No. 90244-5

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 43138-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ALEX VON KLEIST,
Respondent,

v.

GREGORY COCHRANE,
Petitioner,

GRAOCH 161-1 GP, INC., a Washington corporation, GRAOCH 161 GP, L.P., a Washington limited partnership, GRAOCH 160-1 GP, INC., a Washington corporation, GRAOCH 160 GP, L.P., a Washington limited partnership, THE JACKALOPE FUND LIMITED PARTNERSHIP, a British Columbian limited partnership, GARY GRAY and JANE DOE GRAY, and the marital community thereof, LES PIOCH, a Canadian citizen, and PAUL J. LUKSHA, a Canadian citizen,

Defendants.

PETITION FOR REVIEW BY GREGORY COCHRANE

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I. IDENTITY OF PETITIONER

The Petitioner is Gregory Cochrane ("Cochrane"), a Canadian citizen who was one of the appellants in the Court of Appeals and one of the defendants in the underlying Superior Court action.

II. CITATION TO COURT OF APPEALS OPINION

Cochrane seeks review of parts of the Court of Appeals' decision in *Alex Von Kleist v. Paul J. Luksha and Gregory Cochrane*, No. 43138-6-II, filed February 4, 2014 (the "Opinion").[1] Review is sought of those parts of the Opinion which refuse to vacate a default judgment entered against Cochrane on May 10, 2010. The Court of Appeals denied Cochrane's timely Motion for Reconsideration or, in the Alternative, for Publication on April 2, 2014.[2]

III. ISSUES PRESENTED FOR REVIEW

1. Under RCW 4.28.185(4), "[p]ersonal service outside the state [is] valid only when an affidavit is made and filed to the effect that service cannot be made within the state."[3] Does a plaintiff substantially comply with this statute by filing an affidavit of service alleging only that abode service was made at a foreign defendant's out-of-state residence at a time the defendant was present, without any other showing or assertion that service could not be made in Washington?

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[1] The Court of Appeals' unpublished Opinion is attached hereto as Appendix A.
[2] The Court of Appeals Order Requesting an Answer to Motion for Reconsideration, dated March 3, 2014 and its Order Denying Motion for Reconsideration, or in the Alternative, for Publication, dated April 2, 2014, are both attached hereto as Appendix B.
[3] A copy of RCW 4.28.185 is attached hereto as Appendix C.

2. If an affidavit pursuant to RCW 4.28.185(4) is filed on the same day as, but not demonstrably before, a default judgment, does it satisfy the requirement that the affidavit be filed prior to the entry of judgment?

3. Does a trial court abuse its discretion if, without specific authorization by statute or court rule, it enters a second default judgment modifying an earlier final default judgment?

IV. STATEMENT OF THE CASE

This case arises out of an investment Respondent Alex Von Kleist ("Von Kleist") made in a Washington limited partnership. CP 1221, ¶ 2.1. Apparently believing that he was cheated out of funds due from the partnership, Von Kleist prepared a complaint against various entities and individuals, alleging long-arm jurisdiction over the non-resident individuals. CP 1221, ¶ 1.7. On December 11, 2009 Von Kleist attempted service by mail on Cochrane, a Canadian citizen and resident of Ontario, Canada. CP 1264.[4] Less than sixty days later, on January 27, 2010, Von Kleist procured a default judgment against Cochrane and each of the other defendants. CP 1273-76. This default judgment was a final judgment, resolving all claims against all parties. CP 1273-76.

On May 10, 2010, without having moved to modify or set aside the

[4] Von Kleist also attempted service by mail on Paul Luksha ("Luksha") and Les Pioch ("Pioch"). CP 1261-67. See also CP 1680-1687. A comparison of the Canada Post tracking records submitted for Pioch (CP 1686-87) with those for Cochrane (CP 1684) shows that a signed receipt was required from Pioch (and received from a "Jennifer"), but was neither required nor received from Cochrane. *Compare* CR 4(i)(D) (authorizing, under certain circumstances, service in a foreign country "by any form of mail, requiring a signed receipt").

initial default judgment, Von Kleist applied for and received a second default judgment, titled "Default Judgment as to International Defendants." CP 1277-79. According to Von Kleist, he requested the second default judgment because "[a]lthough default judgment was entered as to all defendants in this action on January 27, 2010, the international defendants in question were not personally served" until afterwards. CP 1282-83. Like the first default judgment, the Default Judgment as to International Defendants purports to bind Cochrane. CP 1278.

On the same day as he moved for and obtained the second default judgment, Von Kleist also filed two other documents potentially relevant to the validity of the judgment against Cochrane. The first of these documents (in the order in which they were initially entered on the trial court docket and numbered in the clerks papers) is the Declaration of Stephen Pidgeon in Support of Motion for Judgment on Default as to International Defendants ("Pidgeon Declaration"). CP 1286-93.[5] The Pidgeon Declaration makes no reference to Cochrane's residence, nor any representation "to the effect that service cannot be made [on Cochrane]

[5] According to RAP 9.7(a), "[t]he clerk shall . . . number each page of the clerk's papers *in chronological order of filing*" (emphasis added). Also, a copy of the docket for the trial court case, printed from Pierce County Linx (https://linxonline.co.pierce.wa.us/linxweb/Case/CivilCase.cfm?cause_num=10-2-05794-9) on February 18, 2014 was attached to Cochrane's Motion for Reconsideration as Appendix A. This copy of the docket shows the relevant affidavits filed after the second default judgment. As of May 1, 2014, the online docket reflects a different ordering of the documents filed on May 10, 2010. How and why this change occurred is unclear. In any event, the order in which documents were *initially* entered on the docket is reflected in the numbering of the clerks papers.

within the state."[6] The only relevant statement it contains is that "the defendants GREGORY COCHRANE and LES PIOCH are both Canadian citizens who have never entered the armed forces of the United States." CP 1289 at ¶ 10.

The second document is an Affidavit of Service on Cochrane. CP 1297-1299. This Affidavit of Service includes a title page, which states that "[a]ttached is the Affidavit of Service as to Defendant Gregory Cochrane, a Canadian citizen resident in Toronto, Ontario." CP 1297.[7] The actual affidavit of service, sworn to by George Mallia, includes the following statement:

> On February 18, 2010, at 6:53 p.m., I served Gregory Cochrane with the Summons and Verified Complaint, by leaving a copy with Linda Cochrane, his wife, an adult resident of the same household where Gregory Cochrane is residing at 22 Queen Marys Drive, Toronto, Ontario, M8X 1S2.[8]

The affidavit of service also reports Linda Cochrane's alleged assertion that her husband "Gregory Cochrane was in the house [but] . . . was not available to attend at the front door." CP 1298, ¶ 3. Apart from establishing that Cochrane has a residence in Ontario and alleging that he was there on the date of service, the Affidavit of Service makes no representations about Cochrane's amenability to service in Washington.[9]

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[6] RCW 4.28.185(4).

[7] The title page, evidently prepared by Von Kleist's counsel, is not signed by him, nor is the Affidavit of Service on Cochrane incorporated by reference into, or even mentioned by, the Pidgeon Declaration. CP 1286-89.

[8] CP 1298, ¶ 2.

[9] In addition to these two documents, Von Kleist also filed a declaration of his own. CP 1300-1411. This document makes no reference to either the residence or citizenship of

Approximately seven months after the second default judgment was entered, the law firm of Lane Powell PC filed a notice of limited appearance on behalf of all of the defendants, including Cochrane. CP 1412-14. The appearance was restricted to "the purpose of filing a motion to vacate the default against the defendants." CP 1412. On January 5, 2011, before any motion to vacate was in fact filed, but almost eight months after entry of the second default judgment, Von Kleist submitted the Affidavit of Stephen Pidgeon as to Service on Out of State Defendants ("Pidgeon Affidavit"). CP 1415-25. The distinguishing feature of the Pidgeon Affidavit is that—unlike any of the previous affidavits Von Kleist filed in this matter—it contains language stating that "at no time could service be made upon Gregory Cochrane in the State of Washington." CP 1416.

The defendants, including Cochrane, filed their Motion to Vacate Default Judgments on January 11, 2011. CP 1426. In his various responses and declarations opposing defendants' motion in the trial court, Von Kleist never claimed that his filings on or before May 10, 2010 substantially complied with RCW 4.28.185(4). CP 1503-06; 1508-1643; 1644-76; 1762-91; 1792-1874; 1913-18. Von Kleist's primary argument was that he did not need to comply with the long arm statute, because he had allegedly obtained Cochrane's consent to service by mail. CP 1467 at lines 9-10; CP 1469 at lines 24-25; CP 1651 at line 12. As a back-up

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Cochrane, nor does it make any averment that could be construed "to the effect that service cannot be made [on Cochrane] within the state." RCW 4.28.185(4).

argument, Von Kleist initially maintained that "[t]he non-residence affidavit [which] was ***filed with this Court on January 5, 2011***" constituted substantial compliance with RCW 4.28.185(4). CP 1669 (emphasis added). However, von Kleist promptly abandoned this argument, as indicated by the fact that his Response to Defendants' Re-Filed Motion to Set Aside Default Judgment makes *no* argument for substantial compliance with the long-arm statute, let alone an argument that his filings made on or before May 10, 2010 substantially complied with RCW 4.28.185(4). CP 1762-91.

On April 6, 2012 the trial court denied the defendants' motion to vacate without written explanation. CP 2084-86. However, in his oral decision, the trial judge indicated that he was basing his ruling on a finding that Cochrane had consented to service by mail.[10]

In their opening brief on appeal, Cochrane and Luksha expressly noted that Pidgeon's Affidavit of January 5, 2011 came too late to satisfy RCW 4.28.185(4).[11] In his Respondent's Brief, Von Kleist rested on his claim that Cochrane and Luksha had consented to service by mail, and made no effort to argue that he had substantially complied with the long-arm statute.[12]

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[10] Specifically, the trial judge stated that he "believe[d] the initial forum selection clause [was] dispositive" (RP 4/6/2012 at p. 7, lines 1-2).

[11] *See* Brief of Appellants Cochrane and Luksha, at pp. 24-25.

[12] *See* Respondent's Brief, at p. 19 (noting that "the strict service of process requirements of the long arm statute do not apply"). *See also id.* at p. 22 (asserting that "personal jurisdiction is not being sought via . . . the long arm statute"). *Cf.* Complaint, at ¶ 1.7. CP 1221.

The Court of Appeals' Opinion found that Cochrane had never consented to service by mail.[13] Because invalid service "initially prevented the superior court from having personal jurisdiction," the Court of Appeals vacated the first default judgment.[14] However, the Court of Appeals also found that Von Kleist substantially complied with the long arm statute, and in particular with RCW 4.28.185(4), prior to the entry of the second default judgment against Cochrane. Although neither the trial court nor any of the parties had previously raised this possibility, the Court of Appeals found that documents Von Kleist submitted on the date of entry of the second default judgment—and not the Affidavit of Stephen Pidgeon as to Service on Out of State Defendants, dated almost eight months later—were controlling.[15] It correctly noted that "Von Kleist's affidavit of service on Cochrane in Canada, and Pidgeon's later declaration in support of Von Kleist's motion for default judgment against international defendants, established that Cochrane is a Canadian citizen residing in Toronto, Ontario."[16] From this, it concluded that "Von Kleist's affidavit of service as to Cochrane substantially complied with the long arm statute's requirement that the affidavit of service include a statement 'to the effect that service cannot be made within the state.'"[17] The Court of Appeals also held that the trial court had not abused its discretion by

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[13] Opinion at p. 14. The Opinion also fund that Luksha was never properly served, and released him from both default judgments. Opinion at p. 2.
[14] *Id.* at p. 2.
[15] *Id.* at pp. 17-18.
[16] *Id.* at p. 17.
[17] *Id.*

entering a "second default judgment without first vacating a previously entered default judgment."[18]

V. GROUNDS FOR REVIEW

1. The Opinion conflicts with prior decisions of the Court of Appeals and Supreme Court defining substantial compliance with the long-arm statute, RCW 4.28.185(4).

    a. The affidavits Von Kleist filed on May 10, 2010 do not support the logical conclusion that Cochrane could not be served in Washington.

The Opinion holds that an affidavit alleging merely that service was made on a foreign defendant at his out-of-state residence when he was present therein substantially complies with RCW 4.28.185(4).[19] This holding directly conflicts with *Sharebuilder Securities, Corp. v. Hoang*, 137 Wn. App. 330, 153 P.3d 222 (2007), and effectively reads the statute's affidavit requirement out of the law. Accordingly, review by this Court is proper under RAP 13.4(b)(2).

RCW 4.28.185(4) states that "[p]ersonal service outside the state shall be valid only when an affidavit is made and filed to the effect that service *cannot be made* within the state."[20] Substantial compliance with RCW 4.28.185(4) is sufficient.[21] However, substantial compliance with the statute "means that, viewing all affidavits filed prior to judgment, *the*

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[18] *Id.* at pp. 20-21.
[19] *Id.* at p. 17.
[20] RCW 4.28.185(4) (emphasis added).
[21] *Barr v. Interbay Citizens Bank of Tampa, Fla.*, 96 Wn. 2d 692, 696, 649 P.2d 827 (1982).

logical conclusion must be that service could not be had within the state."[22]

In *Sharebuilder,* the Court of Appeals vacated a default judgment, holding that the trial court lacked personal jurisdiction over the defendant because the plaintiff had failed to comply with RCW 4.28.185(4).[23] The plaintiff claimed substantial compliance with the statute, noting that it had filed an affidavit with the trial court stating as follows:

> Attached hereto as Exhibit B is the Proof of Service showing service on defendants . . . in California on April 7, 2004 by personal service and delivery of copies of the Summons and Complaint to their residence.[24]

As the Court of Appeals noted, "[n]o other affidavit, except the process server's standard affidavit of service, appears in the prejudgment record."[25]

Sharebuilder rejected plaintiff's substantial compliance argument, holding as follows:

> The above language does not substantially comply with RCW 4.28.185(4). The mere statement that [defendant] was served at her California residence does not lead to the logical conclusion that she could not be served within the state. She might also have a residence in Washington, or frequent Washington for business purposes.[26]

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[22] *Sharebuilder*, 137 Wn. App.at 334-35 (emphasis added). *See also Barr*, 96 Wn. 2d at 696; *Ralph's Concrete Pumping Inc. v. Concord Concrete Pumps, Inc.,*154 Wn. App. 581, 590-91, 225 P.3d 1035 (2010), *review granted by Ralph's Concrete Pumping, Inc. v. Concord Concrete Pumps, Inc.*, 169 Wn. 2d 1029, 241 P.3d 786 (2010); *and* 27 Wash. Prac., Creditors' Remedies - Debtors' Relief § 5.4 (2d ed.) (noting that in *Barr* "the court upheld an affidavit that stated bases for the conclusion without stating the conclusion itself *because the conclusion was obvious from circumstances stated*") (emphasis added).
[23] *Sharebuilder*, 137 Wn. App. at 335.
[24] *Id.*
[25] *Id.*
[26] *Id.* (emphasis added).

The contradiction between *Sharebuilder* and the Opinion is revealed by simply placing Cochrane's name, and substituting "Ontario" for "California," in the passage quoted immediately above.[27] The Opinion finds substantial compliance with RCW 4.28.185(4) based on affidavits with the following content:

- Cochrane is a citizen of Canada (CP 1289 at ¶ 10).
- Cochrane was served by abode service at his residence in Ontario at a time when he was present (CP 1298).

As *Sharebuilder* points out, this information—the only relevant information on file by the date of entry of the second default judgment against Cochrane—simply does not support "the logical conclusion . . . that service *could not be had* within the state."[28] It is common knowledge that there are many Canadian citizens who have a primary residence in some Canadian province, but who also have a residence in Washington or frequent Washington for business or recreational purposes, and hence are potentially amenable to service here. The conclusion that Cochrane could

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[27] To wit: "The mere statement that [Cochrane] was served at [his Ontario] residence does not lead to the logical conclusion that [he] could not be served within the state. [He] might also have a residence in Washington, or frequent Washington for business purposes." *Sharebuilder*, 137 Wn. App. at 335.

[28] *Id.* (emphasis added). Neither the Affidavit of Stephen Pidgeon as to Service on Out of State Defendants, filed January 5, 2011, nor the Declaration of Gregory Cochrane, filed January 11, 2011, is relevant to the issue of whether the required affidavit was filed before the judgment. *See, e.g. Sharebuilder,* 137 Wn. App. at 335 (holding that "[defendant's] affidavit that she has never been to Washington cannot create substantial compliance, because it was not filed before entry of judgment"). *See also Barr,* 96 Wn.2d at 696 (noting that "[a]s they were filed before judgment, the affidavits were timely"). The issue of whether the Pidgeon Declaration (CP 1286) and the Affidavit of Service (CP 1297) were themselves filed "before" or "prior to" entry of the second default judgment is discussed separately below.

not be served in Washington is simply not "obvious from the circumstances stated" in the documents on which the Opinion relies.[29]

Neither the fact that Cochrane is a Canadian citizen nor the fact that he was allegedly present in his residence at the time he was served distinguishes this case from *Sharebuilder*. For individuals—as opposed possibly to corporations—citizenship status adds nothing to residence status as a determinant of the possibility of service within this state.[30] Even if Cochrane were a citizen of North Korea, this would in no way support a logically necessary inference that he could not be served in Washington. Citizenship status concerns a formal legal relationship between an individual and a country, not the physical location of the individual in the world.[31]

Similarly, Cochrane's alleged presence in his Ontario home at the time he was served there provides no support for a "logical conclusion . . . that service could not be had within the state."[32] It is of course trivially true that a person cannot be in more than one place at a time.[33] However,

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[29] 27 Wash. Prac., Creditors' Remedies - Debtors' Relief § 5.4 (2d ed.) (analyzing *Barr*, 96 Wn.2d 692 (1982)).

[30] Note that in *Sharebuilder*, the defendant was plainly alleged to be a California resident. *Sharebuilder*, 137 Wn. App. at 333, 335.

[31] *See, e.g., Black's Law Dictionary* 244 (6th ed. 1990) (entries for both "citizen" and "citizenship" make no reference to an adult's location within a country as being relevant).

[32] *Sharebuilder*, 137 Wn. App. at 334-35. It is impossible to determine from *Sharebuilder* whether the defendant was present in her California residence when she was served. The *Sharebuilder* court implicitly—and properly—treated this consideration as irrelevant.

[33] *Compare* Von Kleist's Response to Cochrane's Motion for Reconsideration, or for Publication, at p. 7 (arguing that since "a person cannot be in the more than one place at one time, it can be deductively reasoned that if Cochrane was personally served in

as *Sharebuilder* notes, there is nothing that prohibits a person from simultaneously having both a foreign residence and a Washington residence.[34] Since abode service does not require personal delivery to the defendant, but merely delivery to "some person of suitable age and discretion then resident [in the defendant's usual abode]," as a matter of logic such service can be had in more than one place at the same time.[35] Hence, the fact that service was had at an out-of-state place when the defendant was present does not support a logical conclusion that the defendant could not have been served at the same precise time in Washington.

Moreover, to read RCW 4.28.185(4) as focusing on whether service can be made in Washington at some specific instant in time would generate absurd results. If all that mattered was the defendant's location at the specific moment of service, then RCW 4.28.185(4) would turn into a measure that rubber-stamped out-of-state personal service whenever it occurred, simply *because* it occurred out-of-state. The only affidavit required to legitimate such service would be the affidavit showing out-of-state service itself. *No* Washington case—apart from the Opinion—either explicitly or implicitly adopts this view.[36] The only reasonable

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Toronto, Ontario, he necessarily could not be subject to personal service in the state of Washington").

[34] *Sharebuilder*, 137 Wn. App. at 135. *See also Sheldon v. Fettig*, 129 Wn. 2d 601, 611, 919 P.2d 1209, 1213 (1996) (holding that "under certain circumstances a defendant can maintain more than one house of usual abode").

[35] Von Kleist alleges abode service on Cochrane, not direct personal service. CP 1298.

[36] Many Washington cases have at least implicitly interpreted RCW 4.28.185(4) as requiring *more* than the standard proof of service to be on file prior to jurisdiction

interpretation of the statute is that it is concerned with whether service could be affected in Washington during some period of time. The relevant period may vary from case to case, but in no event can a mere showing that a defendant was out-of-state at the precise moment of service suffice to show that "service cannot be made within the state."[37]

Both common sense and the law as set forth in *Sharebuilder* establish that the affidavits in the record prior to the second default judgment against Cochrane fail to support "the logical conclusion . . . that service could not be had within the state." The Opinion directly conflicts with *Sharebuilder,* and at least implicitly conflicts with all of the cases treating a mere affidavit of out-of-state service as insufficient to constitute substantial compliance with RCW 4.28.185(4).[38] Accordingly, this Court

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attaching under the long arm statute. This may in part be because if RCW 4.28.185(4) could be satisfied by a standard affidavit of personal service on an out-of-state defendant, the statute would be largely redundant of CR 55(b)(4), which states that "default judgment shall not be rendered unless proof of service is on file with the court." *See, e.g., Sharebuilder*, 137 Wn. App. at 335 (holding that "the process server's standard affidavit of service" was not sufficient to satisfy RCW 4.28.185(4)); *Dubois v. Kapuni*, 71 Wn. App. 621, 623, 860 P.2d 431 (1993) (noting that "counsel for Dubois failed to file a required affidavit indicating that the Kapunis were not amenable to process in this State" despite fact that at least two different affidavits of service were on file); *Hatch v. Princess Louise Corp.,* 13 Wn. App. 378, 380, 534 P.2d 1036 (1975) (holding that "there had not been substantial compliance with the statute," and "[i]ndeed, there had been no compliance at all insofar as the affidavit required by subsection (4) is concerned," even though proof of service on the defendant's corporate secretary-treasurer in California was presumably on file as required by CR 55(b)(4)); *RCL Nw., Inc. v. Colorado Res., Inc.*, 72 Wn. App. 265, 267, 864 P.2d 12 (1993) (noting that service of process was effected in Alaska on June 10, 1989, at least suggesting that an affidavit of service to that effect was in the record, as required by CR 55(b)(4), prior to the filing of the RCW 4.28.185(4) affidavit); and *Schell v. Tri-State Irrigation*, 22 Wash. App. 788, 790, 591 P.2d 1222, 1223 (1979) (holding that plaintiff had not complied with RCW 4.28.185(4), even though there was no question of compliance with CR 55(b)(4)).

[37] RCW 4.28.185(4).

[38] See cases cited in Note 36, *supra.*

should grant review under RAP 13.4(b), reverse the Court of Appeals, and vacate the second default judgment against Cochrane for lack of personal jurisdiction.[39]

b. Von Kleist did not carry his burden of proving that he filed the relevant affidavits prior to judgment.

The Opinion also holds that the affidavits Von Kleist filed on May 10, 2010 were timely for the purpose of compliance with RCW 4.28.185(4).[40] But Washington law is clear that the required affidavit(s) must be filed *before* judgment.[41] By finding that "same day" rather than "prior" filing was sufficient, the Opinion conflicts with each of the Supreme Court and Court of Appeals decisions cited in footnote 41 above, and as a consequence, review is proper under both RAP 13.4(b)(1) and RAP 13.4(b)(2).[42]

The record shows that the affidavits were filed *on the same day as* the second default judgment, but does not show that they were filed *before* the default judgment.[43] On this record, von Kleist failed to carry his

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[39] *See, e.g., Ralph's Concrete Pumping*, 154 Wn. App. at 591 (noting that "[i]f there is no compliance with the affidavit requirement of RCW 4.28.185(4), personal jurisdiction does not attach to the defendant and the judgment is void").

[40] *See* Opinion at pp. 17-18.

[41] *See e.g., Barr*, 96 Wn. 2d at 696, 649 P.2d 827 (1982); *Barer v. Goldberg,* 20 Wn. App. 472, 482, 582 P.2d 868 (1978) (stating that "no particular time of filing is required as long as it *precedes* the judgment") (emphasis added); *Schell,* 22 Wn. App. at 792 (same); *and Sharebuilder*, 137 Wn. App. at 334 (stating that "[t]he affidavits must be filed prior to judgment").

[42] *See* Opinion at p. 17, note 26 (asserting that "neither *Sharebuilder* nor any other case of which we are aware specifically addresses and holds that such affidavit is insufficient if filed on the same day as judgment is entered, as was the case here, regardless of whether it is filed immediately before *or after* judgment") (emphasis added).

[43] In fact, the record strongly suggests that the affidavits were filed *after* the second default judgment. *See* RAP 9.7(a) (establishing that clerk's papers shall be numbered "in

burden of proving timely compliance with RCW 4.28.185(4).[44] As a matter of common sense, the phrases "before judgment," "preceding the judgment," or "prior to the judgment" mean something quite different from "before *or* at the same time as the judgment," or "prior to *or* simultaneously with the judgment," let alone "on the same day as the judgment."[45] The Opinion's conclusion here that same-day filing suffices thus conflicts with the natural reading of all earlier decisions requiring the RCW 4.28.185(4) affidavit to be filed "before," "prior to," or "preceding" the judgment.[46] Particularly in light of the fact that default judgments are not favored, and that the long arm statute is to be strictly pursued, the Opinion's conclusion that affidavits filed on the same day as a default judgment are timely for the purpose of RCW 4.28.185(4) is erroneous.[47]

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chronological order of filing." The second default judgment is at CP 1277; the relevant affidavits are at CP 1286 and CP 1297, respectively. *See also* Appendix A to Cochrane's Motion for Reconsideration, or in the Alternative, to Publish, attaching a copy of the docket for the trial court case, printed from Pierce County Linx on February 18, 2014. As noted in footnote 5 above, the online docket now (as of May 1, 2014) shows a different ordering of the documents filed on May 10, 2010.

[44] *See, e.g., CTVC of Hawaii, Co., Ltd. v. Shinawatra*, 82 Wn. App. 699, 708, 919 P.2d 1243, 1248 (1996) modified, 932 P.2d 664 (1997) (noting that the party asserting jurisdiction under the long arm statute has the burden of proving such jurisdiction).

[45] Under CR 58(b) entry of judgment is keyed to the "*time* of delivery" of the judgment to the clerk for filing, not merely to the *date* of such delivery. This reinforces the point that a showing that an affidavit was filed on the same date as a judgment is not the same thing as a showing that an affidavit was filed prior to a judgment.

[46] See cases listed in footnote 41 above. *See also Hatch*, 13 Wn. App. at 380 (holding that "[a]t the time judgment was entered against the Princess Louise Corporation, there had not been substantial compliance with the statute. Indeed, there had been no compliance at all insofar as the affidavit required by subsection (4) is concerned") (emphasis added).

[47] *See, e.g., Griggs v. Averbeck Realty, Inc*, 92 Wn.2d 576, 581, 599 P.2d 1289 (1979) (noting that "[d]efault judgments are not favored"); *Hatch*, 13 Wn. App. at 379 534 P.2d 1036 (1975) (noting that the long arm statute "must be strictly pursued"); *and Haberman v. Washington Public Power Supply System*, 109 Wn.2d 107, 177, 744 P.2d 1032 (1987),

It literally allows a judgment to be taken against a non-resident defendant *before* the long arm statute has been complied with. The untimeliness of the affidavits Von Kleist filed on May 10, 2010 thus provides an independent, compelling reason for this Court to accept review, reverse the Court of Appeals, and vacate the second default judgment against Cochrane as void for lack of personal jurisdiction under CR 60(b)(5).

2. The Opinion conflicts with established precedent by holding that a trial court does not abuse its discretion if it issues a second default judgment to replace a prior final default judgment without specific authorization by statute or court rule.

