

**FILED**

**IN THE CHANCERY COURT, STATE OF WYOMING**

**2025 WYCH 14**

MICHAEL KITHINJI,

Plaintiff,

v.

TRUCKING AUTOMATION, LLC, a  
Wyoming Limited Liability Company;  
CRYSTAL HARLES and AUCTAVIUS  
D. BENNETT, Individually,

Defendants.

Case No. CH-2025-0000012

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**ORDER DENYING MOTION TO SERVE  
AUCTAVIUS BENNETT THROUGH PUBLICATION**

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[¶1] This order addresses the limits of Wyoming's rules for constructive service on individuals. In this action seeking monetary damages for breach of contract and fraud, along with punitive damages and an award of attorney fees, Michael Kithinji moves to serve Auctavius Bennett by publication under W.R.C.P.Ch.C. 4(k)(4)(F). (FSX No. 77787105). That rule permits constructive service “[i]n actions which relate to, or the subject of which is real or personal property in this state,” when “the defendant’s place of residence cannot be ascertained.”

**LAW**

[¶2] As a service rule, Rule 4(k)(4)(F) is strictly construed. *See Hopeful v. Etchepare, LLC*, 2023 WY 33, ¶¶ 30, 44, 528 P.3d 414, 423, 427 (Wyo. 2023); *MN v. CS*, 908 P.2d 414, 415–16 (Wyo. 1995). Strict construction safeguards the due process concerns inherent in service and in any departure from personal service.

[¶3] The text of the rule requires a plaintiff to establish both: (1) that the defendant’s residence cannot be ascertained, and (2) that the action relates to, or has as its

subject, real or personal property in Wyoming. W.R.C.P.Ch.C. 4(k)(4)(F). The first requirement is relatively straightforward and not at issue here. The second requirement—specifically, whether this action relates to property—determines this motion.

[¶4] The court did not find, and plaintiff did not cite, any Wyoming case law directly interpreting the Rule’s property-related requirement. Nor did the court find any guiding precedent from other jurisdictions. Nevertheless, legacy Wyoming cases applying a predecessor statute and drawing a distinction between personal and constructive service are instructive. They confirm that constructive service is permitted only in property-based actions. *See, e.g., Kumor v. Scot. Union & Nat'l Ins. Co.*, 47 Wyo. 174, 33 P.2d 916, 920 (Wyo. 1934) (constructive service under predecessor statute to Rule 4(k)(4)(F) appropriate in action to “determine the ownership” of personal property in Wyoming when non-resident defendant’s place of residence could not be ascertained); *In re Bergman’s Survivorship*, 60 Wyo. 355, 151 P.2d 360, 365-67 (Wyo. 1944) (reasoning that personal service is not required in cases adjudicating the title and status of property within Wyoming when defendant’s are non-residents). Although these cases interpret a previous statutory scheme and apply historical principles, those limiting principles animate Rule 4(k)(4)(F).

[¶5] The Rule’s limited application—requiring that a case involve property located in Wyoming—harkens back to the traditional distinction between *in rem* (or *quasi in rem*) and *in personam jurisdiction*. Historically, constructive service did not suffice to establish *in personam* jurisdiction. *See Otis Oil & Gas Corp. v. Maier*, 74 Wyo. 137, 145, 284 P.2d 653, 655 (1955) (“[I]n personam[] jurisdiction . . . may not be predicated on constructive service of process.”). But it did establish jurisdiction for *in rem* proceedings. *See In re Bergman’s Survivorship*, 151 P.2d at 364 (“Proceedings in rem... do not require personal notice.”); *Nat'l Crude, Inc. v. Ruhl*, 600 P.2d 716, 719 (Wyo. 1979). A judgment like the one sought here, imposing a personal monetary obligation on an individual defendant, requires the court to have personal jurisdiction over that individual. *Hopeful*, ¶ 29, 528 P.3d at 423 (“It has long been the rule that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by a court having jurisdiction over the person of the defendant.”) (citations omitted); *Matter of U.S. Currency Totaling \$14,245.00*, 2022 WY 15, ¶ 21, 503 P.3d 51, 57 (Wyo. 2022) (“An *in rem* proceeding is not one for damages.”). These historical differences help frame Rule 4(k)(4)(F)’s property-based jurisdiction.

## ANALYSIS

### Residence Cannot be Ascertained

[¶6] Kithinji satisfies the first requirement. The affidavit in support (FSX No. 77787105) documents diligent but unsuccessful efforts to locate Bennett, including background checks, skip tracing, and multiple failed service attempts. These efforts support the conclusion that Bennett’s residence cannot be determined.

## **The Action Does Not Relate to Property in Wyoming**

[¶7] The second requirement is not satisfied. Kithinji points to Bennett's membership interest in co-defendant Trucking Automation, LLC, and "potential financial activities conducted through the LLC" as the relevant property. *Aff.*, ¶ 3. While an LLC membership interest is personal property, that membership interest is not the subject of the action, nor is it related to the action.

[¶8] This case is not about enforcing, recovering, or excluding others from Bennett's membership interest. It is not a conversion claim, a dissociation proceeding, or even an action to dissolve the LLC. Kithinji does not seek to adjudicate, reach, or control Bennett's interest in the LLC. Instead, he seeks a personal money judgment against Bennett individually. Constructive service under Rule 4(k)(4)(F) is not allowed for such a personal money judgment. The membership interest is not the direct, or even the indirect, focus of the case.

[¶9] Most civil actions involve some kind of property in the background. If the property requirement in Rule 4(k)(4)(f) were applied liberally, nearly every action could be said to relate to some property in some way. But when the property requirement is strictly applied, as is required for service rules, it demands more than the mere existence of property connected to an individual defendant. The property must itself be the subject of the action or be related to the relief sought. Bennett's membership interest in a Wyoming LLC does not transform this dispute into a property-related action. To conclude otherwise would effectively nullify the property requirement and erase the due process safeguards embedded in Rule 4(k)(4)(F).

## **CONCLUSION**

[¶10] Because the action does not relate to property in Wyoming and seeks only personal relief, the court finds that the requirements of W.R.C.P.Ch.C. 4(k)(4)(F) are not met and denies the motion.

## **SO ORDERED.**

**Dated:** 12/8/2025

/s/ Benjamin M. Burningham  
CHANCERY COURT JUDGE