

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

STANDARD INSURANCE COMPANY,

Plaintiff

v.

JUAN CARLOS CABALLEROS-YESCAS,

And

MARIA VIRGINIA GONZALEZ

As Guardian for John Doe, a minor

Defendants.

Case No. 6:19-cv-01280-JTM-GEB

**ORDER GRANTING
PLAINTIFF STANDARD INSURANCE COMPANY'S MOTION FOR LEAVE TO
SERVE DEFENDANT JUAN CARLOS CABALLEROS-YESCAS BY PUBLICATION**

The Court has before it Plaintiff, Standard Insurance Company's Motion for Leave to Serve Defendant Juan Carlos Caballeros-Yescas by publication together with the sworn Certification filed by Richard J. Pautler, the attorney for Standard Insurance Company in compliance with K.S.A. 60-307(c). (Dkts. # 5 and #6).

Lucy Mojica ("Decedent"), was shot multiple times in her home in Wichita, KS and died on July 7, 2018. Upon Decedent's death life insurance benefits became payable by Standard. The purpose of this interpleader action is to have the Court determine who is entitled to receive these life insurance benefits. Each of the defendants may have a claim to the life insurance benefits.

Police have classified Decedent's death as a homicide and have identified Juan Carlos Caballeros-Yescas as the suspect in Decedent's death. Since July 7, 2018 police have been able to locate or apprehend Juan Carlos Caballeros-Yescas. The News Release issued by the Wichita

Police Departments on July 8, 2018 states that Juan Carlos Caballeros-Yescas “should be considered armed and dangerous” and that anyone seeing him should call 911 immediately and not approach him. (Dkt. #5-2)

K.S.A. 60-307 allows for service by publication and Rule 4(e) of the Federal Rules of Civil Procedure allows for service in this Court in any manner permitted by Kansas law for any action brought in a Kansas court of general jurisdiction. K.S.A. 60-307(a)(4) allows for service by publication “in an action in which the defendant, being a resident of this state, has departed from this state or from the county of the defendant's residence with the intent to delay or defraud creditors or to avoid the service of a summons, or hides in the state or county with that intent.”

Prior to the date of Decedent’s death on July 7, 2018, Juan Carlos Caballeros-Yescas was a resident of Kansas. Since July 7, 2018, police have searched for Juan Carlos Caballeros-Yescas as the suspect in the homicide death of Decedent. Police have published both News Releases and Wanted posters that identify Juan Carlos Caballeros-Yescas as the suspect in the murder of Decedent and seeking his capture. (Dkts. # 5-1 and 5-2) Still Juan Carlos Caballeros-Yescas has not been located or arrested. The Court concludes that Juan Carlos Caballeros-Yescas is hiding in order to avoid being located, thus making personal service upon him impossible.

Under these circumstances, good reason exists to allow Standard Insurance Company to serve Juan Carlos Caballeros-Yescas by publication. No reason exists to believe that Standard Insurance Company, a United States Marshall or a Special Process Server could locate or serve Juan Carlos Caballeros-Yescas, either within Kansas or anywhere else, in light of the fact the police have been unable to locate him over the past 15 months despite their diligent efforts. Because police have identified Juan Carlos Caballeros-Yescas as a suspect in the murder of

Decedent, he has motive to avoid being found and indeed has successfully hidden himself from police for 15 months. Moreover, the police department's warning makes it imprudent and unreasonable to ask anyone to approach Juan Carlos Caballeros-Yescas for the purpose of obtaining service of process on him.

Therefore, the Court orders that Standard Insurance Company publish the following notice in *The Wichita Eagle* once a week for three consecutive weeks.

Public Notice to Juan Carlos Caballeros-Yescas: You have been named as a defendant in a lawsuit pending in the United States District Court for the District of Kansas sitting in Wichita, KS. The lawsuit is styled: *Standard Insurance Company v. Juan Carlos Caballeros-Yescas and Maria Virginia Gonzalez as Guardian for John Doe, a minor*, and has been assigned Case No. 6:19-cv-01280 JTM-GEB. The lawsuit concerns life insurance benefits that became payable upon the death of Lucy Mojica on July 7, 2018. You were named as the primary beneficiary of these life insurance benefits. If you wish to assert a claim to these life insurance proceeds, you or your attorney must appear and participate in this lawsuit. If you or your attorney do not enter an appearance in this lawsuit on or before January 30, 2020, the Court will accept as true the allegations in the Complaint filed with the Court and will enter a default judgment against you and you will forever lose any and all claims you may have to these life insurance benefits.

SO ORDERED: s/ Gwynne E. Birzer
United States Magistrate Judge

Dated: October 31, 2019