The Court of Appeals also erred by failing to vacate the judgment for procedural irregularity under CR 60(b)(1). The grant of the second default judgment, without a prior motion under CR 59 or CR 60 to reconsider or vacate the initial default judgment, constituted a procedural irregularity warranting vacation of the second judgment. By holding otherwise, the Opinion conflicts with established precedent from both this Court and the Court of Appeals, thus warranting review under RAP 13.4(b)(1) and RAP 13.4(b)(2).

Under established Washington law, "[o]nce a judgment is final, a court may reopen it only when *specifically authorized* by statute or court rule."[48] It is also well established that a default judgment which resolves

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amended, 109 Wn. 2d 107, 750 P.2d 254 (1988) (holding that "[a]s statutes authorizing service on out-of-state parties are in derogation of common law personal service requirements, they must be strictly pursued").

[48] *In re Marriage of Shoemaker*, 128 Wn.2d 116, 120, 904 P.2d 1150 (1995) (emphasis added) (going on to note that "CR 60 sets forth the general conditions under which a

all claims in a lawsuit is a final judgment, like any other.[49] Together, these two general principles necessarily imply that a default judgment which resolves all claims in a lawsuit may be reopened only when specifically authorized by statute or court rule.[50]

Since the only way to avoid the conclusion that a default judgment which resolves all claims in a lawsuit may be reopened only when specifically authorized by statute or court rule is to reject one or both of the premises from which it necessarily follows, the Opinion's rejection of the conclusion places it in conflict with *In re Marriage of Shoemaker* and *Rose,* or *Peha's* and CR 54(a)(1), or all of them simultaneously.[51]

The error by the trial court and the Court of Appeals here was not harmless. As this Court has acknowledged, irregularities under CR 60(b)(1) are those "relating to want of adherence to *some prescribed rule*

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party may seek relief from judgment"). *See also Rose ex. rel. Estate of Rose v. Fritz,* 104 Wn. App. 116, 120, 15 P.3d 1062 (2001).

[49] *See, e.g., Peha's Univ. Food Shop v. Stimpson Corp.*, 177 Wash. 406, 412, 31 P.2d 1023 (1934); *and* CR 54(a)(1) (defining "judgment" as "the final determination of the rights of the parties in the action").

[50] The conclusion that a final default judgment may only be reopened when specifically authorized by statute or court rule is compelled by Washington precedent in precisely the same way that the conclusion "Socrates is mortal" is compelled by the major premise that "all men are mortal" and the minor premise that "Socrates is a man." Here, the major premise is that "a final judgment may only be reopened when specifically authorized by statute or court rule." The minor premise is that "a default judgment which resolves all claims in a lawsuit is a final judgment." The subject of the minor premise (a final default judgment) is a subset of the subject of the major premise (all final judgments). Hence what is true of the subject of the major premise *must* also be true of the subject of the minor premise.

[51] Opinion, at pp. 20-21. As for the Opinion's assertion that Cochrane failed to offer authority in support of his position, see Brief of Appellants Gregory Cochrane and Paul Luksha, at pp. 42-43.

or mode of proceeding."[52] The rule prohibiting re-opening of a final default judgment except as authorized by statute or rule is precisely a "prescribed rule or mode of proceeding." It is effectively a meta-procedural requirement that the parties and the courts follow the procedures established by the Civil Rules, and in particular, CR 55(c)(1) and CR 60(b).[53] Here, Von Kleist should have moved under CR 60(b)(5) to vacate the initial judgment as to Cochrane for lack of jurisdiction. If he had done so, he would have had to personally serve the motion on Cochrane pursuant to CR 60(e). His failure to follow CR 55(c)(1), CR 60(b), and CR 60(e), and the trial court's failure to require him to do so, mean that the second default judgment was obtained by procedurally irregular means. The trial court abused its discretion when it refused to vacate the second default judgment under CR 60(b)(1), and the Court of Appeals erred when it upheld the trial court's denial of Cochrane's motion to vacate.

A proceeding to vacate or set aside a default judgment is equitable in its character, and the relief sought or afforded is to be administered in accordance with equitable principles and terms.[54] A trial court considering a motion to vacate a default judgment under CR 60(b) "should exercise its authority liberally, as well as equitably, to the end that substantial rights be

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[52] *In the Matter of the Guardianship of Adamec*, 100 Wn.2d 166, 174, 667 P.2d 1085 (1983) (emphasis added).
[53] CR 55(c)(1) states in pertinent part that "if a judgment by default has been entered, [the court] may . . . set it aside in accordance with rule 60(b)."
[54] *White v. Holm*, 73 Wn.2d 348, 351, 438 P.2d 581 (1968).

preserved and justice between the parties be fairly and judiciously done."[55] This general equitable concern extends as well to appellate review: "where the determination of the trial court results in the denial of a trial on the merits an abuse of discretion may be more readily found than in those instances where the default judgment is set aside and a trial on the merits ensues."[56]

Here, the trial court's denial of Cochrane's motion to vacate the second default judgment has resulted in the denial of a trial on the merits. If this Court were to reverse the Court of Appeals and vacate the second default judgment against Cochrane, the result would be that Von Kleist could, if he so chooses, continue to pursue his claims against Cochrane in the action already commenced.[57] Von Kleist's claims against Cochrane are not time-barred.[58] These circumstances also weigh in favor of this Court granting review and vacating the second default judgment against Cochrane.

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[55] *Id.*

[56] *Id.* at 351-52.

[57] Cochrane of course believes he has strong defenses on the merits to Von Kleist's claims, *see* Appellants' Opening Brief, at pp. 44-46, and would welcome the chance to test those defenses in a trial on the merits.

[58] Since successful service of process on one defendant tolls the statute of limitations as to other defendants, the fact that Gray and the Graoch entities were effectively served (or have at least waived any objection to service), the statute of limitations has not run on Von Kleist's claims against Cochrane. *See* RCW 4.16.170 *and Sidis v. Brodie/Dohrmann, Inc.*, 117 Wn.2d 325, 327, 815 P.2d 781 (1991) (holding that "service of process on one defendant tolls the statute of limitation as to unserved defendants").

VI. CONCLUSION

Under RCW 4.28.185(4), "[p]ersonal service outside the state [is] valid only when an affidavit is made and filed to the effect that service cannot be made within the state." The Opinion for which review is sought found substantial compliance with RCW 4.28.185(4) based on an ordinary affidavit of service stating only that Cochrane, a Canadian citizen, was present at his Ontario residence at the time he was served there. As *Sharebuilder* directly held, this information is simply not enough to support a logical conclusion that service could not be had in Washington. In addition, the Opinion conflicts with precedent by holding that the affidavit required by RCW 4.28.185(4) need *not* be filed prior to the judgment. Finally, the Opinion ignores and contradicts Supreme Court decisions establishing that a final default judgment may only be modified as expressly authorized by statute or court rule. The net result is a substantial miscarriage of justice, upholding a default judgment which clearly should have been vacated under established Washington law. For all of these reasons, this Court should grant review under RAP 13.4(b)(1) and RAP 13.4(b)(2), reverse the Court of Appeals, and vacate the default judgment entered against Cochrane on May 10, 2010.

Respectfully submitted this 2nd day of May, 2014.

David Corbett PLLC

By: _____
David J. Corbett, WSBA# 30895
Attorney for Petitioner Cochrane

CERTIFICATE OF SERVICE

I certify under penalty of perjury of the laws of the State of Washington that on May 2, 2014 I sent a PDF copy of the attached Petition for Review, with Appendices, to Stephen Pidgeon, counsel for Respondent Alex Von Kleist, at the following email addresses:

stephen.pidgeon@comcast.net.
attorney@stephenpidgeon.com

Mr. Pidgeon has previously agreed to accept service of documents in this appeal by email.

Dated this 2nd day of May, 2014 at Tacoma, Washington

By: _____
David J. Corbett

No. _____

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 43138-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ALEX VON KLEIST,
Respondent,

v.

GREGORY COCHRANE,
Petitioner,

GRAOCH 161-1 GP, INC., a Washington corporation, GRAOCH 161 GP, L.P., a Washington limited partnership, GRAOCH 160-1 GP, INC., a Washington corporation, GRAOCH 160 GP, L.P., a Washington limited partnership, THE JACKALOPE FUND LIMITED PARTNERSHIP, a British Columbian limited partnership, GARY GRAY and JANE DOE GRAY, and the marital community thereof, LES PIOCH, a Canadian citizen, and PAUL J. LUKSHA, a Canadian citizen,

Defendants.

APPENDICES A-C to the
PETITION FOR REVIEW BY GREGORY COCHRANE

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APPENDIX A

(Unpublished Opinion)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ALEX VON KLEIST, Respondent, v. PAUL J. LUKSHA, a Canadian citizen, and GREGORY COCHRANE, a Canadian citizen, Appellants, GRAOCH 161-1 GP, INC., a Washington corporation, and GRAOCH 161 GP, L. P., a Washington limited partnership, GRAOCH 160-1 GP, INC., a Washington corporation, and GRAOCH 160 CP, L. P., a Washington limited partnership, THE JACKALOPE FUND LIMITED PARTNERSHIP, a British Columbian limited partnership, GARY GRAY and JANE DOE GRAY, and the marital community thereof, LES PIOCH, a Canadian citizen, Defendants.	No. 43138-6-II (Consolidated with Nos. 43718-0-II, 43885-2-II, 43318-4-II, 43335-4-II, and 43425-3-II) UNPUBLISHED OPINION

HUNT, J. — Gregory Cochrane and Paul J. Luksha appeal the superior court's denial of their motions to vacate two default judgments against them[1] in Alex Von Kleist's action for

[1] The second default judgment did not list Luksha as a judgment debtor; but his name appears on the third page of the judgment summary along with the other Defendants' names. We treat this as a scrivener's error because Von Kleist's second motion for default judgment named other Defendants, including Cochrane, but it did not name Luksha.

securities fraud,[2] intentional misrepresentation, negligent misrepresentation, accounting,[3] breach of contract, violation of Washington's Consumer Protection Act,[4] and appointment of a receiver[5] for their partnership. Cochrane and Luksha argue that the superior court lacked personal jurisdiction over them and that there were other irregularities in procuring the judgments. Holding that improper service initially prevented the superior court from having personal jurisdiction over Cochrane and Luksha, we reverse its denial of their motion to vacate the first default judgment and remand to strike that judgment. Holding that proper service later bestowed personal jurisdiction over Cochrane, we affirm the superior court's denial of his motion to vacate the second default judgment; but because Luksha was not similarly later served, we remand for the superior court to strike his name from the second default judgment summary.

FACTS

Alex Von Kleist is a Canadian citizen who resides in British Columbia. Gregory Cochrane and Paul J. Luksha, also Canadian citizens, are general partners in Graoch Associates Limited Partnership (GALP), a Canadian limited partnership, which controls hundreds of corporate entities in Canada and the United States under GALP President Gary M. Gray's management.

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[2] RCW 21.20.010.

[3] RCW 25.10.210.

[4] RCW 19.86.090; RCW 19.86.093.

[5] RCW 7.60.025.

I. VON KLEIST'S INVESTMENT IN WASHINGTON LIMITED PARTNERSHIP

On the advice of GALP general partner Les Pioch, Von Kleist decided to invest $1,012,000 in a GALP-controlled Washington limited partnership, "GRAOCH ASSOCIATES Limited Partnership #161" (Graoch 161). Clerk's Papers (CP) at 1301. Pioch presented Von Kleist with various documents about Graoch 161 and explained to him that (1) Graoch 161 was a Washington "Loan and Funding vehicle" for "GRAOCH ASSOCIATES #160 LP"[6] (Graoch 160)[7]; (2) Von Kleist's investments would be returned and payable back to him no later than October 15, 2008; and (3) if Graoch 161 missed a repayment date, Von Kleist would be entitled to 18 percent compounded interest per annum until Graoch 161 repaid his (Von Kleist's) investment. Based on these representations, Von Kleist felt that his investment "would be secure." CP at 1301. On November 15, 2007, Von Kleist entered into a "Subscription Agreement" with Graoch 161 to invest in that limited partnership. CP at 1302.

A. Subscription Agreement: Forum Selection and Consent to Service by Mail

This Agreement provided that (1) for $1,012,000, Von Kleist would acquire a limited partnership interest in Graoch 161; (2) Graoch 161 would make one or more loans of $6,784,000 to Graoch 160, due and payable no later than October 15, 2008 ("Loan Repayment Date"[8]); (3) within 30 days of the Loan Repayment Date, Von Kleist would receive a written option (a) to remain a limited partner of Graoch 161 for an additional 12 months or (b) to withdraw as a limited partner of Graoch 161 and to recover his total investments plus accrued distributions.

[6] CP at 1301.

[7] Graoch 160 was another GALP-controlled limited partnership in Washington.

[8] CP at 1302.

Section 16 of this Agreement contained provisions selecting Washington as a forum selection and allowing service by mail. Section 15 of this Agreement contained an assignment provision.

Section 16 of the Agreement, provided, in pertinent part,

> This Subscription Agreement and all rights hereunder shall be governed by, and interpreted in accordance with, the laws of the State of Washington. The undersigned hereby submits to the nonexclusive jurisdiction of the courts of the State of Washington and of the federal courts in the Western District of Washington with respect to any action or legal proceeding commenced by any person or entity relating to or arising out of this Subscription Agreement, the Partnership or the Partnership's business, and consents to the service of process in any such action or legal proceeding by means of registered or certified mail, return receipt requested, in care of the address set forth below on the signature page or such other address as the undersigned shall furnish in writing to the Partnership.

CP at 1320.

Von Kleist signed this Agreement as a "Subscriber"; he was the sole "undersigned" to which the Agreement referred. CP at 1321. Although there was a blank signature line for GALP President Gray, neither Gray nor anyone else signed the Agreement on behalf of the referenced "partnership"[9]; GALP general partner Pioch signed only as a "Witness." CP at 1321.

On December 12, however, a month after Von Kleist had signed the Agreement, GALP President Gray sent Von Kleist a "written acceptance"[10] acknowledging receipt of Von Kleist's bank wire transfer of $1,012,658.23 to Graoch 161 in satisfaction of the Agreement. Gray's letter also represented that Von Kleist's initial distribution check was enclosed and that the next check would be delivered in January.

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[9] CP at 1322.

[10] Br. of Appellant at 28.

B. Breach of Agreement

As the October 15, 2008 loan repayment date neared, Von Kleist had not received the promised written option to withdraw his partnership. He contacted Pioch about this "missing" option letter and explained that he wanted to withdraw as limited partner of Graoch 161 and to recover his investments and accrued distributions. Pioch repeatedly promised that Von Kleist would receive payment in March 2009, but Von Kleist never received it. On July 17, 2009, Von Kleist contacted GALP general partner Cochrane requesting corporate information about Graoch 161. Von Kleist sent a follow up email, to which Cochrane responded, promising to provide financial statements, which, again, Von Kleist never received.

On September 17, 2009 Von Kleist's attorney, Stephen Pidgeon, sent demand letters to Graoch 161's registered agent for service of process (Bruce P. Weiland), Gray, Pioch, Cochrane, and Luksha, demanding full and complete $1,248,845.53 payment to Von Kleist and complete financial statements for Graoch 161 and Graoch 160. Von Kleist received no response to these demand letters.

II. PROCEDURE

A. Superior Court Action

Von Kleist sued Graoch 160; Graoch 161; Graoch 161-1 GP, Inc.; Graoch 160-1 GP, Inc.; The Jackalope Fund Limited Partnership; Gary Gray and Jane Doe Gray; Pioch; Cochrane; and Luksha (collectively, "Defendants") for (1) accounting; (2) appointment of a receiver for Defendants under RCW 7.60.025; and (3) damages based on violations of chapter 21.20 RCW (securities fraud), intentional misrepresentation, negligent misrepresentation, breach of contract, and violation of chapter 19.86 RCW (Consumer Protection Act).

Von Kleist served Defendants with a summons and verified complaint; he served some of them personally and others by certified mail. On December 9, Von Kleist effected personal service on Bruce Weiland, attorney and registered agent for Graoch 161, Graoch 161-1 GP, Inc., Graoch 160, and Graoch 160 GP, Inc., with a summons and verified complaint. On December 11, Von Kleist served Pioch, The Jackalope Fund Limited Partnership ("The Jackalope Fund"), Cochrane, and Luksha by certified mail. On December 18, Von Kleist secured personal service on Gray with a summons and verified complaint.

1. First default judgment

On January 27, 2010, Von Kleist filed a motion for order of default against all Defendants for failure to appear or to indicate any intent to appear or to defend. That same day, the superior court entered an order of default against all Defendants, including Cochrane and Luksha, and a default judgment for $1,245,165.31, listing all Defendants as judgment debtors.

In March 2009, attorney David Spellman spoke with Pidgeon on behalf of the out-of-country Defendants to negotiate an order relieving them from the default judgment. The attorneys prepared a stipulation agreement and order vacating the superior court's default order and default judgment against international Defendants: The Jackalope Fund, Luksha, Pioch, and Cochrane; they also discussed the possibility of settlement. On April 22, Pidgeon sent Spellman an email about the settlement and inquired whether Spellman had an offer; but he never heard back from Spellman about the settlement. The attorneys never signed the stipulation or filed it with the court.

2. Second default judgment

Von Kleist then secured personal service on all international Defendants, except Luksha. On February 18, 2010, Von Kleist personally served the original summons and verified complaint on Cochrane and The Jackalope Fund. On March 1, 2010, Von Kleist secured personal service on Pioch. On May 10, Von Kleist filed affidavits of service as to Cochrane, The Jackalope Fund, and Pioch; he also filed a second motion for default judgment as to these defendants, but he did not include Luksha. That same day, the superior court entered a second default judgment as to international defendants Cochrane, Pioch and The Jackalope Fund. Von Kleist did not include Luksha's name in the second default judgment's list of debtors, which included Cochrane, Pioch and The Jackalope Fund. Nevertheless, the second default judgment mentioned Luksha on the third page of the default judgment, which appears to have been a scrivener's error.

3. Motion to vacate default judgments

Defendants did not directly appeal either default judgment. Instead, on January 11, 2011, they filed a motion to vacate both default judgments, arguing that (1) the default judgments were void under CR 60(b)(5) for lack of personal jurisdiction over them, and (2) there were procedural irregularities in the grant of default judgments entitling them to vacation under CR 60(b)(1).[11] On April 6, 2012, the superior court denied Defendants' CR 60 motion, ruling that there was no basis for vacating the default judgments because it had jurisdiction over the Defendants under the

[11] In their motion to vacate, Defendants also argued that (1) Von Kleist had misrepresented his personal service under CR 60(b)(4) on Gray and Weiland, and (2) procedural and jurisdictional problems warranted the vacation of the default judgment under CR 60(b)(11). They do not, however, pursue these two issues in this appeal.

