's clear requirement of two *prior* attempts and their failure to produce even minimal evidence in this regard. The Florida Supreme Court's decision in *Koster*, specifying that each return of service expressly include a description of the manner

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: [redacted] – Fax: [redacted] – www. [redacted]

of service, requires nothing less than sufficient detail to establish that Plaintiffs satisfied the procedural service requirements of two prior service attempts under section 48.031(2)(b), Florida Statutes. *Id.*

Instead, Plaintiffs belatedly ask for an evidentiary hearing to "clear up any issues as to the number of attempts to serve Epstein himself at his place of business," citing *Linville v. Home Sav. of America, FSB*, 629 So. 2d 295 (Fla. 4th DCA 1993). First, this request is itself a concession that Plaintiffs failed to establish proof of the requisite two prior service attempts in the lower court, and on that basis alone, their attempted service under section 48.031(2)(b) is defective and must be rejected. Second, Plaintiffs failed to submit the necessary proof of strict compliance at the hearing. Plaintiffs' untimely request for an evidentiary hearing for "clearing anything up" is unpreserved and for that reason must be rejected as well. *See Issue II, infra.* Third, Plaintiffs' reliance on *Linville* is entirely misplaced. *Linville* involved the denial of a motion to quash service of process and the denial of the improperly-served individual's request for an evidentiary hearing. *Id.* at 296. The appellate court concluded that the unrebutted allegations in the motion to quash service of process would have established the failure to effect valid service of process and would have entitled appellant to an evidentiary hearing on her motion to quash service of process. *Id.* Unlike the defendant in *Linville* whose unrebutted allegations provided a basis for a motion to quash and a reason for an evidentiary

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: [redacted] – Fax: [redacted] – www. [redacted]

hearing that was requested of and denied by the lower court, Plaintiffs in this case have failed to show this Court – by paper or transcript – any evidence of alleged compliance that would have supported substitute service under section 48.031(2)(b), Florida Statutes or any preserved request for an evidentiary hearing to "clear up" their process server's insufficient affidavit. *Linville* is inapposite and provides no support for Plaintiffs' spurious request.

In sum, the unrebutted record evidence compels reversal because Plaintiffs failed to strictly comply with the "two prior attempts" required under section 48.031(2)(b), Florida Statutes. Epstein has a fundamental right, as a matter of constitutional due process, to demand strict construction of and strict compliance with the procedural requirements of this statute, and this glaring procedural deficiency compels reversal of the trial court's decision.

V. Plaintiffs' Process Server's Return of Service Fails to Strictly Comply with the Clear Statutory Requirement of Serving at Defendant's Place of Business on a "Person in Charge of the Business at the Time of Service"

Similarly, due process requires rejection of Plaintiffs' service based on their failure to comply with the statutory requirement that service be made on a "person in charge of the business at the time of service." Section 48.031(2)(b), Florida Statutes. Citing no case law, Plaintiffs ask this Court to accept that the process server's unexplained notation that he served a person he unilaterally designated as

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: [redacted] – Fax: [redacted] – www. [redacted]

"office manager" is a valid substitute for confirming that the person served is, in fact, in charge of the business at the time of service. (AB. 9.)

Plaintiffs' record evidence failed to establish that Ms. Brenna was "the person in charge of the business" as required by the plain language of section 48.031(2)(b). Both Mr. Richardson's and Mr. Corasmin's affidavits refer to her as an "office supervisor." (App. F, p. 52; App. G, pp. 92-94.) However, the affiants never attest the basis for this conclusory title (i.e., a business card indicating such title or authority, or even a verbal assertion identifying herself as being an "office supervisor").

Further, these affidavits fatally do not even indicate which alleged business entity Ms. Brenna supposedly "supervised," or whether that title actually made her the person in charge of the business at the time of service. *Id.* Moreover, because Mr. Richardson's affidavit was crafted simply listing the "place served" as Southern Trust Company, Inc., does not mean Ms. Brenna was a "supervisor" of that company, or any company of which Epstein was a sole proprietor. (App. F, p. 52.) In fact, Plaintiffs concede that Epstein "is not the owner of a sole proprietorship." (AB. 11.) Clearly, the return of service provided by Plaintiffs establishes that Plaintiffs' process server made no attempt to strictly comply with yet another of the express requirements of section 48.031(2)(b), and this failure serves as yet an additional basis for reversal.

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: [redacted] – Fax: [redacted] – www. [redacted]

CONCLUSION

Reversal is required because both parties agree that Epstein does not meet the classification of a person doing business as a sole proprietor as required by section 48.031(2)(b), Florida Statutes. Further, Plaintiffs failed to comply with section 48.031(2)(b)'s strict statutory requirements for substitute service of process despite the trial court's generous extensions of time to properly effect service on Epstein. Based on these undisputed record facts and binding authority from this Court, Appellant, Jeffrey Epstein, respectfully requests the Court to reverse the September 17, 2018 Order and remand for dismissal by the trial court for Plaintiffs' failure to comply with the order requiring an automatic, self-executing dismissal if service was not properly effected within the time extended. *See* App. E ("shall be dismissed without prejudice. No further order of this Court shall be necessary.").

LINK & ROCKENBACH, PA
CIVIL TRIAL & APPELLATE LAW
1555 Palm Beach Lakes Blvd., Suite 930 – West Palm Beach, FL 33401 – Tel.: [redacted] – Fax: [redacted] – www. [redacted]

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of this Reply Brief was served on this _____ day of December, 2018 by electronic mail to: **Joe Titone, Esq.**, 621 S.E. 5th Street, Pompano Beach, FL 33060 (Joetitone708@comcast.net).

LINK & ROCKENBACH, PA
Counsel for Appellant
1555 Palm Beach Lakes Blvd., Suite 930
West Palm Beach, FL 33401
[redacted] telephone
[redacted] facsimile
PE: [redacted]
PE: [redacted]
2E: [redacted]
2E: [redacted]

By: /s/_____
Kara Berard Rockenbach (FBN 0044903)
Scott J. Link (FBN 602991)

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that this Initial Brief is prepared in Times New Roman 14-point font.

By: /s/_____
Kara Berard Rockenbach (FBN 0044903)