FILED
SUPREME COURT
STATE OF WASHINGTON
2/4/2022
BY ERIN L. LENNON
CLERK

100617-9

From: Minnie Thomas
Appellant

To: The Court of Appeals
Division 1

Attn: Lori
Caseworker

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2022 JAN 28 PM 3:17

Hand delivered to 600 University St, Seattle, WA on 1-28 2022, drop box

Urgent

1 Motion to Review the order not to Reconsider

2. Addendum

FILED
12/29/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

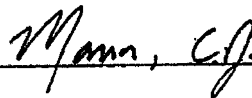
MINNIE THOMAS and LAWRENCE WILLIAMS, Appellants, v. REDMOND POLICE DEPARTMENT, Respondent.	No. 81718-3-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

Appellants Minnie Thomas and Lawrence Williams moved to reconsider the court's opinion filed on November 8, 2021. The panel has determined that the motion for reconsideration should be denied.

Therefore, it is

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:



COURT OF APPEALS
Division 1

IN THE STATE OF WASHINGTON
KENNIE THOMAS
LAWRENCE WILLIAMS
Appellants CASE NO 81718-3
V
THE REDMOND POLICE DEPT
Respondent

REQUEST FOR A REVIEW OF THE ORDER
DENYING" OUR MOTION TO RECONSIDER

We, the appellants, are petitioning the Court of appeals to 'Review' the order denying our meritorious motion to Reconsider the decision to 'Affirm' the trial court's 'Certain" decision to 'Deny' our meritorious Default motion in order to grant the defendant's 'extreme' untimely / moot motion to dismiss our "legit" claims. The reason for this 'legit' request to 'Review the order Denying our appellants, motion to 'Reconsider' is as follows?

1. We, the appellants, submitted to the court

of appeals in our opening brief and in our motion for a Reconsideration "Irrefutable evidence to support our legit claim that the defendant without "any reasonable doubt 'failed' to appear and to respond to the Summons and Complaint that were served to the defendant on 1-30-20. However, the court of appeals dismissed, disregarded or ignored this Solid/Concrete/Irrefutable evidence that was submitted in our opening brief and motion for a Reconsideration to unlawfully continue on affirming the trial court's certain decision to Deny our legit Default motion in order to 'certainly' grant the defendant's extreme "untimely' motions on 4-24-2020 to the trial court and to us, the appellants, after 4-24-20 to dismiss our legit Default motion and legit complaint approximately 68 days after the complaint was served on 1-30-20.

Lastly, the court of appeals, under an Oath, was obligated to 'Hold' the

trial court accountable for making unfair decisions in this action. Here, this did not occur. The court of appeals disregarded the 'fact' that the trial court disregarded, dismissed, ignored or simply and intentional violated it's own CR 4 and CR 12 in this action to 'unfairly' deny our, appellants, [illegible] motion for a Default Judgement in order to unfairly 'grant' the defendant's extreme untimely defense/response to our Summons and Complaint to the trial court 'only' on 4-24-20, and to us, the appellants, 'after' 4-24-20 in response to the Summons and Complaints that were served on 1-30-20. Being provided a defense to our complaint after 4-24-20 was not a 'timely' response under the CR 4 and CR 12.

In reiterate, the CR 4 and CR 12 have the same amount of authority in an action as the CR 12(b)(6) does. So here, the court of appeals should have been fair in this action by holding the trial court accountable for being unfair in this action by disregarding, dismissing, ignoring or violating it's own CR 4 and CR 12 in this action in order to 'unfairly' grant the

defendants' extreme untimely response that was filed with the trial court on 4-24-2020 subsequently to our appellants' meritorious' Default motion that was filed with the trial court on 3-16-20 over the defendant's lack of a response / defense to our summons and complaint within 20 days and even by the date of 3-19-20. Therefore, the court of appeals' unfair decision to affirm the trial court's unfair decision to Deny our meritorious Default Motion by violating the CR 24 and 12 in order to unfairly grant the defendant's extreme untimely defense under the CR 12 (b) (6) needs to be Reviewed.

A. Fact

The CR 24 and 12 should not have been disregarded, dismissed, or violated by the trial court or the court of appeals in order for the defendant to win in this action under the CR 12 (b) (6).