Agreement's "dispositive" "initial forum selection clause." Verbatim Report of Proceedings (VRP) (Apr. 6, 2012) at 7.

B. Appeal from Denial of CR 60 Motion To Vacate Default Judgments

Defendants appealed. Cochrane and Luksha also filed a separate Notice of Appeal seeking review of the superior court's denial of their motion to vacate the default judgments entered against them. On November 20, 2012, a commissioner of our court dismissed the appeals of all Defendants except Cochrane and Luksha, who remain the only active appellants before us in this consolidated appeal.

ANALYSIS

Cochrane and Luksha argue that the superior court erred in denying their motion to vacate the default judgments under CR 60(b)(5) and CR 60(b)(1) on two alternative grounds: (1) The default judgments were void under CR 60(b)(5) because the superior court lacked personal jurisdiction over them based on lack of proper personal service (required under Washington's long arm statute)[12]; and (2) in the alternative, the default judgments against Cochrane and Luksha suffered from serious irregularities that warrant vacation under CR 60(b)(1).

We agree with Cochrane and Luksha that the superior court lacked personal jurisdiction over them and, therefore, the first default judgment was void. As for the second default judgment, however, the record shows that Von Kleist complied with the long arm statute's service requirement when he personally served Cochrane with the summons and complaint on February 18; thus, the second default judgment is not void as to Cochrane. The record also

[12] RCW 4.28.185.

shows that Von Kleist neither named nor attempted to serve Luksha with the second motion for default.

I. PERSONAL JURISDICTION

Cochrane and Luksha first argue that both default judgments were void for lack of personal jurisdiction because (1) Von Kleist had not personally served them with his summons and complaint as required by Washington's long arm statute; and (2) thus, the superior court erred in denying their motion to vacate default judgments under CR 60(b)(5). Von Kleist counters that the Agreement's forum selection (Washington) clause rendered Washington's long arm statute inapplicable; and, therefore, service by mail under CR 4(i)(1)(D) established personal jurisdiction.[13]

We hold that because Cochrane and Luksha did not consent to service by mail, (1) Washington's long arm statute governed service of process over them, (2) Von Kleist did not properly serve them in person outside the state with his first motion for default so as to confer personal jurisdiction, and (3) the first default judgment was void for lack of personal jurisdiction. We further hold that the superior court similarly lacked jurisdiction to enter the second default judgment as to Luksha. Finally we hold that the superior court did not lack jurisdiction over Cochrane to enter the second default judgment; therefore, we disagree with his assertion that the second default judgment was void as to him.

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[13] Von Kleist asserts that because CR 4(i)(1)(D) controls, instead of the long arm statute, no affidavit was necessary to show an attempt to serve Defendants in Washington. *See* RCW 4.28.185(4). *See also, contra*, RCW 4.28.185(2), which allows personal service outside the state on a defendant with minimum Washington contacts, and subsection (4), which requires the filing of an affidavit of such service stating that "service cannot be made within the state." RCW 4.28.185(4). *See also* RCW 4.28.180.

A. Standard of Review; Personal Jurisdiction over Nonresident Defendant

Generally, we review for abuse of discretion a superior court's ruling on a motion for relief from judgment under CR 60(b). *Showalter v. Wild Oats*, 124 Wn. App. 506, 510, 101 P.3d 867 (2004). A superior court abuses its discretion if it exercises discretion without tenable grounds or reasons. *State ex. rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

We review de novo, however, a trial court's denial of a motion to vacate a default judgment for lack of jurisdiction.[14] *Ralph's Concrete Plumbing, Inc., v. Concord Concrete Pumps, Inc.*, 154 Wn. App. 581, 585, 225 P.3d 1035 (2010). CR 60(b)(5) permits relief from a final judgment that is void. A default judgment entered against a person over whom the court has no personal jurisdiction is void, and a court has a nondiscretionary duty to vacate it. *Scott v. Goldman*, 82 Wn. App. 1, 6, 917 P.2d 131, *review denied*, 130 Wn.2d 1004 (1996); *In re Marriage of Markowski*, 50 Wn. App. 633, 635, 749 P.2d 754 (1988).

A superior court has personal jurisdiction over an out-of-state defendant if (1) the party asserting jurisdiction meets the requirements of Washington's long arm statute, or (2) there is written consent to personal jurisdiction. *Ralph's Concrete Plumbing*, 154 Wn. App. at 584-85 (Washington courts may assert personal jurisdiction over out-of-state defendant if long arm statute is satisfied); *Kysar v. Lambert*, 76 Wn. App. 470, 484, 887 P.2d 431, *review denied*, 126 Wn.2d 1019 (1995) (consent to personal jurisdiction by written agreement); *Voicelink Data*

[14] In *Morris v. Palouse River & Coulee City R.R.*, 149 Wn. App. 366, 370-71, 203 P.3d 1069, *review denied*, 166 Wn.2d 1033 (2009), Division Three analyzed whether the trial court erred in denying defendant's CR 60(b)(5) motion to vacate for lack of jurisdiction under abuse of discretion. The court in *Morris*, however, reviewed de novo the specific question of whether service of process complied with statutory requirements for jurisdiction. *Morris*, 149 Wn. App. at 371.

Servs., Inc. v. Datapulse, Inc., 86 Wn. App. 613, 620, 937 P.2d 1158 (1997). Washington's long arm statute, RCW 4.28.185, extends the jurisdiction of Washington courts to out-of-state defendants, so long as both the long arm statute's requirements and due process are satisfied. *In re Marriage of Yocum*, 73 Wn. App. 699, 702, 870 P.2d 1033 (1994). The party asserting jurisdiction under the long arm statute has the burden of establishing its requirements "by prima facie evidence." *Yocum*, 73 Wn. App. at 703. To establish jurisdiction over an out-of-state defendant under the long arm statute, a party must (1) show that the out-of-state defendant committed one of the acts listed in the statute[15], (2) personally serve the out-of-state defendant, and (3) file an affidavit of service that is "to the effect that service cannot be made within the state." RCW 4.28.185(1), (2), (4). As an alternative to the long arm statute, a second, independent basis for personal jurisdiction is proof of consent to personal jurisdiction. *Kysar*, 76 Wn. App. at 487. A valid forum selection clause in a "'freely negotiated'" agreement is proof of consent to jurisdiction. *Kysar*, 76 Wn. App. at 484 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n.14, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985)).

B. Cochrane and Luksha Did Not Consent to Service by Mail

Section 16 of the Subscription Agreement, into which Von Kleist and the Defendants entered, contained the following provision for forum selection, consent to personal jurisdiction, and consent to service by mail:

> This Subscription Agreement and all rights hereunder shall be governed by, and interpreted in accordance with, the laws of the State of Washington. The undersigned hereby submits to the nonexclusive jurisdiction of the courts of the State of Washington and of the federal courts in the Western District of

[15] The long arm statute lists the acts that permit personal service outside Washington State for purposes of establishing personal jurisdiction in our courts. *See* RCW 4.28.185(1)-(6).

> Washington with respect to any action or legal proceeding commenced by any person or entity relating to or arising out of this Subscription Agreement, the Partnership or the Partnership's business, and consents to the service of process in any such action or legal proceeding by means of registered or certified mail, return receipt requested, in care of the address set forth below on the signature page or such other address as the undersigned shall furnish in writing to the Partnership.

CP at 1320. The plain language of this provision, however, bound only Von Kleist to personal jurisdiction in Washington and service by mail.[16]

Cochrane and Luksha, both GALP partners, contend they did not consent to personal jurisdiction in Washington or to service by mail because the Agreement's forum selection/service by mail provision did not bind the Graoch 161 partnership and, therefore, could not bind them as partners. They argue that this provision was not binding on them because (1) the Agreement was a mere "offer"[17] from Von Kleist to invest in Graoch 161; (2) the parties intended that the Agreement would bind only Von Kleist, the sole "undersigned"[18] to the Agreement; (3) neither they nor any other Graoch 161 agent signed the Agreement; and (4) Graoch 161 did not assume the obligations stated in the Agreement, such as the forum selection and service by mail provision.[19] We agree.

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[16] We disagree with the superior court's ruling that Section 16 of the Agreement governed all parties' selection of Washington as a forum and constituted all Defendants' consent to Washington court jurisdiction, including service by mail.

[17] Br. of Appellant at 28.

[18] Br. of Appellant at 29.

[19] Von Kleist counters that because Cochrane and Luksha were partners of various Graoch entities, including Graoch 161 and GALP, (1) they were bound by the actions of GALP's other partners, including Graoch 161's acceptance of the Agreement; and (2) because all Defendants were third-party beneficiaries of the Agreement that Von Kleist entered into with Graoch 161, the Agreement should be binding on them.

