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Court of Appeals  
Division II  
State of Washington  
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COA No. 54192-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,  
DIVISION II

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MARK MULDER, a single person,

Plaintiff/Appellant,

-vs-

KRISTINA MARIE WARD, JOHN DOE WARD, and the marital  
community comprised thereof (if any),  
Defendants/Respondents.

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APPEAL FROM THE SUPERIOR COURT FOR PIERCE COUNTY  
THE HONORABLE STANLEY J. RUMBAUGH, JUDGE, PRESIDING

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APPELLANT'S REPLY BRIEF

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## II. RESPONSE TO RESPONDENT'S STATEMENT OF THE CASE

Ms. Ward fails to resolve a fundamental conflict in the evidence. Ms. Ward asserts she signed a certified mail receipt for a package of discovery materials from appellant bearing the address of 839 S. Prospect, but she did so because the USPS mail carrier brought it to her alleged true address of 833 S. Prospect. Respondent's Brief, p. 13-14, 26, 31. RP 10.

Ms. Ward's testimony cannot be reconciled with the USPS documents concerning that transaction. The USPS Form 3811 was admittedly signed by respondent. CP 53; EX 2; RP 14 l. 1-2. In Box 1 of the form appears the name of the addressee, Ms. Kristina Ward, and her address at 839 S. Prospect. EX 2. Box D contains the question, "*Is delivery address different from Item 1? If YES, enter delivery address below:...*" EX 2. Neither the postal employee nor Ms. Ward altered the form. RP 14 l. 8.

Further, the USPS tracking confirmation for that transaction recites "[y]our item was delivered to an individual at the address at 11:52 am on May 2, 2019 in TACOMA, WA 98405." CP 115. The address referred to in the tracking confirmation can only be the address listed in Box 1 of the USPS Form 3811. The tracking confirmation contains no evidence whatsoever the item was delivered to any other location.

The USPS Form 3811 and the USPS tracking confirmation provide convincing evidence Ms. Ward was present at 839 S. Prospect on May 2, 2019. This evidence contradicts Ms. Ward's testimony she was never at 839 S. Prospect.

Respondent argues Auburn Mills' declaration presents no good evidence that the individual at 839 S. Prospect was, in fact, the same person as Kristina Ward. Respondent's Brief, p. 17. In her testimony at the hearing, however, Ms. Mills answered the following question:

Q: Did he [Randy Hill] indicate to you that he knew the last name of whoever was living next-door?

A I simply asked him, "Does Kristina Ward live next door?" He gave me a big grin, and he said, "Yes."

RP 36 l. 9-12.

Ms. Ward attempts to counter Ms. Mills' testimony by pointing to her post-contact identification of Ms. Ward from photographs. Respondent's Brief p. 22-24. But Randy Hill's identification to Ms. Mills that Ms. Ward was his neighbor gave Ms. Mills contemporaneous information as to Ms. Ward's residence.

### III. ARGUMENT

#### A. Standards of Review.

The Court reviews *de novo* whether service of process was proper.

*Scanlon v. Townsend*, 181 Wn. 2d 838, 847, 336 P. 3d 1155 (2014);

#### B. Respondent fails to overcome the presumption that service of process upon her was correct.

On May 3, 2019, Dr. Mulder's attorney filed a Return of Service Declaration confirming Ms. Ward and John Doe Ward were personally served on April 20, 2019 at 3:46 p.m. at 839 Prospect St. Unit A, Tacoma WA. 98405. CP 10-11. The attorney's affidavit of service is presumptively correct. *State ex rel. Coughlin v. Jenkins*, 102 Wn. App. 60, 65, 7 P. 3d 818 (2000); *Woodruff v. Spence*, 76 Wn. App. 207, 210, 883 P.2d 936 (1997).

To overcome the presumption of good service, Ms. Ward must demonstrate that service was insufficient and she must show by clear and convincing evidence that service was improper. *Scanlan v. Townsend*, 181 Wn.2d 838, 847, 336 P.3d 1155 (2014); *Leen v. Demopolis*, 62 Wash. App. 473, 478, 815 P.2d 269, *review denied*, 118 Wash.2d 1022, 827 P.2d 1393 (1992).

Ms. Ward fails to overcome the presumption of good service. In light of the USPS Form 3811 (EX 2), the USPS tracking confirmation (CP 115) and the hearing testimony of Ms. Mills (RP 36 l. 9-12), Ms. Ward cannot

establish with high probability she was not served with process and therefore, she is unable to satisfy her clear and convincing burden of proof.

**C. Ms. Ward's testimony that Dr. Mulder's discovery was delivered to her by a postal worker at 833 S. Prospect contradicts the postal delivery documents and violates the parol evidence rule.**

Ms. Ward repeatedly invokes her testimony that Dr. Mulder's discovery documents were delivered to her 833 S. Prospect address by a postal worker. Respondent's Brief, p. 13-14, 26, 31. Ms. Ward's testimony directly contradicts USPS Form 3811 and USPS tracking confirmation, and thereby violates the parol evidence rule. *Berg v. Hudesman*, 115 Wn. 2d 657, 669, 801 P. 2d 222 (1990).

The parol evidence rule is a rule of substantive law and cannot be waived by failing to object. *Cooley v. Hollister*, 38 Wn. App. 447, 452, 687 P. 2d 230 (1984); *Silverdale Hotel Assocs. v. Lomas & Nettleton Co.*, 36 Wash. App. 762, 770 n. 5, 677 P.2d 773, *rev. denied*, 101 Wash.2d 1021 (1984) (citing *Becker v. Lagerquist Bros., Inc.*, 55 Wash.2d 425, 348 P.2d 423 (1960)). Therefore, Ms. Ward's violation of the parol evidence rule may be raised for the first time on appeal.

The parol evidence rule applies to government documents. *Buell v. City of Bremerton*, 80 Wn. 2d 518, 525, 495 P. 2d 1358 (1972); *State ex rel. Grimmer v. Spokane*, 64 Wash. 388, 116 P. 878 (1911). The parol

evidence rule thus applies to USPS Form 3811 and USPS tracking confirmation.

Federal courts prohibit parol evidence if it contradicts a postal document. *A.E. Alie & Sons, Inc., v. U. S. Postal Service*, 897 F. 2d 591, 593 (1<sup>st</sup> Cir. 1990); *Ames v. U.S. Postal Service*, 2005 WL 3536202 at 3 (D. N. J. 2005).<sup>1</sup> As Ms. Ward's testimony regarding delivery of Dr. Mulder's discovery requests to her 833 S. Prospect address contradicts the USPS Form 3811 and USPS tracking confirmation, that portion of her testimony should be stricken or otherwise disregarded. RAP 10.7; *Norton v. U.S. Bank Association*, 450, 463, 324 P. 3d 693 (2014).

**D. Ms. Ward waived the defense of insufficient service of process by acting inconsistently and dilatory.**

Ms. Ward's effort at discovery on the issue of service of process consisted of one interrogatory, number 34, buried on page 16 of a 19-page document. EX 4. Such a feeble attempt at notice is plainly insufficient.

Equally insufficient is Ms. Ward's service of her answer at 3:36 p.m. on June 26, 2019, some 89 days after filing of the complaint, just hours before the running of the statute of limitations. CP 17-20. Even the Civil Rules require 5-day notice. See CR 6 (d). Ms. Ward offers no good excuse for such dilatory filing of her answer.

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<sup>1</sup> Unreported; cited as persuasive per GR 14.1 (b)

Ms. Ward attempts to distinguish *Romjue v. Fairchild*, 60 Wn. App. 278, 803 P. 2d 57 (1991) by arguing she sent her amended discovery, with its single question on service of process buried deep within the document, some 10 days prior to the end of the tolling period. Respondent's Brief p. 29. Ms. Ward's feeble attempt at notice is likewise insufficient to distinguish this case from *Romjue*.

Mrs. Ward argues her actions do not indicate a strategy of ambush. Respondent's Brief, p. 30. To the contrary, by delaying filing her answer for 89 days until the afternoon before the running of the statute of limitations, Ms. Ward demonstrated a strategy of ambush. *King v. Snohomish County*, 146 Wn.2d 420, 424, 47 P.3d 563 (2002).

**E. Ms. Ward must be equitably estopped from asserting the defense of insufficient service of process.**

Ms. Ward argues her signing of the USPS Form 3811 is not a statement inconsistent with her later assertion of the defense of insufficient service of process. Respondent's Brief, p. 31-32. Ms. Ward again overlooks the irreconcilable conflict between her testimony regarding signing the form at 833 S. Prospect, as the form itself recites the address at 839 S. Prospect, and contains nothing to suggest the mail carrier delivered the documents anywhere other than the address stated on the form. EX 2. Moreover, Ms. Ward's testimony regarding USPS Form 3811 is barred by the parol evidence rule, *supra*.

Ms. Ward argues Dr. Mulder does not satisfy the reasonable reliance test, but fails to support her argument with either citation to the record or authority. Respondent's Brief, p. 32. Ms. Ward's argument should therefore not be considered. RAP 10.3 (a) (6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn. 2d 801, 809, 828 P. 2d 549 (1992).

**F. An award of attorney's fees and/or sanctions against Ms. Ward is appropriate.**

Ms. Ward continues to adhere to her testimony that she signed the USPS Form 3811 at 833 S. Prospect when the form on its face tells a different story. EX 2. Once again, Ms. Ward's testimony is barred by the parol evidence rule, *supra*.

Ms. Ward's declaration and courtroom testimony that she always lived at 833 S. Prospect is contradicted by the USPS Form 3811, the USPS tracking confirmation, and the trial testimony of Autumn Mills. EX 2; CP 115; RP 36 l. 9-12.

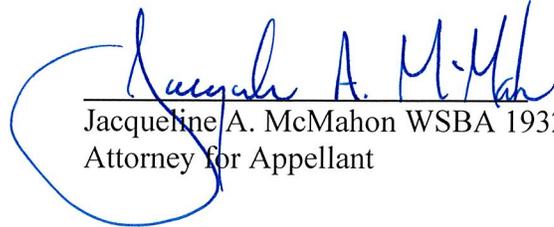
Ms. Ward's lack of candor regarding the address where she was served with summons supports an award of sanctions against her by this Court. RAP 18.9 (a); *In re Welfare of RH*, 176 Wn. App. 419, 430, 309 P. 3d 620 (2013); *Deutscher v. Gabel*, 149 Wn. App. 119, 132-35, 202 P. 3d 355 (2009).

#### IV. CONCLUSION

The order on motion to dismiss should be reversed, and the case remanded to the trial court for a trial. The Court should award sanctions against respondents under RAP 18.9 (a).

Dated this 1<sup>st</sup> day of June, 2020.

Respectfully submitted,  
McMahon Law Group, PLLC

  
Jacqueline A. McMahon WSBA 19321  
Attorney for Appellant

**V. CERTIFICATE OF MAILING**

The undersigned does hereby certify that on June 1, 2020, she served a copy of Appellant’s Reply Brief filed in the above-entitled case to all parties listed below at their address of record, in the manner indicated:

<p>Gordon Hauschild Law Office of Gerrit J. Ayers 917 Pacific Avenue, Suite 207 Tacoma, WA 98402</p>	<p><input checked="" type="checkbox"/> U.S. First Class Mail, postage prepaid  <input type="checkbox"/> Via Legal Messenger  <input type="checkbox"/> Overnight Courier  <input checked="" type="checkbox"/> Electronically via email:  <u>SeattleSCEServ@geico.com,</u>  <u>Ghauschild@geico.com</u>  <u>Llarson@geico.com</u>  <input type="checkbox"/> Facsimile  <input checked="" type="checkbox"/> Via Washington State Appellate Courts' Portal</p>
<p>Clerk Washington State Court of Appeals, Division II 950 Broadway, Suite 300 Tacoma, WA 98402-4454</p>	<p><input type="checkbox"/> Via U.S. Mail  <input type="checkbox"/> Via Legal Messenger  <input type="checkbox"/> Via Facsimile  <input type="checkbox"/> Via Hand Delivery  <input type="checkbox"/> Via E-mail  <input checked="" type="checkbox"/> Via Washington State Appellate Courts' Portal</p>

Dated this 1<sup>st</sup> day of June 2020, at Puyallup, WA.

  
 \_\_\_\_\_  
 Rhonda Ryan

**MCMAHON LAW GROUP, PLLC**

**June 01, 2020 - 2:21 PM**

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