

FILED
SUPREME COURT
STATE OF WASHINGTON
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Supreme Court Cause No. 97153-6

Court of Appeals Cause No. 35734-1-III

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

EGP INVESTMENTS, LLC, RESPONDENT,

vs.

MARVIN R. FREAR JR and JANE DOE FREAR, PETITIONERS.

REPLY IN SUPPORT OF RESPONDENTS' PETITION FOR
DISCRETIONARY REVIEW

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In lieu of service of process being accomplished by delivery of a summons and complaint to a defendant, Washington law allows the following: “by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein.” RCW 4.28.080. Just as “our state's service of process requirements, RCW 4.28.080(15) lists specific prerequisites to personal service,” so too are there specific prerequisites to abode service in this state. *Scanlan v. Townsend*, 181 Wn.2d 838, 849, 336 P.3d 1155, 1160 (2014). The statutory requirement for service is unequivocally unmet with a finding that “someone” was served. Likewise, the statutory requirement for service is unmet with a finding that “someone at the house” was served.

It is telling that neither the trial court, nor Court of Appeals referenced the statute or mentioned the prerequisites to proper abode service by name or content. This Court has previously reviewed and painstakingly analyzed the specific wording of the abode service statute, including the terms “abode” and “resident” in order to provide direction to the trial and appellate courts in cases such as this. See e.g.: *Salts v. Estes*, 133 Wn.2d 160, 943 P.2d 275, (1997); *Wichert v. Cardwell*, 117 Wn.2d 148, 812 P.2d 858 (1991); *Sheldon v. Fettig*, 129 Wn.2d 601, 919 P.2d 1209 (1996). In *Salts, supra*, this Court held that “*Wichert* and *Sheldon* mark the outer boundaries of RCW 4.28.080(15).” *Salts*, 133 Wn.2d at 166. “Precious

little would be left of the term “then resident therein” were we to determine substituted service can be obtained on a person who happens to be in the defendant's house only to feed the defendant's dog and check his mail.” *Id.*

In this case, the parties agree that if the alleged service occurred as set forth in the declaration of service, it was ineffective because the person served was not “a resident therein”. What remains is an attempt to shore up the defective service with a declaration that is only based on a subjective belief with absolutely no averment of fact. “To state that the plaintiff is informed or believes that a particular fact exists would be bad pleading, because it would simply be an allegation of information or belief, as to the fact, and not an averment of the existence of the fact itself.” *Barber v. Grand Summit Min. Co.*, 11 Wn.2d 114, 124–25, 118 P.2d 773, 777 (1941). With no facially valid sworn statement from the EGP regarding who was served, both the trial court and the Court of Appeals erred by placing the burden on the Frears to prove the negative – that they were not served.

The lower courts’ decisions to simply avoid conducting the analysis of abode service, which this Court has repeatedly required, should not be permitted to stand. The first and most basic foundation of any litigation is jurisdiction, and the first and basic element of personal jurisdiction is service of process. *State v. Breazeale*, 144 Wn.2d 829, 841, 31 P.3d 1155 (2001); *Pascua v. Heil*, 126 Wn. App. 520, 526, 108 P.3d 1253 (2005).

Proper service of process “is essential to invoke personal jurisdiction over a party.” *In re Marriage of Markowski*, 50 Wn. App. 633, 635-36, 749 P.2d 754 (1988). For these reasons, the Petitioner respectfully requests that this Court accept review of lower courts’ decisions.

DATED this 14th day of June, 2019.

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CERTIFICATE OF SERVICE

I certify that on the 2nd day of May, 2019, I caused a true and correct copy of this Petition for Discretionary Review to be served on the following in the manner indicated below:

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By: _____

Jackie Singleton

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Filing Motion for Discretionary Review of Court of Appeals

Transmittal Information

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Appellate Court Case Number: Case Initiation
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Reply in Support of Respondents' Petition for Discretionary Review

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