DATED this 27th day of January, 2022

Minnie Thomas
Lawrence Williams

MOTION TO REVIEW THE ORDER
DENYING MOTION FOR RECONSIDERAT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that I am now, and at all times material hereto, a citizen of the United States, a resident of the state of Washington, over the age of 18 years, not a party to, nor interested in the above entitled action, and competent to be a witness herein. I caused to be served, pursuant to CR5(b)(7), on this date the foregoing in the manner indicated to the parties listed below:

Attorney
Daniel Shickich
900 5th Ave
Seattle, WA

- ☐ Legal Messenger
- ☐ Facsimile
- ☐ ECF/Email
- ☒ 1st Class mail or
- ☐ Federal Express

Hand delivered

Signed at Redmond, Washington this 27th day of January, 2022

Minnie Thomas
L. Williams

Minnie Thomas
Lawrence Williams
8208 161st Ave NE #A-226
Redmond, Washington 98052
425 891-1867

MOTION TO REVIEW
THE ORDER DENYING
THE MOTION TO RECONSIDER

Addendum

Reiteration

1. proof that the defendant failed to respond to the Summons and complaint, and doubtfully within 20 days after being served on 1-30-20. See the attached evidence, cp

Evidence Submitted to Support a Default Judgement

Copy

OGDEN MURPHY WALLACE, P.L.L.C. | OMWLAW.COM

Re: an Invalid/ no legal defense for not providing us with a legal defense in a timely manner after being served on 1-30-20

DANIEL SHICKICH
206.442.1318
dshickich@omwlaw.com

April 13, 2020

Minnie Thomas
Lawrence Williams
8208 161st Ave. NE, # A-226
Redmond, WA 98052

Re: *Thomas and Williams v. Redmond Police Dept.*, King County Superior Court No. 19-2-29072-2 SEA

Dear Ms. Thomas and Mr. Williams,

It has recently come to our attention that due to a typo, the notice of appearance filed by our office on February 21, 2020 was directed to an incorrect address. Enclosed, please find a copy of the notice of appearance with a corrected certificate of service. Also enclosed is a copy of the certificate of service filed with the Court on February 21, 2020, and a copy of an email correspondence we received from the Court on April 10, 2020. We are forwarding the correspondence from the Court to you per the Court's request therein.

Regards,

OGDEN MURPHY WALLACE, P.L.L.C.

[signature]

Daniel F. Shickich

DFS:pla
Enclosures

Factual Statements

A "Typo" that caused an alleged "Incorrect mailing of the defendant's response to the summons and complaint that was served to the defendant on 1-30-20" "was not" a "Legal Defense" to support the "violation" of the CR 4 and CR 12 cited on 4-13-20.

Copy

✓ An extreme untimely appearance and defense to us, the appellants, after 4/13 2020

FILED
2020 APR 13 12 THE HONORABLE CATHERINE SHAFFER
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 19-2-29072-2 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

MINNIE THOMAS and LAWRENCE WILLIAMS, Plaintiffs, v. REDMOND POLICE DEPARTMENT, Defendant,	NO. 19-2-29072-2 SEA NOTICE OF APPEARANCE

TO: Minnie Thomas and Lawrence Williams, *pro se*

AND TO: Clerk of the Court

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that Daniel F. Shickich, of Ogden Murphy Wallace, PLLC, enters his appearance in the above-entitled action as attorney for Defendant Redmond Police Department, and you are notified that service of all further pleadings, notices, documents or other papers herein, exclusive of process, may be had upon said Respondent by serving the undersigned attorneys of record at the address below stated. Transmission by facsimile does not constitute service unless prior agreement is made.

Said defendant does not waive, and expressly reserves, inter alia, all applicable defenses, including those defenses regarding process, service of process, and jurisdiction.

OGDEN MURPHY WALLACE, PLLC
901 5th Ave, Suite 3500
Seattle, WA 98164
Tel: 206-447-7000/Fax: 206-447-0215

Copy

The Summons was served on 1-30-20

CORRECTED CERTIFICATE OF SERVICE

I certify under the laws of the State of Washington that on the date noted below, I served *pro se* plaintiffs below with a true and correct copy of the foregoing document by the method indicated:

Minnie Thomas Lawrence Williams 8208 161st Ave. NE, # A-226 Redmond, WA 98052 *Pro se Plaintiffs*	[X] U.S. Mail [ ] Messenger [ ] Email and/or [ ] KCSC E-Service

DATED this 13th day of April, 2020, at Seattle, Washington.

Untimely to us, the appellants, that was received after 4-13-20.

Phyllis Abbey
Phyllis Abbey, Legal Assistant

Clear Facts

1 On 3-19-20, the date the Default Motion was filed with the trial court, the defendant had not "Appeared" to us, the plaintiffs, after being served with a Summons and Complaint on 1-30-2020.

2 On 3-19-20, the defendant had not Served us with an answer to our complaint after being Served on 1-30-2020

3 Based on the above 2 statements, we, the appellants, were entitled to a Default Judgement on 3-31-2020 or thereafter over the defendant violating the CR 4 and CR 12 by 3-19-2020.

Copy! Evidence for a ... Judgement

A "moot" appearance to the Local Court on 2-21-20 after being Served on 1-30-20.

FILED
2020 FEB 21 10:14 AM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 19-2-29072-2 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

MINNIE THOMAS and LAWRENCE WILLIAMS, Plaintiffs, v. REDMOND POLICE DEPARTMENT, Defendant.	NO. 19-2-29072-2 SEA NOTICE OF APPEARANCE

TO: Minnie Thomas and Lawrence Williams, *pro se*

AND TO: Clerk of the Court

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that Daniel F. Shickich, of Ogden Murphy Wallace, PLLC, enters his appearance in the above-entitled action as attorney for Defendant Redmond Police Department, and you are notified that service of all further pleadings, notices, documents or other papers herein, exclusive of process, may be had upon said Respondent by serving the undersigned attorneys of record at the address below stated. Transmission by facsimile does not constitute service unless prior agreement is made.

Said defendant does not waive, and expressly reserves, inter alia, all applicable defenses, including those defenses regarding process, service of process, and jurisdiction.

//

OGDEN MURPHY WALLACE, PLLC
901 5th Ave, Suite 3500
Seattle, WA 98164
Tel: 206-447-7000/Fax: 206-447-0215

Reinstatement

1. Proof that our appellant's motion for a Default Judgement should have been granted over the defendant's violation of the CR 4 and CR 12 in April of 2020 after being served on 1-30-20. See copies of the attached CR 4 and CR 12.

Copy

Re: The CR 4 for the Superior Court that governs a timely response to a complaint or a Default Judgement for an untimely defens

17
18 The State of Washington To:
Defendant(s)
19 Redmond Police Department
20 Address: 8701 [illegible] ave NE Redmond, WA
21 1. A lawsuit has been started against you in the above-entitled Court by the plaintiff.
22 2. Plaintiffs' claim is stated in written complaint, a copy of which is served upon you with this
23 Summons.
3. In order to defend against this lawsuit you must respond to the Complaint by stating your
24 defense in writing, and by serving a copy upon the person signing this Summons,
25 [X] within twenty (20) days (if service is made on you within the State of Washington),
or
26 [ ] within sixty (60) days (if service is made on you outside the State of Washington),
27 after the date of service on you of this summons, or a default judgment may be entered against you without notice. A default judgment is one where the plaintiff is entitled to what he asked for
28 because you have not responded.
29 4. If you serve a Notice of Appearance on the undersigned person, you are entitled to notice before default judgment may be entered.
30 5. If not previously filed, you may demand that the Plaintiff file this lawsuit with the court. If
31 you do so, the demand must be in writing and must be served upon the person signing this

32
your written response, if any, may be served on time.
4 7. This summons is issued pursuant to Civil Rule 4 for the Superior Court of the State of
5 Washington.

CR 12

(a) When Presented. A defendant shall serve an answer within the following periods:

(1) Within 20 days, exclusive of the day of service, after the service of the summons and complaint upon the defendant pursuant to rule 4;

(2) Within 60 days from the date of the first publication of the summons if the summons is served by publication in accordance with rule 4(d)(3);

(3) Within 60 days after the service of the summons upon the defendant if the summons is served upon the defendant personally out of the state in accordance with RCW 4.28.180 and 4.28.185 or on the Secretary of State as provided by RCW 46.64.040.

(4) Within the period fixed by any other applicable statutes or rules.

A party served with a pleading stating a cross claim against another party shall serve an answer thereto within 20 days after the service upon that other party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court.

(A) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action.

Factual Statements

1. It was proven to the [illegible] with Irrefutable evidence that the defendant failed to respond within 20 days to our Summons and Complaint after being served on: 1-30-20.

