

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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DEPUTY

No. 42226-3-II

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

EUGENE LAYTON,

Petitioner,

vs.

MADANI KEISS AB DALLA and "JANE DOE" KEISS AB DALLA ,
husband and wife, and ADVANCED MOBILITY, LLC, a/k/a
ADVANCED MOBILITY OF PUYALLUP, LLC,

Respondents.

RESPONDENT'S BRIEF

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ORIGINAL

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I. INTRODUCTION

Keiss Madani is the Respondent and was the Defendant in Superior Court. He is represented by attorney Debora A. Dunlap. Advanced Mobility, LLC was also a named Defendant in the underlying lawsuit, was dismissed, and Petitioner has sought to appeal its dismissal from this lawsuit.

II. ISSUES PRESENTED

1. Whether the Trial Court properly dismissed Petitioner's claims on Summary Judgment because Petitioner never obtained service on any Respondent within the 3 year statute of limitations?
2. Whether the Trial Court properly ruled that service at an apartment that Respondent never lived at upon a tenant that Respondent never lived with was improper service?

III. STATEMENT OF THE CASE

This appeal arises from the May 20, 2011 summary judgment dismissal of all Respondents due to Petitioner's failure to obtain valid service on Respondent Madani that would properly commence the lawsuit within the statute of limitations. (CP 121-123). The underlying case is a basic automobile collision between Petitioner's motorcycle and a medical transport vehicle driven by Respondent on September 26, 2007. (CP 1- 3).

Petitioner filed his lawsuit on September 1, 2010 giving him 90 days to obtain service on at least one of the Respondents in order to

properly commence his lawsuit within the statute of limitations. Unless valid service was obtained on at least one Respondent by November 30, 2010, the lawsuit would not be commenced.

Petitioner hired a process server who attempted service upon Respondent Madani on September 20, 2010. The process server had Respondent's proper address at that time, which was 3445 S 160th St., Seatac, WA 98188. **However, he had the wrong apartment number.** He believed Madani lived in Apartment #46. However, Madani never lived at that unit. (CP 19-20). That unit was solely occupied by Afra Sulimani. (Id. and Dec. of Sulimani, p. 1 – 4).

The Process Server's declaration is extremely vague. Originally he swore he served Ms. Sulimani at her own apartment (#46) and baldly asserted she was a "co-resident" of Respondent. (CP 86-87). He later amended his declaration, submitted in support of Petitioner's Motion for Reconsideration, to state that nobody was home at Apartment #46, but that he located Ms. Sulimani across the hall at Apartment #61 and served her the documents there.¹ (May 27, 2011 Dec. of Marlow).

It does not ultimately matter if service was at apartment #46 or

¹ Ms. Sulimani acknowledges in her declaration that she recalls receiving the documents from the process server at her own Apartment #46, even though she advised him that Respondent did not live there and that she merely collected his mail. She swears the process server did not even bother to ask her which apartment Respondent lived in or where he was at time of service (Sulimani Dec. 3-4).

#61, because Respondent never lived at either. While he did previously reside at 3445 S 160th St., Seatac, WA 98188 over a three to four year period, the only apartments he lived at were #35, #49, and #52, none of which Petitioner ever attempted service at. (CP 19-28 and Dec. of Sulimani, p. 2)

The parties disagree on what transpired between Ms. Sulimani and the process server.

The process server states that he asked Ms. Sulimani if “she lived at this address to which she replied, ‘Yes’” and then he asked “if the Defendant resides at this address to which she also replied, ‘Yes.’” (May 27, 2011 Dec. of Marlow). He then indicates he explained to her that he had legal documents, “confirmed again that both individuals reside at unit 46” and gave her the documents. Id.

Ms. Sulimani disagrees. She testified the process server never told her what the documents even were. (Dec. of Sulimani). He never asked her where Respondent lived or where he was at the time of the attempted service. Id. The extent of the conversation was that she specifically told him Respondent did not live there and that she just collected his mail. (Dec. of Sulimani, p. 3). He gave her the documents anyway.

