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SUPREME COURT
STATE OF WASHINGTON
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No. 1021470
SUPREME COURT
OF THE STATE OF WASHINGTON

LYRA JEAN SPENCER
Appellant,
and
FRANKLIN HILLS HEALTH, LLC.,
Respondent

APPELLANT LYRA JEAN SPENCER'S ANSWER TO PETITION FOR
REVIEW

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I. INTRODUCTION

The Plaintiff properly served the Defendant, Franklin Hills Health, LLC, with the summons, complaint, interrogatories and case assignment notice on August 10, 2021. In an unpublished opinion, Division III of the Court of appeals, using well-developed standards for judicial review, determined that the Superior Court erred when it determined that service upon the Defendant was not in compliance with RCW 4.28.080(9). The Petitioner, Defendants Franklin Hills Health, LLC has failed to properly identify any aspect of Division III's decision that conflicts with the authority of the Court and also fails to reasonably identify any part of this decision that affects a substantial public interest pursuant to RAP 13.4(B)(4). This Court should deny review.

II. IDENTITY OF RESPONDENT

The Plaintiff in this case, Lyra Jean Spencer, opposes the petition for review.

III. STATEMENT OF THE CASE

Lyra Jean Spencer filed a personal injury lawsuit against the Defendant, Franklin Hills Health-Spokane, LLC, on July 8, 2021 in Spokane County Superior Court, Docket No. 21-2-01861-32. On or about August 10, 2021, the summons, complaint, interrogatories and case assignment notice were served on Sheri Flavel,

Human Resources and Payroll Manager for the Defendant at the Defendant's business location at 6021 N. Lidgerwood St, Spokane WA 99208. CP 44. The registered agent, Jeremy Tolman, was not available to be served. CP 39. Ms. Flavel works directly for Mr. Tolman, who is also the Executive Director for Franklin Hills Health, LLC, and whose office is also at 6021 N. Lidgerwood St., Spokane, WA. CP 4; 8; RP 14, ¶ 10-15. Ms. Flavel signed the case assignment notice with her name, the date of 8-10-21 and her position, HR Manager. CP 42.

David Kenworthy, a process server in Spokane, Washington with approximately 15 years of experience, was hired by Plaintiff's counsel to serve the Defendant with the summons and complaint. CP 38. Mr. Kenworthy researched the Defendant, Franklin Hills Health-Spokane, on the Washington State Secretary of State website. CP 38. The Secretary of State's website listed the registered agent as Jeremy Tolman and the registered agent's address as 6021 N. Lidgerwood St., Spokane WA. CP 38 - 39. This address is also the corporation's principal office mailing address. CP 39. On or about August 10, 2021, Mr. Kenworthy traveled to 6021 N. Lidgerwood St, Spokane WA 99208 to serve the summons, complaint, interrogatories and case assignment notice. CP 39. Mr. Kenworthy let the initial person he spoke with know that he had legal papers to serve on the company and he asked for Jeremy Tolman to accept service. CP 39. Mr. Kenworthy was informed that Jeremy Tolman was not available. CP 39. Sheri Flavel came to the front area and accepted the summons, complaint, interrogatories

and case assignment notice. CP 39. She signed the case assignment notice with her name, the date of 8-10-21 and her position, HR Manager. CP 39; 42. Ms. Flavel never indicated that she was not authorized to accept legal papers or that there was another person present who had authority to accept legal papers. CP 39.

On January 7, 2022 the Defendant filed a Motion to Dismiss for Failure to Properly Serve the Summons and Complaint. CP 26-27. Oral argument was heard on February 4, 2022 before the Honorable Maryann Moreno. During the hearing, it was stated that Ms. Flavel worked for the executive director of the Franklin Hills, Mr. Tolman, who was also the registered agent for Franklin Hills. RP 13, ¶¶ 15-22 and RP 14, ¶¶ 10-15. Mr. Tolman was Ms. Flavel's boss. RP 14, ¶¶ 15

The Court considered the motions, memorandums, and declarations of the parties, the court file, and the arguments of counsel. CP 57. On February 8, 2022 the Court issued an Order granting the Defendant's Motion and dismissed the case. CP 56-58.

The Plaintiff filed a Motion for Reconsideration on February 18, 2022. CP 59-65. The Trial Court denied the Plaintiff's Motion for Reconsideration. CP 83-85. The Plaintiff filed an Appeal to the Washington State Court of Appeals, Division III. CP 86-91.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. Division III's decision correctly applies relevant case law and RCW 4.28.080(9).

Division III's decision in *Spencer v. Franklin Hills Health, LLC* is a proper application of Supreme Court precedent, including *Weber v. Associated Surgeons, PS*, 166 Wn.2d 161, 206 P.3d 671 (2009) and the relevant statute, RCW 4.28.080(9), because the Court required strict compliance with the statute and required service on a managing agent and/or office assistant to the registered agent. Division III spent considerable time illustrating how modern business operates and that antiquated methods of employee titles and functions are not proper in today's modern business environment. The *Weber* case is a proper interpretation on service of process and the Court correctly recognized the changing nature of business and corporations. The Court of Appeals decision is correct and properly applies the most recent and relevant case law from the Supreme Court.