2. The Defendant responded 'untimely' to the Summons and Complaint on 4-24-20 by approximately "63 days" too untimely.

3. Even if the defendant's 'extremely untimely' response to our Summons and Complaint was 'factual' on 4-24-20, it should have been dismissed by the trial court; because an untimely "legal defense" is a no legal defense, and a "no legal defense" cannot legally "win" a case.

Closing Factual Statements

'A Fact'

Everything that the defendant stated in the extreme 'untimely' defense on 4-24-20 to oppose to our Default motion that was filed on 3-19-20, should not have been considered by the trial court and the Court of appeals 'even' if it was actually factual, because "legally" under the CR4 and CR12 for the Superior it did not matter whether it was factual or not," because the defendant did not state this in a timely manner to be in pursuant to the CR4 and CR12 for the trial court. Therefore, the Court of appeals should not have Affirmed the trial court unfair decision to consider a defense that was 'untimely' to oppose to our Default motion and case.

FILED
11/8/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MINNIE THOMAS and LAWRENCE WILLIAMS, Appellants, v. REDMOND POLICE DEPARTMENT, Respondent.	No. 81718-3-I DIVISION ONE UNPUBLISHED OPINION

MANN, C.J. — Minnie Thomas and Lawrence Williams appeal the dismissal of their personal injury action against Redmond Police Department (RPD), as well as the trial court's order striking their motion for a default judgment and denying the motion on its merits. Because Thomas and Williams fail to demonstrate error, we affirm.

FACTS

On November 1, 2019, Minnie Thomas and Lawrence Williams filed a pro se complaint against RPD. Thomas and Williams alleged that on November 4, 2016, a team of police officers violated their civil rights during an "unwarranted welfare check/illegal raid" at their residence in Redmond. They also brought claims against RPD for invasion of privacy, conspiracy, assault, "unlawful commitment," "false report and entrapment," intentional infliction of emotional distress, "defamation of

character/slander/libel," and "retaliation, property damage, aid and abetting." The complaint sought $3,000,000 in damages.

On January 30, 2020, the King County Sheriff's Department filed a non-service notice indicating that its attempt to serve the summons and complaint was unsuccessful. Specifically, the notice stated that "Janet Masud, Legislative Records Manager, declined to accept on behalf of Redmond Police Department." Around the same time, an unidentified individual delivered a copy of the summons and complaint to RPD's office.

On February 21, 2020, counsel for RPD entered a notice of appearance on behalf of RPD and mailed a copy to Thomas and Williams in accordance with CR 4(a)(3). However, due a typographical error in the address, Thomas and Williams apparently did not receive it.

On March 19, 2020, Thomas and Williams filed a motion for order of default judgment directly into the court file without separately filing a notice of court date as required by KCLCR 7(b)(5)(A). Thomas and Williams asserted that they were entitled to a default judgment because RPD failed to appear within 20 days after service. Thomas and Williams acknowledged that they did not serve RPD with a copy of the motion on the ground that they did not know the name or address of RPD's counsel.

On April 10, 2020, counsel for RPD discovered the typographical error in Thomas and Williams' address. Counsel mailed a copy of the notice of appearance to the correct address the following day.

On April 24, 2020, RPD filed a motion to strike Thomas and Williams' motion for a default judgment. RPD argued that the motion should be stricken because Thomas

and Williams failed to separately file a notice of hearing as required by KCLCR 7 and failed to provide notice to RPD five days prior to the hearing date as required by CR 55(a)(3). On the same day, RPD also filed a motion to dismiss Thomas and Williams' complaint in accordance with CR 12(b)(2) and CR 12(b)(5). RPD argued that dismissal with prejudice was warranted because Thomas and Williams failed to achieve service of process before the statute of limitations expired for all claims asserted in the complaint. RPD requested that the motion to strike be heard on May 8 and the motion to dismiss be heard on May 26.

Thomas and Williams sent several letters to the trial court and the bailiff, but did not timely file a response to RPD's motion to strike. After RPD filed its reply, Thomas and Williams filed three untimely documents, including a joint declaration, a motion to dismiss RPD's motion to strike, and a "second reply" to RPD's motion to strike.

