

**IN THE DISTRICT COURT OF BOYD COUNTY, NEBRASKA**

**FUNDCO, INC.,**  
Plaintiff,

vs.

**MARLIN D. LEWIS, et al.,**  
Defendants.

Case No. CI02-7

**ORDER ON MOTION  
FOR SERVICE BY  
PUBLICATION**

**SUBJECT OF ORDER:** Motion for service by publication and affidavit for service by publication filed August 13, 2002.

**ORDER:** After examination of the files, the court finds, determines, and orders:

1. The affidavit does not demonstrate why service by publication is necessary as to Marlin D. Lewis where the file appears to show that a summons was served upon said defendant by personal service.

2. The affidavit does not demonstrate why service by publication is necessary where summons has been issued for personal service on defendant Joan A. Ludemann and no return of service appears in the file.

3. The affidavit does not demonstrate why service by publication is necessary where summons has been issued for personal service on defendant Kayl Heating & Air and no return of service appears in the file. Further, even the simplest inquiry of the court clerk could disclose some indication of where summons to said defendant might be directed.

4. In summary, the court is not satisfied from the file, including the affidavit submitted in support of the motion, that these defendants cannot be located in the exercise of reasonable diligence. Merely issuing certified mail summons to an address furnished by the county treasurer is not sufficient to establish reasonable diligence in an investigation. Due process requires the exercise of reasonable diligence supporting failure of personal and/or certified mail service before publication will be permitted as substitute service. This

file does not show the existence of such at this point in time. Accordingly, the motion for service by publication is denied without prejudice to further motion supported by showing of reasonable diligence.

**IT IS SO ORDERED.**

Signed in chambers at **Ainsworth**, Nebraska, on **August 16, 2002**;  
DEEMED ENTERED upon file stamp date by court clerk.

BY THE COURT:

If checked, the court clerk shall:

- Mail a copy of this order to all counsel of record and any pro se parties.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- Note the decision on the trial docket as: [date of filing] **Signed "Order on Motion for Service by Publication" signed.**  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- Mail postcard/notice required by § 25-1301.01 within 3 days.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- Enter judgment on the judgment record.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

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William B. Cassel  
District Judge

Mailed to: