

No. 66793-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

RICHARD STALLWORTHY,

Appellant / Plaintiff,

v.

Judith Dykes,

Respondent / Defendant,

Appeal from the Superior Court of King County

The Honorable Richard E. Eadie

King County Superior Court No. 10-2-14309-2 SEA

Reply Brief of Appellant / Plaintiff,

Richard Stallworthy

Richard Stallworthy, Appellant Pro Se

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## TABLE OF CONTENTS

2. Introduction.....	5
<b>Issues</b> .....	7
5. <i>Summary of Arguments</i> .....	13
6. <i>Argument</i> .....	14
7. <i>Conclusion</i> .....	15

## TABLE OF AUTHORITIES

### Table of Cases

#### Federal Cases

##### SUPREME COURT OF THE UNITED STATES

(Probate court was sufficiently involved with actions activating time bar in "nonclaim" statute).

Tulsa Professional Collection Servs. v. Pope,

485 U.S. 478; 108 S. Ct. 1340; 99 L. Ed. 2d 565; 1988 U.S. LEXIS 1870;  
56 U.S.L.W. 4302; 56 U.S.L.W. 4303

#### State Cases

##### Constitutional Provisions

Due Process Clause of U.S. Const. amend. XIV. Ref. Err 3, Appendix 1.

Washington State Constitution

**SECTION 3 PERSONAL RIGHTS.** No person shall be deprived of life, liberty, or property, without due process of law.

##### Statutes

RCW 4.28.020 Jurisdiction acquired, when. Ref. Err 4.

From the time of the commencement of the action by service of summons, or by the filing of a complaint, or as otherwise provided, the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings.

**RCW 4.28.080 Summons, how served. Ref. Err 1 and 4.**

**Notes:**

**Rules of court:** Service of process -- CR 4(d), (e).

**RCW 4.28.210 Appearance, what constitutes**

Every such appearance made in an action shall be deemed a general appearance

**RCW 11.40.040 “Reasonably Ascertainable” Definition Ref. Err 3**

(2) . . . the personal representative is presumed to have exercised reasonable diligence to ascertain creditors . . . any creditor not ascertained . . . is presumed . . . not reasonably ascertainable. . . . presumptions may be rebutted only by clear, cogent, and convincing evidence.

(3) . . . any creditors not known to the personal representative are not reasonably ascertainable.

Regulations and Rules

**CR4 Ref. Err 4.**

(d) Service.

(2) 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.

(j) Other Process. **These rules do not exclude the use of other forms of process authorized by law.**

**CR5** Ref. Err 4.

(a) Service--When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants

(b) Service--How Made.

(1) On Attorney or Party. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address.

Other Authorities

### **Common Law**

1. Herbert Broom “Commentaries on the Common Law 4th London edition 1873” (available free from Google Books online
2. the Common Law Procedure Act(16 and 17 Vict. Cap. 76 Robert Malcome Kerr, 1852

## **2. Introduction**

On page 1, First, the US Supreme Court's clear decision from appeal brief voiced by Sandra Day O'Connor went unanswered and unmentioned in Respondent's Brief, where Supreme Court correctly (and the first to) define reasonably ascertainable creditor as a creditor whose name and address are reasonably ascertainable. Respondent seems to believe the law should give a formula to judge the merits of a creditor's claim and can be determined by respondent acting as a judge where the laws and the courts have no business and did not confer on respondent such judicial powers. And distorts the<sup>3</sup> meaning of reasonably ascertainable creditor many times on RB (Response Brief) pgs 1, 2, 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17, and 24. VRP 23 suggested a two pronged test and then correctly states or reads the law which states that a "reasonably ascertainable creditor is ONE the administrator would discover" where discover means find. The meaning a creditor is not defined, only that they need to be discovered not that you must agree with their claims.

Second the time limit for filing was met as determined by the Motion to Reconsider CP 112 which rejected that claim from the original summary judgment (and therefore the court did err in its ruling on summary judgment at least in that item leaving the two items we have today) but respondent makes it appear otherwise by introducing an irrelevant clause from RCW 11.40.100 arguing, as he does many times on RB pgs 1, 2, 4,

19, 20, 22, and 24 that if the summons is not served within 90 days then the case is not commenced within the 30 days required. Where the real issue is whether service is complete where service is made by mail upon the appeared attorney or by common law (introduced here.

POA Mr. Dykes decedent, was POA at death, acted on own interests while Stallworthy/Appellant was unconscious and sick in hospital for a year and beyond when Mr. Dykes and Mrs. Stallworthy died. Plaintiff filed a creditor claim which was rejected by Dykes with no mention of timely filing non-reasonably ascertainable creditor (distinct from reasonably ascertainable name and address of creditor as stated by Justice O'Connor).saying to sue within 30 days as the only option, a suit followed then a summary judgment, a motion to reconsider and now an appeal.

### **Issues**

#### Common Law

1. Broom “Commentaries on the Common Law 4th London edition 1873” (available free from Google Books online

*Proceedings from Writ to Appearance.*

The present practice of our superior courts of common law, dates from a recent period; the Common Law Procedure Acts of 1852,1854, and 1860, and the General Rules of Hilary Term, 1853, and of Michaelmas Vacation, 1854, containing the materials upon which it mainly rests ;(i) although

there are, besides these, certain statutes unrepealed, which regulate special matters of practice.

According to the former practice it was always necessary that the writ of summons should be served personally on the defendant . . . *distringas*, which issued in two cases; one to compel an appearance, or obsolete.

*Diistringas* The *distringas* to compel an appearance was abolished, reported by the commissioners to be a very expensive and unnecessary process.

The writ is now abolished, and, in lieu of it, power is given *wru#* to the court or a judge, on being satisfied that Summons 'the writ has come to the defendant's knowledge, and that he wilfully avoids appearing to it, to order that the plaintiff may proceed at once, as if personal service had been effected: (s. 17.)

from the Common Law Procedure Act(16 and 17 Vict. Cap. 76 Robert Malcome Kerr, 1852

*Diistringas*

definition *diistringas*

#### *4. Statement of the Case*

Pgs 2 – 7, Pg 2 introduces the Affidavit in the Praecipe CP 73-79 with no mention , no argument with Appellant's contention that it was not properly introduced having been given to appellant at the hearing for the first time, it was never mailed there is no certificate of mailing, long after a response

was due from Dykes. And the reasonably ascertainable distortion is repeated.

Pg 3 repeats that Dykes was not “properly served” omitting that her attorney was. And states Mr.Dykes was Stallwortthy’s POA during a comma but in fact he remained POA till his death. And lists several allegations by Stallworthy against the POA which are essentially true.

Pg 4 repeats the distorted reasonably ascertainable argument and commences repeating the irrelevant 30 day argument,

Pg 5 introduces Dykes affidavit was only “filed” as part of the praecipe which was not properly introduced and appears to be false in that it does not state anything she did any records she view but only recited the law in reverse. (The law says she needed to examine records, checkbooks, so she stated she examined check books using essentially the same language. I guess one can presume she examined all checkbooks since she did not mention ay that were missing. Doing all of that Dykes never found one reasonably ascertainable creditor from a man who left her a million dollar house.) Distorted, reasonably ascertainable creditor (RAC) argument repeated.

Pg 6 states Stallworthy did not give any supporting evidence to refute the RAC argument, but how could he, as the Affidavit, the Praecipe was only presented to him at the beginning of the hearing and the RAC argument was only introduced at the hearing where it was noted there were errors

incitation VRP 24.. The check that was (it was not available to the plaintiff at the hearing) introduced was actually a bank copy of a check.

Presumably Dykes POA kept the checks (carbons) he wrote at least none of the checks he wrote were stated as missing. And the check was not just a check but was one written to pay attorney in New Jersey for wife's lawsuit which would never benefit Stallworthy. VRP 12

Pg 7 restates "suit not served in a timely manner where it was timely served to Defendant's attorney after his appearance. Also there are disputes of fact because the Affidavit appears false and was not timely filed.

Pg 9 RAC is revisited saying Mrs. Dykes who knew that Dykes had spent money of the Plaintiff had made cash advances from credit cards of Plaintiff had received and cashed checks written by POA to her benefit, who knew Stallworthy personally and knew his name and address, the only requirement states as necessary for actual notice for due process clause of the 14<sup>th</sup> amendment.

Pg 10 says Stallworthy failed to present any evidence to refute Mrs. Dykes contrived affidavit by why should any be necessary given since the affidavit was not timely introduced in a clever underhanded manner and was not filed till after the motion for summary judgment was submitted.

Pg 11 12 revisits RAC.

Pg 13, 14 repeats RAC argument states check was part of Stallworthy's own records when in fact it was only a bank issued copy of the signed and cashed check that was in Stall worthy's possession.

A footnote to pg 13 cites that persons represented by lawyers and pro se are to be represented equally. I guess every attorney facing a pro se drags this citation out, though I would think they might be embarrassed to do so as it is really saying if you are rich client with a rich attorney (or two) you can bludgeon your likely poor opponent and the court as well.. There is no equality in court one more example.