On May 8, 2020, the trial court struck and denied Thomas and Williams' motion for a default judgment. The court ruled that the motion was procedurally defective because the plaintiffs failed to provide the required notice to the court or defendants. The court further ruled that the motion failed on its merits because the plaintiffs did not provide proof of proper service and because they submitted no competent evidence in support of the proposed judgment. The court also noted that on March 27, 2020, the presiding judge of the King County Superior Court issued Emergency Order No. 15, indicating that no default motion would be considered during the period set forth in the order, and that the order was reaffirmed in Emergency Order No. 17, which extended the period until June 5, 2020. Accordingly, the court stated that it would not consider any renewed default motion unless brought after the Emergency Order is lifted. Lastly,

the court denied Thomas and Williams' motion to dismiss RPD's motion to strike because it was untimely and lacked merit.

Meanwhile, Thomas and Williams failed to file a response to RPD's motion to dismiss. Instead, on May 15, 2020, they filed a motion for a month-long continuance of the hearing date on the motion. RPD opposed the motion, arguing that it was untimely and failed to offer any valid reason for a continuance. On May 20, 2020, Thomas and Williams filed a motion seeking to have the trial court lift Emergency Order No. 15 on the ground that it prevented them from filing a motion for reconsideration regarding the order striking and dismissing their motion for default. On May 21, 2020, RPD filed a reply in support of its motion to dismiss, noting that its motion was unopposed and that dismissal was proper for lack of proof of service.

On May 26, 2020, the trial court denied Thomas and Williams' untimely motion to continue and struck without prejudice their motion to lift Emergency Order No. 15. On May 27, 2020, the court granted RPD's motion to dismiss the complaint with prejudice on the ground that Thomas and Williams failed to properly serve RPD before the statutes of limitation expired on their claims.

On June 5, 2020, Thomas and Williams moved for an emergency order extending the time to file a motion for reconsideration of the trial court's order striking and denying their motion for a default judgment. RPD opposed the motion. The court denied the motion and also ruled that, to the extent Thomas and Williams sought reconsideration, such relief was denied.

Thomas and Williams appeal.

ANALYSIS

We hold pro se litigants to the same rules of procedure and substantive law as an attorney. In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). With this in mind, we proceed to analyze the issues presented in this case.

A. Motion to Dismiss

Thomas and Williams argue that the trial court erred in dismissing their complaint with prejudice. RPD contends that dismissal was proper because Thomas and Williams failed to serve RPD before the statutes of limitation expired on their claims. We agree with RPD.

A civil action is deemed commenced when the complaint is filed or when the summons and complaint are served on the defendant. CR 3(a). For purposes of tolling the statute of limitations, if the complaint is filed before the summons is served, the plaintiff must serve the defendant within 90 days of filing the complaint. RCW 4.16.170. If the plaintiff does not serve the defendant within 90 days of filing, the action will be treated as if it had not been commenced. RCW 4.17.170; Wothers v. Farmers Ins. Co. of Wash., 101 Wn. App. 75, 79, 5 P.3d 719 (2000). "When a defendant challenges service of process, the plaintiff has the initial burden of proof to establish a prima facie case of proper service." Northwick v. Long, 192 Wn. App. 256, 261, 364 P.3d 1067 (2015). Whether service of process was proper is a question of law reviewed de novo. Scanlan v. Townsend, 178 Wn. App. 609, 617, 315 P.3d 594 (2013).

Thomas and Williams never produced proof of service or a declaration from a person purporting to have effectuated service. The only evidence in the court file

regarding service was a non-service notice from the King County Sheriff's Department. Thus, Thomas and Williams failed to establish proof of proper service.[1]

Thomas and Williams repeatedly assert that service was proper because a copy of the summons and complaint was delivered to RPD's office. But service of a summons on a city can only be accomplished by delivering a copy to "the mayor, city manager, or, during normal office hours, to the mayor's or city manager's designated agent or the city clerk thereof." RCW 4.28.080(2); CR 4(d)(2).[2] Thomas and Williams did not cause a copy of the summons and complaint to be delivered to any of the entities set forth in RCW 4.28.080(2). They further assert that RPD's notice of appearance constitutes an acknowledgement of proper service. But filing a notice of appearance does not waive the defense of insufficient service of process. See CR 4(d)(5) (voluntary appearance of a defendant does not preclude challenge to jurisdiction, insufficiency of process, or insufficiency of service of process pursuant to CR 12(b)).