The versions of delivery of pleadings to Ms. Sulimani differ, but the result is the same - service was improperly obtained.

Respondent was currently employed working on a fishing boat in Alaska at the time Petitioner attempted service upon him. (CP 20). He was in Alaska from approximately July 2010 – November 2010. Id.

Petitioner did ask Ms. Sulimani to collect his mail while he was gone. Id. He had done this when he had left for previous out of state fishing jobs, regardless of whether he continued to keep his own apartment or not. (Dec. of Sulimani, p. 2). However, he never authorized Ms. Sulimani to accept service or make any other authoritative decisions on his behalf. (CP 20-22). He merely asked her, as a neighbor who happened to live in the same complex to watch over his mail until he returned so that nothing would get lost, misplaced, or stolen. (CP 20).

Respondent received the documents upon his return in late November or early December 2010. (CP 21). Ms. Sulimani gave the documents to one of Respondent's former roommates who then gave the documents to Respondent. (Dec. of Sulimani p. 2-3). It was only then he discovered they were legal documents and he was being sued.

Respondent never lived or resided at Apartment #46, nor was it his "usual place of abode" for the purposes of service. He and Ms. Sulimani were nothing more than acquaintances who lived in the same building – not "co-residents," married, lovers, relatives, significant others, or anything else as Petitioner asserted in his original briefing.

In fact, as Ms. Sulimani explained in her declaration, both she and Respondent's culture (Sudan) and religion (Muslim) strictly prohibit she and Respondent from sharing a household. (Dec. of Sulimani, p. 1 -2).

Petitioner's attempts to serve Afra Sulimani at her own apartment and then insist that was valid service upon Respondent Madani must fail. No personal service was obtained on Madani nor was service made at his "usual abode" upon a person of suitable age and discretion who was a "resident therein." No alternative service was sought. As no valid service was obtained, the lawsuit was never commenced within the statute of limitations and the Trial Court properly dismissed the case.

Mr. Madani's former employer, Advanced Mobility was also named as a defendant in the lawsuit and service attempted through the Non-Resident Motorist Statute on the Secretary of State. Respondents moved to dismiss Advanced Mobility due to improper service on a company using this statute. Service on a company required different statutory authorized service. Petitioner does not challenge this portion of the summary judgment order. It is therefore waived and will not be discussed further.

IV. ARGUMENT

A. Standard of Review

In reviewing a summary judgment order, the appellate court

reviews the matter de novo. Kruse v. Hemp, 121 Wn.2d 715, 722 (1993). Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Ranger Ins. Co. v. Pierce Co., 164 Wn.2d 545, 552 (2008); CR 56(c).

The purpose of summary judgment is to avoid a useless trial. State ex rel. Bond v. State, 62 Wn.2d 487, 488 (1963). It permits the Court to cut through formal allegations and grant relief when it appears from uncontroverted facts, set forth in affidavits, depositions, admissions on file or in the pleadings, that there are no genuine issues of material facts. Id.

After the moving party submits adequate affidavits, the nonmoving party must set out specific facts sufficiently rebutting the moving party's contentions and disclosing an issue of material fact. Heath v. Uruga, 106 Wn. App. 506, 513 (2001). The nonmoving party may not rely upon speculation, argumentative assertions that unresolved factual issues remain, or having its affidavits accepted at face value. Id.

If the moving party is a defendant and meets this initial showing, then the inquiry shifts to the party with the burden of proof at trial, the plaintiff. Young v. Key Pharmaceuticals, Inc., 112 Wn.2d 216, 225 (1989). If, at this point, the plaintiff "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial," then the trial court

should grant the motion.

B. The Trial Court Properly Dismissed All Petitioner's Claims on Summary Judgment Because Petitioner Failed To Obtain Valid Service Within The Statute of Limitations.

It is axiomatic that if Petitioner failed to properly commence his lawsuit within the statute of limitations, his claims are barred as a matter of law. See: Unisys Corp. v. Senn, 99 Wn. App. 391, 397-98 (2000) (“An action must commence before the statute of limitations has run”); 1000 Virginia Ltd. Partnership v. Vertecs Corp., 158 Wn.2d 566, 574 (2006) (“A statute of limitation bars plaintiff from bringing an already accrued claim after a specific period of time...”)

Petitioner had 3 years from the date of the incident to properly commence his lawsuit. RCW 4.16.080. He had to either file his Complaint or serve his Summons and Complaint upon at least one respondent by September 26, 2010. If he did so, he would have 90 days to complete the remaining task or his lawsuit would not commence. RCW 4.16.170. As explained in Bethel v. Sturmer, 3 Wn. App. 862 (1970):

Filing the complain (*sic*) in superior court constituted tentative commencement of the action and gave the court conditional jurisdiction. It also provided the plaintiff with an additional 90 days in which to effect service on the defendant. **Unless service is effected within the 90 day period, the**

**tentative commencement of the action
becomes wholly abortive.**

Id. at 864. (emphasis added).

Petitioner filed his lawsuit on September 1, 2010. (CP 1-3). Thus, he had to serve either Mr. Madani or Advanced Mobility no later than November 30, 2010. If he did not do so, the September 26, 2010 statute of limitations would expire and his lawsuit was barred. See: Wothers v. Farmers Ins. Co., 101 Wn. App. 75, 79 (2000) (“Either service or filing tentatively tolls the statute of limitation. If the additional step [service after filing or filing after service] is not accomplished within 90 days, the action is treated as if it had not been commenced”).

Petitioner failed to serve any respondent by November 30, 2010. His lawsuit was never properly commenced within the statute of limitations and the Trial Court properly dismissed all claims against the respondents. See: Lockhart v. Burlington Northern Railroad Co., 50 Wn. App. 809 (1988) (Action barred by the statute of limitations after plaintiff failed to properly serve any defendant within 90 days of filing of Complaint); Weber v. Associated Surgeons, P.S., 166 Wn.2d 161, 163 (2009) (“Failure to properly serve a defendant prevents the trial court from obtaining personal jurisdiction over the defendant”); Bethel, 3 Wn. App. 862, 865-66 (1970) (“If the court has not acquired jurisdiction over the

person of the defendant, she would ordinarily be entitled to immediate dismissal”).

As stated above, Petitioner is not appealing whether his attempted service on Advanced Mobility was valid and this argument is therefore waived. The totality of his appeal focuses on whether the attempted substitute service upon Mr. Madani through Afra Sulimani was valid. Because the Trial Court found the service upon Respondent Madani was invalid, it properly found Petitioner’s action had not been commenced and properly dismissed the case.

C. The Trial Court Properly Found No Question of Fact That Service Upon Afra Sulimani Was Improper Service Upon Respondent Madani.

It is undisputed that Petitioner made no effort whatsoever to personally serve Respondent Madani. Nor is there any evidence Petitioner attempted alternative substitute service on Respondent Madani after being unable to personally serve him, such as through service by publication or the Non-Resident Motorist Statute. The entirety of Petitioner’s attempted service involves serving a completely different resident who lived in Respondent Madani’s apartment building in an entirely different unit and then insisting that should constitute effective service upon Respondent Madani. Petitioner presents no evidence that his process server even attempted to ask where Respondent Madani was. He simply assumed

Madani was a “co-resident” of Afra Sulimani and handed her the Summons and Complaint without inquiring further. Washington’s case law is abundantly clear that Petitioner did not properly obtain service upon Respondent Madani.

As explained by RCW 4.28.080(15), in order to effectively serve Respondent Madani in the manner attempted by Petitioner, Madani needed to either be personally served or the documents needed to be served in a very specific manner:

Service made in the modes provided in this section shall be taken and held to be personal service. The summons shall be served by delivering a copy thereof, as follows:

(15) In all other cases, to the defendant personally, or 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(15).

By the plain language of the statute, because Petitioner did not personally serve Madani, service was effective only if Petitioner was able to leave a copy of the summons (1) at Madani’s usual abode, (2) with some person of suitable age and discretion (3) then resident therein. All three elements of the substituted service must be satisfied before the

service is effective. Gerean v. Martin-Joven, 108 Wn. App. 963, 969 (2001).

Here, Petitioner did not fulfill either the first or the third requirement. For either of these independent reasons, no valid service was obtained and the lawsuit was never commenced before the statute of limitations expired on September 26, 2010.

1. There Was No Service At Respondent Madani's "Usual Abode."

As explained in the analogous case of Streeter-Dybdahl v. Huynh, 157 Wn. App. 408 (2010):

Proper service of process has not been accomplished when the defendant is not personally served and there is insufficient evidence to establish that the address served was the center of the defendant's domestic activity. Here, the summons and complaint was left with someone who was not the defendant at a house in which the defendant did not reside and only visited occasionally to pick up mail that was sent to her at that address. Thus, the defendant was not properly served and the trial court erred by denying the defendant's motion to dismiss for insufficient process. Accordingly, we reverse.

Id. at 410.

The Streeter-Dybdahl court explained that a respondent's "usual abode" is a term of art:

The term “ ‘[u]sual place of abode’ must be taken to mean such center of one's domestic activity that service left with a family member is reasonably calculated to come to one's attention within the statutory period for [the] defendant to appear.”

Id. at 413.

Here, Petitioner argues Afra Sulimani's apartment #46 was Madani's "usual abode" simply because he had a car registration and postal address at that apartment and because Petitioner's process server believed Ms. Sulimani told him Madani lived there. He also cites Goettemoeller v. Twist, 161 Wn. App. 103 (2011) and Sheldon v. Fettig, 129 Wn.2d 601 (1996) for the proposition that "usual abode" may be liberally construed and the burden is on Respondent to demonstrate by clear and convincing evidence that the service was improper.

Respondent made that showing at summary judgment before the Trial Court. He cited numerous cases holding that even under Sheldon's liberal view of "usual abode," if there was no more than a showing of limited contacts with an address, that was insufficient to establish that address was a "usual abode" for the purpose of substitute service.

The clearest example is Streeter-Dybdahl, where plaintiff, just as in this case, attempted service at an address, served the wrong person (defendant's brother) and then argued that because defendant still received

mail at that address and still had it listed as her address with the DOL, it was her “usual abode” for the purposes of service. The Court rejected this argument and held:

...[T]he use of a particular address for a limited purpose is not a critical factor in determining a center of domestic activity.

Streeter-Dybdahl, 157 Wn. App. at 414.

Despite the fact that defendant (1) still received mail at that address, (2) formerly owned the house where service was attempted, (3) listed that address on the police accident report, and (4) listed that address as her most current address with the DOL, the Court still found these were insufficient contacts to make this a “usual abode” such that service was effective at that address. Id. at 411. In the case at bar, Respondent Madani had even less contacts than this with Ms. Sulimani’s apartment and never lived, resided at or owned any interest in her apartment. It was not his “usual abode” even under Sheldon’s liberal interpretation.

The remaining Washington cases on this issue further support this holding. See: Gross v. Evert-Rosenberg, 85 Wn. App. 539, 541 (1997) (Address defendant no longer lived at, but still listed on voter registration and King County Assessor’s website was not usual abode); Vukich v. Anderson, 97 Wn. App. 684, 691 (1999) (Property that defendant leased after moving to California was not usual abode, even though defendant

still received mail there, continued to register his car at that address, and used the address in small claims court previously); Blankenship v. Kaldor, 114 Wn. App. 312, 317 (2002) (Using former address on checking account after moving did not constitute usual abode).