Sheri Flavel, either as a managing agent due to her position as human resources and accounts receivable manager, or as an office assistant working for the registered agent, was properly served. Application of *Johanson v. United Truck Lines*, 62 Wn.2d 437, 383 P.2d 512 (1963), a case that is approximately 60 years old, does not change the analysis or conclusion of the Court of Appeals. Division III, at length, analyses the nature of business and the changing organization of agents and

managers in a business and correctly concluded that the Defendant was properly served when Sheri Flavel, as a managing agent or office assistant was served on August 10, 2021 with the summons and complaint.

As Division II ruled in an unpublished portion of *Dalen v. St. John Med. Ctr.*, 8 Wn.App. 2d. 49, 436 P.3d 877 (2019), *cited here pursuant to GR 14.1(a)*, “express authority to accept service is not necessary.” *Id, citing to Reiner v. Pittsburg Des Moines Corp.*, 101 Wn.2d 475, 477, 680 P.2d 55 (1984) and *Crose v. Volkswagenwerk Aktiengesellschaft*, 88 Wn.2d 50, 58, 558 P.2d 764 (1977). Express authority to accept service is not required. To require that would yield absurd results and be contrary to the statute which allows for service on registered agents or their office assistants, or managing agents, the latter two of which Flavel was, because an employer or business could simply deny authority accept service to its employees/agents and if the registered agent were unavailable, service would be impossible, resulting in the unnecessary delay or denial of Justice in our legal system.

A managing agent of a corporation “must have some substantial part in the management of its affairs generally or in a particular district or locality.” *Johanson v. United Truck Lines*, 62 Wn.2d 437,440, 383 P.2d 512 (1963). The record contains sufficient evidence that Sheri Flavel was an assistant to the registered agent or was a managing agent. Flavel’s declaration states that she is the human resources and accounts receivable manager for Franklin Hills LLC. CP 4. She is in charge of

personnel and accounts receivable, which is a substantial part of management. CP 4. Sheri Flavel works at the same location as the executive director/registered agent for the Defendant corporation, Jeremy Tolman. CP 4, 8, and 39. Flavel serves under executive director/ registered agent Tolman. CP 4. During the February 22, 2022 hearing the defendant argued that Flavel works for registered agent. RP 14, ¶¶10-15. The record is complete with evidence that Flavel is a managing agent and /or an office assistant to the registered agent, and therefore service on her was proper under RCW 4.28.080(9).

Service on a designated person was accomplished, when the summons, complaint, interrogatories, and case assignment notice were served on Sheri Flavel, a managing agent and/or assistant to the registered. The requirements of RCW 4.28.080(9) and case law have been met. The Court of Appeals did not expand any definition of a managing agent. Division III's application of the rules established in *Johanson* and *Weber*, and RCW 4.28.080(9) are consistent with established case law, and it is not in need of review by the Supreme Court.

B. Petitioner/Defendant Franklin Hills LLC, fails to establish an issue of substantial public interest.

The petition does not involve an issue of substantial public interest. RAP 13.4(B)(4). The opinion of Division III in this case is a proper application of the current law, is limited in scope and results in a case remanded back to the trial

court for further determination. The Defendant can continue to defend its position and interests, just as the Plaintiff must properly prosecute her case. The Defendant has not identified a “sweeping implication of the Court of appeals decision” requiring the Supreme Court grant review. *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005). This case is not in need of determination by the Supreme Court.

The Court of Appeals decision does not render RCW 4.28.080(9) meaningless. The hyperbole espoused by defendant that any employee could be served is simply not accurate—only people in the statute could be served, not any employee. The decision of Division III does not eliminate, ignore, or replace the requirements for service pursuant to RCW 4.28.080(9). Division III did not make any employee capable of accepting service for corporation. As the Supreme Court ruled in *Weber*, service that occurred in a situation similar to the facts in this case was in compliance with RCW 4.28.080(9). *Weber v. Associated Surgeons, P.S.*, 166 Wn.2d 161, 206 P.3d 671 (2009). The Court of Appeals in this case is correctly applying established law. RCW 4.28.080(9) requires service on certain people and the Court of Appeals decisions in this case maintains that. There is no issue of substantial public interest. RAP 13.4(B)(4).

C. CONCLUSION

The Court of Appeals properly applied the law and made the correct decision in this case. The Petitioner, Franklin Hills Health, LLC, has not demonstrated a conflict between the decision of Division III and this Court; they simply do not like the outcome. Neither has the Petitioner established that this case involves a substantial public interest. There is no need for Supreme Court review. This Court should deny review.

I certify that this brief contains 1,683 words, excluding those portions exempt under RAP 18.17.

DATED this 28th day of July, 2023

Respectfully Submitted,

MEYER THORP, PLLC
Attorneys and Counselors at Law

By: _____


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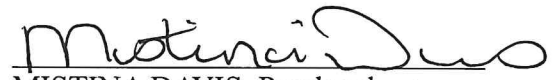
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Dated this 28 day of July, at Spokane, WA.


MISTINA DAVIS, Paralegal

MEYER THORP ATTORNEYS AT LAW

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