Because Thomas and Williams failed to serve RPD within 90 days of filing their complaint, they failed to commence their lawsuit. "An action must commence before the statute of limitation has run." Unisys Corp. v. Senn, 99 Wn. App. 391, 397-98, 994 P.2d 244 (2000). "The purpose of statutes of limitations is to shield defendants and the judicial system from stale claims." Crisman v. Crisman, 85 Wn. App. 15, 19, 931 P.2d 163 (1997). The statute of limitations period begins to run when the plaintiff's cause of

[1] We also note that RPD is not a legal entity capable of being sued. Jurisdiction over RPD is properly achieved by suing the City of Redmond. See Nolan v. Snohomish County, 59 Wn. App. 876, 883, 802 P.2d 792 (1990).

[2] CR 4(d)(2) provides: "Personal in State. Personal service of summons and other process shall be as provided in RCW 4.28.080–.090, 23B.05.040, 23B.15.100, 46.64.040, and 48.05.200 and .210, and other statutes which provide for personal service."

action accrues. Crisman, 85 Wn. App. at 20. This generally occurs when the plaintiff suffers some form of injury or damage. In re Estates of Hibbard, 118 Wn.2d 737, 744, 826 P.2d 690 (1992).

Thomas and Williams allege that the "unwarranted welfare check/illegal raid" took place on November 4, 2016, more than three years and five months prior to RPD's motion to dismiss. The statute of limitations for libel, slander, assault, assault and battery, false imprisonment, and invasion of privacy is two years. RCW 4.16.100(1); Eastwood v. Cascade Broad. Co., 106 Wn.2d 466, 469, 722 P.2d 1295 (1986). A civil rights claim under 42 U.S.C. § 1983 has a three-year statute of limitations, as does a claim for civil conspiracy. Southwick v. Seattle Police Officer John Doe #s 1-5, 145 Wn. App. 292, 297, 186 P.3d 1089 (2008). The statute of limitations for intentional infliction of emotional distress is also three years. RCW 4.16.080(2). Thomas and Williams' claims for "false report and entrapment" and "retaliation, property damage, and aid and abetting" are not recognized civil claims under Washington law. To the extent they are construed as claims for civil rights violations or injury to property, the statute of limitations is three years.

Because the statute of limitations had run on all of the claims in the complaint, the trial court properly dismissed it with prejudice.

B. Motion for Default Judgment

Thomas and Williams argue that the trial court erred in striking and dismissing their motion for a default judgment. They contend that they are plainly entitled to a default judgment because RPD failed to timely appear after having been properly served. We disagree.

"Default judgments are generally disfavored in Washington based on an overriding policy which prefers that parties resolve disputes on the merits." Showalter v. Wild Oats, 124 Wn. App. 506, 510, 101 P.3d 867 (2004). We review the trial court's decision on a motion for default judgment for abuse of discretion. Morin v. Burris, 160 Wn.2d 745, 753, 161 P.3d 956 (2007). Discretion is abused if it is exercised without tenable grounds or reasons. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). A trial court's decision to strike a motion is also reviewed for abuse of discretion. King County Fire Prot. Dists. No. 16, No. 36, & No. 40 v. Hous. Auth. of King County, 123 Wn.2d 819, 826, 872 P.2d 516 (1994).

CR 55(a)(1) allows entry of a default judgment against a party who has failed to appear. Under CR 4(a)(3), a "notice of appearance" shall "be in writing, shall be signed by the defendant or the defendant's attorney, and shall be served upon the person whose name is signed on the summons." The appearance requirement may be satisfied informally through the doctrine of substantial compliance. Morin, 160 Wn.2d at 749. To determine if a party has substantially complied, the court examines the defendant's relevant conduct after litigation has commenced to determine if it was designed to, and, in fact, did apprise the plaintiff of the defendant's intent to litigate the case. Morin, 160 Wn.2d at 755. A party who has appeared is entitled to written notice of the motion for default. CR 55(a)(3). "Because default judgments are disfavored, the concept of 'appearance' is to be construed broadly for purposes of CR 55." Servatron, Inc. v. Intelligent Wireless Prods., Inc., 186 Wn. App. 666, 675, 346 P.3d 831 (2015).