This citation is not a law, and has a very specific reference. In it the pro se has pleaded for not admitting a citation based on the fact that the party was represented by an attorney and he was not, a very limited circumstance on which to base saying represented and non-represented should be treated exactly alike in all matters. And the law the citation is based on is criminal law not civil law.

Pg 14 begins two absurd examples of persons whom someone might have names and addresses for in their records (why he didn't mention the New York telephone directory which one might have in their records who knows) and these are clearly absurd examples and goes back to the issue does the law or the court have any business authorizing a party to invalidate the claims of the other party by what ever formula is devised much less one as convoluted and one-sided as this one. If one is charged

with hit and run driving one cannot use the defense that they did not know the victim was injured perhaps having made a diligent review of their records including their vehicle.

Pg 17 states the check does not “create any suspicion of impropriety” but the check was written to an attorney in New Jersey where Linda Stallworthy lived and engaged said attorney where and her mother died and the court had question why was money being paid from Stallworthy’s account for this law suit from which Stallworthy would never and did never benefit.

Pg 18 asserts trial court’s summary judgment was proper yet the court asked that a list of documents used be included VRP 29

While I am on this issue I ask under common law for a more complete description of the review conducted as inadequately described in the affidavit.

Pg 19 restates the argument that service upon the appeared attorney as prescribed in CR5is inadequate

Pg 20 restates the irrelevant 30 day argument..

Pg 21 Discusses the details of CR 4(d), claims that Dykes never authorized her attorney to accept process service on her behalf, but this only refers to the notice of appearance which Mr. Garvey filed and the rules state that a notice cannot be selective about what can and cannot be served upon the attorney unless ordered by the court which it was not.

CR5 addresses service upon attorney under multiple items, but only the first does not apply to original service. Other items when applied to multiple items are repeated for each item and nothing is written to say it applies to all items.

Pg 22 and 23 address attorney's fees and costs. Of course the estate has been closed, how clever, but didn't all of the estate go to Mrs. Dykes and her/their family? And of course we are not dealing with equality here, where Mrs. Dykes inherited a property assessed at over \$1,000,000 while Stallworthy's underwater property where the assessment less the debt is worth at least negative \$100,000..

## ***5. Summary of Arguments***

### Reasonably Ascertainable

Regarding the two issues one has to do with the definition of "reasonably ascertainable" which the US Supreme Court said clearly pertain to "name and address." Does extending the meaning to include judging whether the creditor has a valid claim overrule the Supreme Court decision? Dykes does not address this issue because perhaps to do so would require stating that the US Supreme Court was wrong that he knows better.

### Personal Service

Is it required in this case. On its surface the law seems clear that personal service is required until we have a notice of appearance from an attorney. While some have argued that this action waived right to process, But in

this case I am simply looking at the laws and rules where rules CR5 (b) requires service to be upon the attorney rather than the plaintiff directly and rule 4 does not say anything about how service upon an attorney should be performed. And both rules and 4.28.080 make reference to rules.

## **6. Argument**

### Process of Service

Service though not personal service was made both upon Dykes directly and Dykes' attorney both by mail both signed for the same way service was performed by Dykes in Probate court every time and when she rejected the Creditor claim saying to file in superior court and presumably it was not a surprise when she received summons to that court within 30 days later. On its surface the law seems clear that personal service is required until we have a notice of appearance from an attorney. While some have argued that this action waived right to process, But in this case I am simply looking at the laws and rules where rule CR5 (b) requires service to be upon the attorney rather than the plaintiff directly and outlines the rules for service upon an attorney which does not appear to require personal service.

Common Law if not explicitly denigrated by current law provides that not providing personal service may limit the additional fees an attorney the other may charge but does not dispose of the suit itself.

Reasonably Ascertainable [Creditor]

No court no law including this one has every granted to a party to any dispute to make a reasonably ascertainable determination of the merits of the other party's arguments. In the law cited the phrase used is “reasonably ascertainable creditor is one” where “one” means a creditor and the court decides whether the creditor is a valid creditor or not and the law is therefore not granting the right to Dykes to define who is a creditor. The second issue is whether personal service of the summons etc. Is required in this case.

### **7. Conclusion**

This is simply to request for relief by having the case remanded back to Superior Court.

Sept. 22, 2011

Respectfully submitted



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Signature

Richard Stallworthy Pro Se, Appellant

Affidavit of Mailing

Case Name: Richard Stallworthy, Appelant vs. Judith Dykes

Case NO.: 66793-9-I

I certify that a copy of the reply to response to initial Appeal Brief was sent to Dykes via her attorney Huck on Sept. 22, 2011.

were mailed to the persons listed below,

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