A valid contract requires mutual assent, generally in the form of an offer and an acceptance. *Yakima County (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 388-89, 858 P.2d 245 (1993). In interpreting contracts, Washington courts follow the "objective manifestation test" for contract formation. *Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 699, 952 P.2d 590 (1998). A court determines the parties' intent by focusing on their objective manifestations as expressed in the agreement. *McGuire v. Bates*, 169 Wn.2d 185, 189, 234 P.3d 205 (2010). A court will not read into a contract that is otherwise clear and unambiguous. *Mayer v. Pierce County Med. Bureau, Inc.*, 80 Wn. App. 416, 420, 909 P.2d 1323 (1995).

The plain language of Section 16 of the Agreement expresses no intent to bind Graoch 161 (and its partners) to service by mail. Rather, under this provision, only "the undersigned" (Von Kleist) must accept service by mail:

> The *undersigned* hereby submits to the nonexclusive jurisdiction of the courts of the State of Washington and of the federal courts in the Western District of Washington with respect to any action or legal proceeding commenced by any person or entity relating to or arising out of this Subscription Agreement, the Partnership or the Partnership's business, and consents to the service of process in any such action or legal proceeding by means of registered or certified mail, return receipt requested, in care of the address set forth below on the signature page or such other address as the *undersigned* shall furnish in writing to the Partnership.

CP at 1320 (emphasis added). This reference to the "undersigned" unambiguously refers to Von Kleist, who signed as the sole subscriber and who was the only party who signed the Agreement in a binding contractual capacity.[20] The last clause of Section 16—"such other address as the

[20] Pioch, the only other person who signed the Agreement, signed only as a witness, not as a Graoch 161 agent in a contractual capacity.

undersigned shall furnish in writing to the *Partnership*"—further demonstrates the parties' intent that the service by mail provision was to bind only "the undersigned," namely Von Kleist, and not "the Partnership" (Graoch 161).[21] CP at 1320 (emphasis added).

Although the Agreement contained a blank signature line for Gray, neither Gray nor any Graoch 161 or GALP representative signed the Agreement. Again, Pioch signed, but only as a "[w]itness." CP at 1321. Accordingly, the service by mail provision did not bind either Cochrane or Luksha; instead, it bound only the "undersigned," namely Von Kleist, to the Agreement and its provisions.[22] Because the Agreement did not bind Luksha and Cochrane, they did not consent to service by mail and, therefore, Washington's long arm statute governs service of process here.[23]

C. Service of Process under Washington's Long Arm Statute

Proper service of process is basic to personal jurisdiction. *Pascua v. Heil*, 126 Wn. App. 520, 526, 108 P.3d 1253 (2005). To subject defendants located outside our state to state court

[21] *See, e.g., Oltman v. Holland Am. Line USA, Inc.*, 163 Wn.2d 236, 250, 178 P.3d 981 (2008) (forum selection clause not binding on third party who did not agree to the contract containing the clause).

[22] Because we hold that the Agreement bound only Von Kleist, and not Graoch 161, we do not address whether the Agreement bound Cochrane and Luksha under partnership theory or third party beneficiary theory.

[23] Cochrane and Luksha concede that the GALP partnership "accepted" Von Kleist's Subscription Agreement when GALP President Gray acknowledged receipt of Von Kleist's $1,012,000. Br. of Appellants at 28. This acceptance of Von Kleist's offer to buy in as a Graoch 161 partner did not, however, constitute acceptance of the service by mail obligation under the Agreement, which, again, by its plain terms bound only the "undersigned," Von Kleist. CP at 1320.

jurisdiction, Washington's long arm statute, RCW 4.28.185, requires personal service on them.[24] Cochrane and Luksha are Canadian citizens residing in Canada; thus, our long arm statute required personal service to confer jurisdiction over them in Washington courts. RCW 4.28.185.

Cochrane and Luksha assert that Von Kleist failed to comply with Washington's long arm statute because (1) he served them by mail instead of serving them in person as the statute requires; and (2) he failed to file the statutorily required affidavits of service before the superior court granted both default judgments. Cochrane and Luksha are correct that before obtaining the first default judgment, Von Kleist did not personally serve them. Instead, Von Kleist served Cochrane and Luksha with his summons and complaint by certified mail.[25] When Cochrane and Luksha did not respond, the superior court granted Von Kleist's motion and entered the first default judgment against them on January 27, 2010. Because Von Kleist did not personally serve out-of-state defendants Cochrane and Luksha, as required by the long arm statute, (1) Von Kleist failed to satisfy the long arm statute service requirements; and (2) as a result, the superior court lacked personal jurisdiction over Cochrane and Luksha to enter the first default judgment against them.

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[24] RCW 4.28.185(2) states:

> Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the defendant outside this state, as provided in RCW 4.28.180, with the same force and effect as though personally served within this state.

[25] Von Kleist argues that (1) the long arm statute personal service requirement did not apply here because Cochrane and Luksha contractually consented to service by mail; and (2) therefore, CR 4(i)(1)(D)'s service by mail provision controlled instead. We disagree. Because we hold that the Agreement's forum selection and consent to service by mail provision did not bind the Cochrane and Luksha to accept service by mail, we do not further address this argument.

For purposes of the second default judgment, however, Von Kleist complied substantially with the long arm statute to confer personal jurisdiction over Cochrane in Washington courts. Cochrane and Luksha do not dispute that before the superior court entered the second default judgment, Von Kleist had personally served his summons and complaint on Cochrane. Instead, Cochrane and Luksha contend that the second default judgment was void for lack of personal jurisdiction over them because (1) Von Kleist failed to file a timely affidavit of inability to serve Cochrane in Washington, as required under RCW 4.28.185(4); and (2) Von Kleist did not personally serve Luksha.

We first dispose of Cochrane and Luksha's second point: Von Kleist did not name Luksha in his second motion for default judgment; nor did the second default judgment list Luksha as a debtor. Therefore, to the limited extent that the second default judgment arguably included Luksha, the superior court had no personal jurisdiction over him; and, other than ordering Luksha's name stricken from the judgment summary, we do not further address the second default judgment as to him.

We next address Cochrane and Luksha's first point—whether Von Kleist timely filed an affidavit of inability to serve Cochrane in Washington to satisfy the long arm statute's requirement. Personal service outside Washington state is valid under the long arm statute only when an affidavit is made and "filed to the effect that service cannot be made within the state" on

the named defendant. RCW 4.28.185(4).[26] If a plaintiff has not complied with this affidavit requirement, then there is no personal jurisdiction over the named defendant and any judgment entered against that defendant is void. *Sharebuilder Sec. Corp. v. Hoang*, 137 Wn. App. 330, 335, 153 P.3d 222 (2007). The standard for meeting this RCW 4.28.185(4) affidavit requirement, however, is substantial and not strict compliance. *Barr v. Interbay Citizens Bank of Tampa, Fla.*, 96 Wn.2d 692, 696, 649 P.2d 827 (1982).

Here, as Cochrane and Luksha acknowledge, Von Kleist personally served Cochrane on February 18, 2010. Von Kleist's affidavit of service on Cochrane in Canada, and Pidgeon's later declaration in support of Von Kleist's motion for default judgment against international defendants, established that Cochrane is a Canadian citizen residing in Toronto, Ontario. Thus, Von Kleist's affidavit of service as to Cochrane substantially complied with the long arm statute's requirement that the affidavit of service include a statement "to the effect that service cannot be made within the state" of Washington. RCW 4.28.185(4).

Cochrane and Luksha incorrectly assert, however, that Von Kleist waited until January 5, 2011, to file his affidavit[27], which, therefore, was untimely because the statute required that it be

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[26] It is caselaw, not the long arm statute, that mentions filing of such affidavit should occur "before" the court enters judgment. *Sharebuilder Sec. Corp. v. Hoang*, 137 Wn. App. 330, 334-35, 153 P.3d 222 (2007); *see also* RCW 4.28.185(4). But neither *Sharebuilder* nor any other case of which we are aware specifically addresses and holds that such affidavit is insufficient if filed on the same day as judgment is entered, as was the case here, regardless of whether it is filed immediately before or after the judgment.

[27] The January 5, 2011 affidavit, to which Cochrane and Luksha refer, is Pidgeon's affidavit about service on the out-of-state defendants, filed in response to defendants' motion to vacate under CR 60(b)(5). Pidgeon's affidavit includes the timely May 10, 2010 affidavit of service as to Cochrane.

filed before the superior court entered default judgment on January 27, 2010, or May 10, 2010.[28] On the contrary, the record shows that Von Kleist filed his affidavit of service on Cochrane on May 10, 2010, the same day the superior court entered the second default judgment against Cochrane. We hold that (1) this affidavit's filing substantially complied with the long arm statute[29] to confer personal jurisdiction over Cochrane; (2) the superior court, therefore, had personal jurisdiction over him; and (3) the second default judgment was not void as to Cochrane for lack of jurisdiction.[30]

II. CR 60(b)(1) Motion To Vacate

In the alternative, Cochrane and Luksha argue that even if the superior court had personal jurisdiction over them, the superior court erred in denying their motion to vacate the default judgments under CR 60(b)(1) because there were procedural irregularities in entering these judgments. Having already held that the first default judgment was void as to both Cochrane and Luksha and should have been vacated under CR 60(b)(5), we need not reach their argument about irregularities in the first default judgment. Thus, we address only whether the superior court erred in denying their CR 60(b)(1) motion to vacate the second default judgment, which under our holding above, was potentially valid only as to Cochrane.

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[28] Moreover, the cases Cochrane and Luksha cite are distinguishable and do not apply here. These cases involved filing affidavits months after the entry of the default judgment, which is not what happened here.

[29] RCW 4.28.185(4).

[30] As previously explained, however, the superior court did not have personal jurisdiction over Luksha and, thus, we remand to remove his name from the judgment summary in the second default judgment.

Cochrane and Luksha argue that the following "irregularities" occurred: (1) The superior court granted the second default judgment without previously amending or vacating the first default judgment; (2) the superior court granted the second default judgment without previously securing an entry of default against Luksha; and (3) Cochrane and Luksha had meritorious defenses to Von Kleist's claims. Br. of Appellants at 40. The exclusive procedure for attacking an allegedly defective judgment is by appeal from the judgment, not by appeal from denial of a CR 60(b) motion. *Bjurstrom v. Campbell*, 27 Wn. App. 449, 451, 618 P.2d 533 (1980). CR 60(b) is not a substitute for appeal. *Bjurstrom*, 27 Wn. App. at 451. An unappealed final judgment cannot be restored to an appellate track by means of moving to vacate and then appealing the denial of the motion. *State v. Gaut*, 111 Wn. App. 875, 881, 46 P.3d 832 (2002).

Because Cochrane and Luksha did not appeal the second default judgment,[31] the validity or irregularity of its entry is not before us here. Instead, we have before us their appeal of only the superior court's denial of their motion to vacate the second default judgment under CR 60(b)(1). In this more limited challenge, they fail.

A. Standard of Review

On review of an order denying a CR 60(b) motion to vacate a judgment, only the propriety of the motion's denial, not the impropriety of the underlying judgment, is before us. *Gaut*, 111 Wn. App. at 881. We will not disturb a superior court's decision on a motion to vacate a default judgment unless the superior court has abused its discretion. *Morin v. Burris*,

[31] RAP 5.2(a) requires that notice of appeal be filed within 30 days of entry of the judgment in the superior court. Cochrane and Luksha did not file direct appeals from the superior court's January 2010 default judgment or its May 2010 default judgment. Instead, they waited until January 2011 and filed a CR 60(b) motion to vacate these default judgments.

160 Wn.2d 745, 753, 161 P.3d 956 (2007). A superior court abuses its discretion if it exercises discretion based on untenable grounds or reaches a decision based on untenable reasons. *Morin*, 160 Wn.2d at 753.

B. No Abuse of Discretion

Cochrane and Luksha argue that the superior court abused its discretion in denying their motion to vacate the second default judgment in two respects: (1) it did not first vacate the prior default judgment, which failure constitutes an "irregularity" warranting grant of their CR 60(b)(1) motion to vacate the second default judgment; and (2) although the *White*[32] factors do not apply to a claim of irregularity, if these factors did apply here, Cochrane and Luksha had "meritorious defenses" to Von Kleist's claims, which support vacation of the default judgment as a matter of equity.[33] Br. of Appellants at 44. These arguments fail.

Irregularities under CR 60(b)(1) are those relating to failure to adhere to some prescribed rule or mode of proceeding. *In re Guardianship of Adamec*, 100 Wn.2d 166, 174, 667 P.2d 1085 (1983). Cochrane and Luksha fail to provide any authority to support their position that a superior court cannot issue a second default judgment without first vacating a previously

[32] *White v. Holm*, 73 Wn.2d 348, 352, 438 P.2d 581 (1968). Typically, we evaluate a motion to vacate under CR 60(b)(1) under the four *White* factors, which look to whether (1) there is substantial evidence to support a prima facie defense to the claims; (2) the moving party's failure to appear timely was occasioned by mistake, inadvertence, surprise, or excusable neglect; (3) the moving party acted with due diligence after notice of entry of default; and (4) no substantial hardship will result to the opposing party.

[33] Cochrane and Luksha also argue that the superior court did not first issue a valid order of default against Luksha before entering the second default judgment, which failure constituted an "irregularity" under CR 60(b)(1). Br. of Appellants at 43. Having already held that the second default judgment did not apply to Luksha, we do not address this argument.

entered default judgment[34]; nor are we independently aware of any such authority. Accordingly, Cochrane and Luksha fail to establish that the superior court's entry of the second default judgment was an irregularity warranting vacation under CR 60(b)(1).

Focusing primarily on alleged equities, Cochrane and Luksha next contend that their "meritorious defenses" to Von Kleist's claims met the requirements for setting aside a default judgment under the four-part *White* test.[35] Br. of Appellants at 44. Yet they correctly acknowledge that this *White* four-part test does not control a claim of irregularity.[36] We agree that Washington law is clear that vacating a default judgment for irregularity does not hinge on whether the defendant can show a meritorious defense. *See Kennewick Irrigation Dist. v. 51 Parcels of Real Property*, 70 Wn. App. 368, 371, 853 P.2d 488, *review denied*, 122 Wn.2d 1027 (1993) (*White* factors do not apply to alleged irregularity under CR 60(b)(1)). But we disagree that the *White* factors apply to Cochrane and Luksha's claim of irregularity. *See, e.g., Mosbrucker v. Greenfield Implement, Inc.*, 54 Wn. App. 647, 652, 774 P.2d 1267 (1989) (a claim of irregularity is not controlled by the test set out in *White*, which applies to cases involving excusable neglect or inadvertence). We hold that Cochrane and Luksha fail to establish that the superior court abused its discretion in denying their motion to vacate the second default judgment under CR 60(b)(1). Therefore, we affirm the superior court's denial of this motion; nevertheless, for reasons previously explained, we agree that Luksha should not have been included in this second default judgment and that his name should be stricken on remand. We

[34] The cases that Cochrane and Luksha cite do not support this proposition; rather, they address collateral issues.

[35] *See* n.34.

[36] *See, e.g.*, CR 60(b)(1).

reverse the superior court's denial of Cochrane and Luksha's motion to vacate the first default judgment, entered January 27, 2010. We affirm the superior court's denial of their motion to vacate the second default judgment entered May 10, 2010, with the exception of remanding to strike Luksha's name from the third page of the second default judgment.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Worswick, C.J.

Johanson, J.

APPENDIX B

Order Requesting Answer to Motion for Reconsideration

and

Order Denying Motion for Reconsideration

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

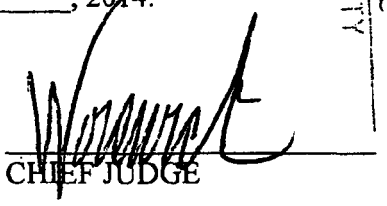
ALEX VON KLEIST, Respondent, v. PAUL J. LUKSHA, a Canadian citizen, and GREGORY COCHRANE, a Canadian citizen, Appellants.	No. 43138-6-II ORDER REQUESTING AN ANSWER TO MOTION FOR RECONSIDERATION

APPELLANT Gregory Cochrane moves for reconsideration of the opinion filed February 4, 2014 in the above entitled matter. As the motion appears to raise a substantial issue and an answer would assist the Court in resolving the motion, the Court requests that the RESPONDENT file an answer to the motion for reconsideration within ten (10) days of this order. Accordingly, it is

SO ORDERED.

DATED this 3rd day of March, 2014.

FOR THE COURT:



CHIEF JUDGE

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ALEX VON KLEIST, Respondent, v. PAUL J. LUKSHA, a Canadian citizen, and GREGORY COCHRANE, a Canadian citizen, Appellants.	No. 43138-6-II ORDER DENYING MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE, FOR PUBLICATION

APPELLANT GREGORY COCHRANE moves for reconsideration, or in the alternative, for publication of the Court's **February 4, 2014** opinion. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Worswick, Hunt, Johanson

DATED this 2nd day of April, 2014.

FOR THE COURT:

Worswick CJ

CHIEF JUDGE

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APPENDIX C

RCW 4.28.185

West's Revised Code of Washington Annotated
Title 4. Civil Procedure (Refs & Annos)
Chapter 4.28. Commencement of Actions (Refs & Annos)

West's RCWA 4.28.185

4.28.185. Personal service out-of-state--Acts submitting person to jurisdiction of courts--Saving

Effective: July 22, 2011
Currentness

(1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:

(a) The transaction of any business within this state;

(b) The commission of a tortious act within this state;

(c) The ownership, use, or possession of any property whether real or personal situated in this state;

(d) Contracting to insure any person, property, or risk located within this state at the time of contracting;

(e) The act of sexual intercourse within this state with respect to which a child may have been conceived;

(f) Living in a marital relationship within this state notwithstanding subsequent departure from this state, as to all proceedings authorized by chapter 26.09 RCW, so long as the petitioning party has continued to reside in this state or has continued to be a member of the armed forces stationed in this state.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the defendant outside this state, as provided in RCW 4.28. 180, with the same force and effect as though personally served within this state.

(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon this section.

(4) Personal service outside the state shall be valid only when an affidavit is made and filed to the effect that service cannot be made within the state.

(5) In the event the defendant is personally served outside the state on causes of action enumerated in this section, and prevails in the action, there may be taxed and allowed to the defendant as part of the costs of defending the action a reasonable amount to be fixed by the court as attorneys' fees.

(6) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law.

Credits

[2011 c 336 § 100, eff. July 22, 2011; 1977 c 39 § 1; 1975-'76 2nd ex.s. c 42 § 22; 1959 c 131 § 2.]

Notes of Decisions (369)

West's RCWA 4.28.185, WA ST 4.28.185
Current with 2014 Legislation effective before June 12, 2014, the General Effective Date for the 2014 Regular Session

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