These cases clearly demonstrate that even though Respondent Madani registered his car at Ms. Sulimani's apartment and asked the postal service to send her his mail while he was in Alaska, these are merely "limited purposes" that do not render her apartment his "usual abode" such that service would be effective there. Petitioner has cited no authority demonstrating these contacts were sufficient to turn Afra Sulimani's apartment into Respondent Madani's usual abode. Thus, any of the information gathered by Petitioner's investigator, Jennifer Gillespie is entitled to no weight. Those facts did nothing but demonstrate that Madani used Ms. Sulimani's apartment for a "limited purpose," not a "usual abode."

Petitioner also overreaches the holding of Romjue v. Fairchild, 60 Wn. App. 278 (1991). Petitioner insists Romjue stands for the proposition that "a person challenging service claiming that the residence served is not his usual place of abode has the burden to prove his usual place of abode is somewhere else." Respondent cannot locate where Romjue holds that.

Further, Romjue was reversed and remanded for trial because defendants waived their service of process arguments. The Romjue court, **after specifically holding it would “not reach the issue whether there are unresolved material issues of fact regarding [defendant’s] ‘usual place of abode’”** merely acknowledged that in some other states, “the parental home of an unmarried college student may continue to be a place where substitute service may be made in certain circumstances.” Id. at 282. There is no analogy to this case, as Mr. Madani is clearly not an unmarried college student whose mother is Ms. Sulimani.

Regardless, Respondent has more than adequately met his burden, even presuming Petitioner is correct on Romjue’s holding. Respondent’s declaration explains he resided at that street, but at a different apartment than Ms. Sulimani. Beyond the car registration and mail collection, which do not meet the necessary threshold as a “usual abode,” Petitioner offers no evidence that Respondent had anything whatsoever to do with apartment #46 such that it could be considered his “usual abode” for the purposes of service of process.

2. What Ms. Sulimani Allegedly Represented To The Process Server Is Of No Import.

The balance of Petitioner’s argument that Afra Sulimani’s apartment was Respondent Madani’s “usual abode” is that his process

server claims Ms. Sulimani told him Madani lived in apartment #46. Ms. Sulimani denies this fact. In fact, she insists she told the process server the exact opposite – that Madani **did not** live at Apartment #46 and that she just collected his mail. (Dec. of Sulimani). The process server never bothered to ask her where Madani actually was and just handed her the documents. Id. Respondent Madani and Afra Sulimani’s declarations both confirm that at no time did Madani ever live at Apartment #46 or otherwise use it in a manner that would make it his “usual abode.”

Ultimately, whatever the exchange was between Afra Sulimani and Petitioner’s process server does not matter. Whatever Ms. Sulimani told the process server is immaterial as to whether service was valid or not. Case law is clear process servers may not rely upon information from third parties to justify erroneous service.

For example, in Gerean v. Martin-Joven, 108 Wn. App. 963 (2001), there was a dispute over whether service was valid when the process server served Respondent’s father at his house who later gave the paperwork to Respondent when he next saw her. The Court found the service invalid. Petitioner argued that Respondent’s father had represented that his house was Respondent’s usual place of abode and thus Respondent should be estopped from denying this fact, even though it was not her usual abode and she had moved away over a year ago. Id. at 967.

The Court held that it was immaterial what the father had represented to the process server:

Moreover, the court found that any misrepresentation, even if we accept the process server's version of the attempted service, was not by the defendant, but by Mr. Martin. And Mr. Martin was not a party to this suit. The court correctly concluded that Ms. Martin-Joven was not estopped from acting inconsistently with a statement by a third party. **Thus, any disputed fact about who said what to whom at Deer Park is not material on this issue either.**

Nothing in the record hints that Ms. Gerean made any attempt to find out Ms. Martin-Joven's current address or that Ms. Martin-Joven was not available to receive properly tendered service. There was no proper tender of service. The court correctly concluded that Ms. Martin-Joven's conduct was entirely consistent with asserting the defense.

Id. at 974. (emphasis added).

Just as in the case at bar, Afra Sulimani is not a party to the lawsuit, and therefore it is immaterial what she may have told the process server, even if the Court accepts the process server's version as true. As in Gerean-Joven, Petitioner demonstrates no evidence that he attempted to find out Respondent Madani's current address or that he was not available to receive properly tendered service.

The focus is on the actual Respondent's actions and consistency in establishing Apartment #46 was not his usual abode. This is not a situation where Respondent claims Apartment #46 was not his usual abode only when he was in Alaska. **He testified he never resided there.** (CP 19-20).

The Court reached a similar result in Charboneau Excavating, Inc. v. Turnipseed, 118 Wn. App. 358 (2003), where it reversed a default judgment and held that Petitioner had not properly demonstrated reasonable diligence at attempting personal service prior to attempting service by publication. Petitioner argued that Respondent's employees had lied to him about Respondent's whereabouts, frustrating service. The Court again held that statements made by third parties were immaterial and did not affect whether service was ultimately obtained or not. A misrepresentation by a third party, even if true, would not make otherwise invalid service proper:

[Petitioner]'s process servers allege they were lied to or at least misled by employees at BJ's. BJ's employees deny that. **We deem this dispute immaterial**, as discussed more fully below. Even if the process servers' version is correct, nothing in the record shows that [Respondent] was aware of, much less participated in or encouraged, the conduct of BJ's employees.

Id. at 360. (emphasis added).

As long as Respondent Madani was not participating in or encouraging the misrepresentation or evading service, what third parties such as Afra Sulimani represented to the process server, such as in this case, are immaterial. See also: Goettemoeller v. Twist, 161 Wn. App. 103, 110 (2011) (“A defendant has no duty to assist a process server”).

This has to be the law, as Respondent Madani has no control over Ms. Sulimani’s representations or if her interpretation when allegedly asked if Madani resided “here” meant in the building and not her actual apartment. Her response to Madani living in the building was correct, but certainly not as to her specific apartment. This would be no different that Ms. Sulimani telling the process server that Madani lived in the building across the street. Her saying so does not make it any more true.

3. There Was No Service On “Resident Therein”

This largely adheres to the foregoing. Respondent Madani has already sworn under oath in a declaration as well as explained at deposition that he never lived at Apartment #46. RCW 4.28.080(15) requires service to be made upon a “resident therein” of Respondent’s “usual abode.”

The term “resident therein” has been defined by the Washington Supreme Court:

We hold for the purposes of RCW 4.28.080(15) that “resident” must be given its ordinary meaning – **a person is resident if the person is actually living in the particular home...**[W]e decline to transform “resident” into “present” by judicial construction.

Salts v. Estes, 133 Wn.2d 160, 170-71 (1997). (emphasis added).

The Supreme Court further explained:

It appears the common theme in the case is not only whether defendant is reasonably likely to receive the papers served, but whether the person to whom they are handed is a full-time resident of the defendant’s dwelling house or usual place of abode.

“Residing therein” has long been held to require the recipient of the papers to be actually living in the same place as defendant.

Id. at 169. (emphasis added).

In Salts, Petitioner waited until the three year statute of limitations had almost run and then attempted to serve Respondent at his residence. Id. at 163. Respondent was out of town when service was attempted, but the process server served the Summons and Complaint upon an individual who had been stopping by at the request of Respondent to feed the dog, bring in the mail, and other similar matters. Id. The Court rejected Petitioner’s argument that this individual was a “resident therein” of Respondent’s residence and affirmed summary judgment dismissal for

failing to file within the statute of limitations. Id. at 171. See also: Blankenship v. Kaldor, 114 Wn. App. 312, 315-18 (2002) (Insufficient service for father to accept documents at his home and send them to daughter. Father was not resident of daughter's usual abode).

Here, it is undisputed that the process server served Ms. Sulimani either at her own apartment (#46), across the hall at apartment #61, or somewhere in the hallway in between the two apartments. There is no evidence he ever attempted service at any of the apartments where Respondent Madani previously resided (#35, #49 or #52). Afra Sulimani was not a "resident therein" of any of these apartments. Thus, even if Ms. Sulimani could have accepted service, which she was not authorized to, service was not at the proper location on a "resident therein" and must fail.

D. Respondent Has Shown By Clear and Convincing Evidence That There Was No Valid Service.

Respondent has more than abundantly shown by clear and convincing evidence that Petitioner's attempted service was improper, even under Goettemoeller.

Petitioner concedes that at best, service was on Ms. Sulimani either at her Apartment (#46), the apartment across the hall (#61), or somewhere in between. Respondent was never personally served. No alternative service of process was attempted. Petitioner offers no evidence that

service was ever even attempted at apartments #35, #49, or #52, the only apartments Respondent testified he ever lived at.

Both Respondent Madani and Ms. Sulimani testified Madani never lived at, resided at, or used Apartment #46 for any purpose beyond registering his car there and having his mail sent there while he was out of town for his job, whether or not he kept his own apartment or not. Ms. Sulimani was the sole renter and resident of Apartment #46. It is against Madani's culture and religion to have the type of contact with Ms. Sulimani's apartment that Petitioner urges this Court to find.

Washington Courts have unanimously held that the limited purposes Respondent used Apartment #46 for are insufficient to transform it into his "usual abode." Beyond the car registration, mail, and immaterial declaration of the process server, Petitioner presents no evidence whatsoever that relates Madani to Apartment #46 in a significant enough manner to render it his "usual abode." The testimony of Respondent and Ms. Sulimani establish by clear and convincing evidence that Apartment #46 was not his "usual abode" and any service upon Ms. Sulimani at that apartment was invalid.

V. CONCLUSION

Petitioner fails to demonstrate the Trial Court erred in dismissing this case on summary judgment due to his failure to properly serve any

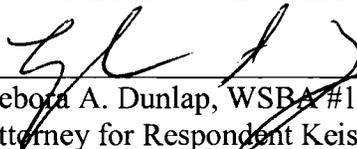
Respondent within the statute of limitations.

Petitioner never attempted personal service upon Madani. He made no attempt to serve through alternative means, such as the Non-Resident Motorist Statute or Service by Publication. He served the papers on the wrong person at the wrong apartment and insists this is still valid service. Petitioner did not obtain service at Madani's "usual abode" upon a "resident therein."

Respondent Madani had no connection to Apartment #46 where the documents were served except for having his mail sent there while he was out of town working in Alaska. Case law has already explicitly held that such "limited purpose" is insufficient to render an address a "usual abode" for the purposes of service. The summary judgment order dismissing this case should be affirmed.

DATED this 22nd day of November, 2011.

McGAUGHEY BRIDGES DUNLAP, PLLC

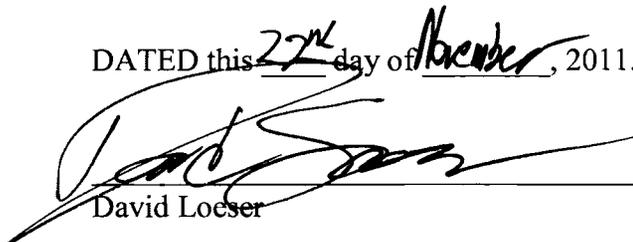
By:  WSBA # 40677
Deborah A. Dunlap, WSBA #14959
Attorney for Respondent Keiss Madani

filed with the Clerk of the above captioned court. The address to which these documents were provided to appellant's attorney was:

G. Parker Reich
Jacobs & Jacobs
114 East Meeker Avenue
P. O. Box 513
Puyallup, WA 98371

- by hand delivery
- legal messenger (ABC Messenger Service)
- facsimile
- U.S. Mail

DATED this 22nd day of November, 2011.



David Loeser