Here, on February 21, 2020, RPD timely filed a notice of appearance with the court and mailed a copy to Thomas and Williams. Although they apparently did not

receive it due to a typographical error in the address, counsel for RPD promptly acted to serve the notice of appearance to the correct address as soon as he discovered the problem. Thus, RPD substantially complied with the appearance requirements of CR 4(a)(3) and was entitled to notice of the motion for default judgment 5 days prior to the hearing date. CR 55(a)(3). Thomas and Williams did not provide any such notice. Thomas and Williams also failed to separately file a notice of court date as required by KCLCR 7(b)(5)(A) and provide working copies to the trial court as required by KCLCR 7(b)(4)(F). Thus, the trial court properly struck the motion.

Moreover, even assuming that Thomas and Williams had provided proper notice of their motion to the court and to RPD, the trial court properly denied the motion for default judgment because it failed on its merits. The trial court must assess both its jurisdiction and the sufficiency of the complaint prior to entering a default judgment. Kaye v. Lowe's HIW, Inc., 158 Wn. App. 320, 330, 242 P.3d 27 (2010).

CR 55(b)(4) precludes entry of a default judgment "unless proof of service is on file with the court." The purpose of this rule "is to ensure that the trial court has personal jurisdiction over the party in default prior to entering a default judgment." Kaye, 158 Wn. App. at 328 n.7. "Proper service of the summons and complaint is a prerequisite to the court obtaining jurisdiction over a party." Goettemoeller v. Twist, 161 Wn. App. 103, 107, 253 P.3d 405 (2011) (quoting Woodruff v. Spence, 76 Wn. App. 207, 209, 883 P.2d 936 (1994)). "When a court lacks personal jurisdiction over a party, the judgment obtained against that party is void." Rodriguez v. James-Jackson, 127 Wn. App. 139, 143, 111 P.3d 271 (2005). Here, as discussed above, the trial court lacked personal jurisdiction because Thomas and Williams failed to provide proof of proper service.

In addition, "the party seeking a default judgment [must] set forth facts supporting, at a minimum, each element of the claim." Friebe v. Supancheck, 98 Wn. App. 260, 268, 992 P.2d 1014 (1999). Mere unsupported legal conclusions are insufficient to support a default judgment. Caouette v. Martinez, 71 Wn. App. 69, 78, 856 P.2d 725 (1993). Thomas and Williams offered no evidence whatsoever in support of their claim. As the trial court correctly noted, "[p]laintiff's complaint is not evidence." The trial court did not abuse its discretion in striking and denying the motion for a default judgment.

C. Other Assignments of Error

Thomas and Williams assign error to several other rulings and actions of the trial court. None have merit.

Motion to Lift Emergency Order No. 15.

Thomas and Williams argue that the trial court erred in striking their motion to lift Emergency Order No. 15. They contend that the trial court "cunningly" issued Emergency Order No. 15 in a deliberate effort to prevent their default motion from being granted and to give RPD additional time to file a motion to dismiss.

Thomas and Williams are incorrect. Emergency Order No. 15 is part of a series of emergency orders entered by the presiding judge of the King County Superior Court in response to the COVID-19 pandemic.[3] As such, the order is applicable to all civil cases within King County, not just Thomas and Williams' case. Moreover, Thomas and Williams' motion did not comply with the time requirements of the court rules and the

[3] As these orders alter the trial court rules applicable in this case, it is appropriate for this court to take judicial notice of them. RAP 10.4(c); Swak v. Dep't of Labor & Indus., 40 Wn.2d 51, 53, 240 P.2d 560 (1952) (appellate court may take judicial notice of the record in the case presently before the court or "in proceedings engrafted, ancillary, or supplementary to it").

emergency orders. See KCLCR 7(b)(5)(A); Emergency Orders Nos. 15 and 17 (requiring motions governed by KCLCR 7(b) to be served and filed no later than nine court days before the date the party wishes the motion to be considered); CR 5(b)(2)(A) (service by mail deemed complete upon the third day after mailing). The trial court did not abuse its discretion in striking the motion.

Motion for a Continuance

Thomas and Williams argue that the trial court erred in denying their motion for a continuance of RPD’s hearing on the motion to dismiss. We review a superior court's decision to deny a motion for a continuance for a manifest abuse of discretion. Doyle v. Lee, 166 Wn. App. 397, 403-04, 272 P.3d 256 (2012). “In exercising discretion to grant or deny a continuance, trial courts may consider many factors, including surprise, diligence, redundancy, due process, materiality, and maintenance of orderly procedure.” State v. Downing, 151 Wn.2d 265, 273, 87 P.3d 1169 (2004).

