

**IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO**

**MARK A. QUINN, et. al.** : **CASE NO. 09-CV-00645**  
**Plaintiffs,** :  
**vs.** : **JONATHAN P. HEIN, JUDGE**  
**BRAD QUINN, et. al.** : **JUDGMENT ENTRY – Defendant’s**  
**Defendants.** : **Motion to Dismiss for Failure to**  
**Obtain Service of Process**

This matter came before the Court upon the motion of Defendant Brad Quinn to dismiss the complaint filed by Mark A. Quinn on October 7, 2009. In support of this motion, the Defendant argues that service of the complaint was not perfected within the one year time required by Civil Rule 3(A). The Plaintiff does not dispute failure of service but alleges instead that it attempted to perfect service – albeit unsuccessfully – and that claims should be determined on their merits and not on procedural deficiencies.

Civil Rule 3(A) provides as follows:

***Rule 3. Commencement of Action; Venue***

***(A) Commencement.*** *A civil action is commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant, or upon an incorrectly named defendant whose name is later corrected pursuant to Civ.R. 15©, or upon a defendant identified by a fictitious name whose name is later corrected pursuant to Civ.R. 15(D).*

Clearly, service of the complaint must be made upon a party before the action can

be deemed to have commenced. But what consequence is there for the failure to perfect service within one year? The answer, involving a case with nearly identical facts, is found in the syllabus of *Sisk & Associates, Inc. V. Committee to Elect Timothy Grendell* (2009), 123 Ohio St.3d 447:

*“When a plaintiff files an instruction for a clerk to attempt service of a complaint that was filed more than a year prior, the instruction, by operation of law, is a notice dismissal of the claims, and if the plaintiff had previously filed a notice dismissing a complaint making the same claim, the instruction, by operation of law, is a second notice dismissal, resulting in dismissal with prejudice of the claims. ( Goolsby v. Anderson Concrete Corp. (1991), 61 Ohio St.3d 549, 575 N.E.2d 801 and Olynyk v. Scoles, 114 Ohio St.3d 56, 2007-Ohio-2878, 868 N.E.2d 254, construed and applied.)*

*While the Court agrees that the preferred method of resolving cases is based on their substance and merits, Peterson v. Teodosio (1973), 34 Ohio St.3d 175, such philosophy applies where the Court has discretion in its ruling. Here, obedience to legal principles mandates the Court’s dismissal of this action.*

**IT IS THEREFORE ORDERED AND DECREED** that the Defendant’s motion to dismiss the amended complaint is granted. Costs to Mark Quinn. FINAL APPEALABLE ORDER.

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**Jonathan P. Hein, Judge**

cc: Jeffrey D. Wilson, Attorney for Plaintiff (via fax)  
Steven O. Dean, Attorney for Brad Quinn (via fax)  
Rhonda McKinniss, Attorney for DCDJFS (via fax)

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