Thomas and Williams argue that a month-long continuance was warranted “during the COVID-19 pandemic, to gather crucial evidence to try to prevent the trial court from granting” RPD’s motion to dismiss. However, they did not provide any details regarding what evidence they sought or how it was necessary to respond to RPD’s motion. Thus, they failed to explain why the continuance should be granted. Moreover, they filed the motion for a continuance without separately filing a notice of court date as required by KCLCR 7(b)(5)(A). And the motion was untimely pursuant to Emergency Order No. 15. The trial court did not abuse its discretion in denying the motion.

Motion to Extend Time for Filing a Motion for Reconsideration

Thomas and Williams argue that the trial court erred in denying their motion to extend time allowed under CR 59 to file a motion for reconsideration. We review a trial court's decision on a motion to enlarge time under CR 6(b) for abuse of discretion. Clipse v. Commercial Driver Srvs., Inc., 189 Wn. App. 776, 786, 358 P.3d 464 (2015).

Courts have authority to enlarge time deadlines when the request is made before the period has expired. CR 6(b)(1). After the deadline expires, courts may accept late filings under certain circumstances. CR 6(b)(2). But that rule expressly bars courts from extending time for taking any action under CR 59(b). Here, Thomas and Williams moved to extend the time allowed under CR 59 for reconsideration more than two weeks after the deadline had passed. Because the court lacked authority to grant the motion, it did not abuse its discretion in denying it.

Notice of Appeal

Thomas and Williams assign error to the filing of their appeal by the trial court. But they provide no argument or citation to authority in support of this claim. We need not consider it. RAP 10.3(a)(6); Cowiche Canyon Conservatory v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

D. Motion to Modify Commissioner's Ruling

On June 21, 2021, Thomas and Williams filed their opening brief in this appeal. RPD timely filed its respondent's brief with this court on July 21, 2021. On August 25, 2021, Thomas and Williams filed a motion in this court to sanction RPD for failing to serve them with a copy of their respondent's brief in this appeal pursuant to RAP 18.5. On September 2, 2021, a commissioner of this court denied the motion. In so ruling,

the commissioner stated: “While asserting ‘time is of the essence,’ Thomas and Williams have sought and obtained multiple extensions in filing the record and their opening brief.”

Thomas and Williams moved to modify the commissioner’s ruling. They argued that sanctions are warranted because RPD failed to seek an extension and because the rules should apply equally to all parties. RPD filed a response to Thomas and Williams’ motion to modify. RPD stated that it timely filed a copy of its respondent’s brief with this court on July 21, 2021 and mailed a copy to Thomas and Williams on the same day in accordance with RAP 18.5(a) and CR 5(b). However, due to a typographical error in the address, Thomas and Williams did not receive it. On August 10, 2021, counsel for RPD received an e-mail notifying him of the error. He immediately mailed a copy of the brief via priority overnight delivery, but did not request a signature to confirm receipt. On August 31, 2021, RPD received a copy of Thomas and Williams’ motion for sanctions, in which they claimed that they still had not received a copy of the brief. RPD immediately mailed another copy via first class mail. The following day, RPD received e-mail confirmation that it had been delivered. RPD subsequently sent a letter to Thomas and Williams indicating that it did not object to an extension of time to file their reply. On September 15, 2021, this court granted Thomas and Williams a 30-day extension of time to file their reply brief.

“The appellate court will ordinarily impose sanctions under rule 18.9 for failure to timely file and serve a brief.” RAP 10.2(i). “The appellate court on its own initiative or on motion of a party may order a party or counsel, . . . who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms

or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court. RAP 18.9(a). "In construing statutes and court rules . . . words like 'may' are permissive and discretionary." State v. Stivason, 134 Wn. App. 648, 656, 142 P.3d 189 (2006).

Thomas and Williams argue that it would be unfair and unjust to disregard RPD's carelessness in mailing its response brief to the incorrect address and in failing to confirm whether the mailed brief had been received. Although the repeated typographical errors were sloppy, there is no indication that RPD acted for purposes of delay. And Thomas and Williams have not shown that they were harmed thereby. The motion to modify the commissioner's ruling is therefore denied.

Affirmed.

WE CONCUR: