

No. 347991

FILED

AUG 11 2017

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS,
DIVISION III
OF THE STATE OF WASHINGTON

IN RE: THE Dissolution Of:

Greg Benjamin

Authorized Representative Natural Person, In Propria Persona: SUI JURIS Not a
Corporate Person or Entity, Misrepresented by Fraudulent Construct of ALL CAPITAL
LETTERS All Rights Reserved: U.C.C. 1-207/1-308; U.C.C. 1-103

Appellant,

v.

Kelli Benjamin

Respondent

AMENDED REPLY BRIEF OF APPELLANT GREG BENJAMIN

Greg Benjamin

Authorized Representative Natural Person, In Propria Persona: SUI JURIS Not a
Corporate Person or Entity, Misrepresented by Fraudulent Construct of ALL CAPITAL
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339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

Kennedy v. Sundown Speed Marine, Inc., 97 Wash.2d 544, 549, 647 P.2d 30, cert. denied, 459 U.S. 1037, 103 S.Ct. 449, 74 L.Ed.2d 603 (1982).

112 Wash.2d at 618, 772 P.2d 1013.

Restatement of the Law 2d, Judgments 2d, § 74, cmt. a.

Tatham v. Rogers (2012) 170 Wash.App. 76, 283 P.3d 583

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Murphy Bros. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 351 (1999) .

McClain v. Checknet Case No. 3:15cv00214, 1 (S.D. Ohio Aug 31, 2015)

Distrib., Inc. v. Hornell Brewing Co., 340 F.3d 345, 35(6th Cir. 2003)

Sawyer v. Lexington-Fayette Urban County Government, 18 Fed. App'x. 285, 287 (6th Cir. 2001)

Byrd v. Stone, 94 F.3d 217, 219 (6th Cir. 1996)).

Nunez by Nunez v. City of San Diego, 114 F3d 935 (9th Cir. 1997)

P.O.P.S. v. Gardner, 998 F2d 764 (9th Cir. 1993)

Statutes

RCW 13.34.080 Summons when petition filed—Publication of notice

RCW 65.16.020 Qualifications of legal newspaper.

RCW 4.28.080 Summons, how served

RCW 4.28.100 Service of summons by publication—When authorized.

RCW 4.28.110 Manner of publication and form of summons.

RCW 4.28.200 Right of one constructively served to appear and defend or reopen.

RCW 26.50.085 Hearing reset after ex parte order—Service by publication—
Circumstances.

RCW 26.50.123 Service by mail.

RCW 26.09.150 Decree of dissolution of marriage or domestic partnership, legal
separation, or declaration of invalidity—Finality—Appeal—Conversion of decree of
legal separation to decree of dissolution—Name of party.

RCW 4.28.020 Jurisdiction acquired, .

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Rules

FAMILY.CODE SECTION 2335.5. FAMILY.CODE SECTION 2338.5.

CR 55 DEFAULT AND JUDGMENT (b)(4)—(c)(1)—(c)(2)—

CR 60(b)(1)—(b)(3)—(b)(7)

"C.R. RULE 4 Summons(d)(5) (d)(8)

RULE 2.6 Ensuring the Right to Be Heard

CR 12 DEFENSES AND OBJECTIONS

Amendment XIV Section 1

Other Authorities

"Sine qua non" or "without which not" refers to "something on which something else
necessarily depends." Black's Law Dictionary 1418 (8th ed. 2004). Viii

DMCS Sec. 200.0105: 48 . DMCS Sec. 200.0105: DMM Sec. 422.221

7 Cong.Rec. 4025-27 (1878) . Act of July 12, 1876, ch. 179, Sec. 5, 19 Stat. 82

8 Cong.Rec. 1662-1665 (1879) .See 8 Cong.Rec. 697 (1879)

DMM Sec. 422.223

GOVERNMENT CODE SECTION 6000-6008

For The Record, To Be Read Into The Record Notice to the Agent is Notice to the Principal- Notice to the Principal is notice to the Agent.

COMES NOW, Greg Benjamin Natural Person, In Propria Persona Sui Juris; (not to be confused with, Not a Corporate Person or Entity, Misrepresented by Fraudulent Construct of ALL CAPITAL LETTERS nor substituted by, Pro Se by unauthorized hand of another). I am a naturally freeborn American; possessing Free-hold by right ; standing squarely Affirmed, aligned and bound to the Zodiac Constitution, with all due respect and honors given to the Constitution for the United States Of America,

I. OVERVIEW

The central issue presented is the sufficiency of evidence required to grant publication. Also if the Liberty lake splash qualifies as a newspaper of general circulation. Under our statutes, case law and constitution, this evidence must be clear, cogent and convincing and sufficient. In no case will mere hearsay, speculation or “suspicion” be sufficient. Evidence must also be relevant, i.e., in accordance with statutory standards. A dissolution by default cannot be imposed or should be dismissed where there is no perfection of proper service or receipt of attempted service.

Furthermore Publication of legal notices cannot be done in free newspapers. A free newspaper, even if it meets all other criteria, is not considered to be of “General Circulation” In the case at bar, the trial court violated these precepts. In doing so the petitioners rights to appear and defend were violated.

2. Statement of Issues

A. Kelli Benjamin did not perfect service to be granted publication. In her motion for publication, Kelli states that she made attempts through certified mail. If this was the case she would have a receipt from this attempt whether I received the summons or not. Kelli provided the courts with no such proof. She did not attempt service by mail or she would have rendered this proof as is required by law.

She also claims to have had other copies made for others to serve me. Two of my sisters worked with Kelli at this time and neither one of them were asked to serve me or offered any copy of the summons to serve me with. My sisters would have surely known my whereabouts if Kelli was not able to find me.

The fact is I was on Kelli's account at her work as her husband from 2007-2014. She worked at a fitness club and her and I both had free memberships as husband and wife. Kelli in fact saw me almost daily working out while she was working.

I was not hiding myself nor did I ever refuse any mail. If I had it wouldn't matter because Kelli would have still received a receipt from the postal service for certified mailing whether it was received or denied or just not delivered. The fact is there is no receipt because there was no attempt. On September 24th, 2009, in a parallel case #082040503, Kelli was also granted service by mail but gives the wrong zip code to the address making it impossible that I would ever receive the documents. In this case Kelli again provides no receipt of service along with giving the wrong address.

Plaintiff bears the burden to effect service and to show that service has been perfected. See *Sawyer v. Lexington-Fayette Urban County Government*, 18 Fed. App'x. 285, 287 (6th Cir. 2001) (citing *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996)).

"Unless a named defendant agrees to waive service, the summons continues to be the sine qua non directing an individual or entity to participate in a civil action or forgo procedural or substantive rights." *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 351 (1999) .

"Sine qua non" or "without which not" refers to "something on which something else necessarily depends." *Black's Law Dictionary* 1418 (8th ed. 2004).

"[I]f service of process was not proper, the court must set aside an entry of default." *O.J. Distrib., Inc. v. Hornell Brewing Co.*, 340 F.3d 345, 353 (6th Cir. 2003)

3. The Liberty Lake Splash

is not a newspaper of "General Circulation". Even if it meets all the criteria of a newspaper for general circulation, it cannot be considered as it is free. Proof of this can be noticed by the own resolution of the Splash dated May 23rd, 2001 #2 requirements states:

The city is required to publish its legal notices, Ordinances, or summaries thereof, and other matters in a legal newspaper which has the qualifications set forth in RCW chapter 65.16

The classification decisions of the Board of Governors have recognized the Congressional requirement to preserve the second-class subsidized category as defined by statute prior to 1970. The current mail classification system is compiled in the Domestic Mail Classification Schedule (DMCS). See 39 C.F.R. Sec. 3001.68, Appendix A to Subpart C (1986). The detailed regulations which implement the DMCS are set forth in the Domestic Mail Manual (DMM), a publication incorporated by reference in 39 C.F.R. Sec. 111.1 (1986). The DMCS and the related provisions of the DMM still retain the

general outline of the classification system established by Congress in 1879. Specifically, the DMCS states:

CFR 200.0105 Second-class matter must have a legitimate list of persons who have subscribed by paying or promising to pay at a rate above a nominal rate for copies to be received during a stated time....

CFR 200.012 Publications designed primarily for advertising purposes, free circulation, or circulation at nominal rates ... do not qualify for second-class privileges

CFR 200.0122 Designed primarily for free circulation is defined as distribution of 50 percent or more of the copies of a publication for free or at a nominal rate. Copies mailed to persons who are not on a legitimate list of subscribers ... are free copies.

The Domestic Mail Manual regulations at issue in this proceeding are based on, and reflect, the language of the DMCS. In pertinent part, DMM Sec. 422.221 states the paid subscriber requirement of DMCS Sec. 200.0105:

DMCS Sec. 200.0105: 48 General publications must have a legitimate list of subscribers who have paid or promised to pay, at a rate above a nominal rate, for copies to be received during a stated time

Similarly, DMM Sec. 422.223 excludes free publications from general second-class entry, echoing DMCS Secs. 200.012 and 200.0122:

Publications primarily designed for free circulation and/or circulation at nominal rates may not qualify for the general publications category. Publications are considered primarily designed for free circulation and/or circulation at nominal rates when one-half or more of all copies circulated are provided free of charge ... or are paid for at nominal

rates by the ultimate recipients....

These eligibility standards for general second-class publications follow the approach adopted by Congress in the 1879 postal legislation and maintained continuously for the following ninety years. The PRC and the Board of Governors, like Congress, have selected objective evidence of customer demand rather than the more subjective standard of "newspaperness" as the primary distinguishing characteristic of second-class mail. The objective evidence of a list of paid subscribers has been chosen as the most useful tool, consistent with the desire to avoid postal censorship, to distinguish between second-class publications issued in response to reader demand and third-class matter primarily designed for the advertising or other commercial purposes of the publisher.V. The Validity of the Paid Subscriber Rule

Under these rules the liberty lake splash is not a paper of general circulation and should not be on the clerks list for publication of legal notice. Free newspapers are not considered "newspapers of general circulation." Legal advertising cannot be done in free newspapers even if they meet all of the above requirements

4. ORDER TO SHOW CAUSE

on my motion to vacate was done in EX PARTE with Pro Tem Com Nicole Koyama residing over the hearing. This was done under the modification action as to contest the validity of the dissolution and the jurisdiction of the courts. This would nullify the need for modification.

Ex parte /,eks 'pa:rti:/ is a Latin legal term meaning "from (by or for) [the/a] party". An ex parte decision is one decided by a judge without requiring all of the parties to the controversy to be present.

This is why Mr Hughes was not present at the show cause hearing and was served notice of the vacate hearing along with all the subject matter after the fact of the Show Cause hearing which was granted under the argument of CR 60 (b)(7).

5. There is No Substantial Evidence

That Kelli with due Diligence tried to perfect service. In fact after orders of default are granted, the petitioner is to give the clerk of the court an addressed envelope with my last known address on it for the clerk to send the judgements to me. This was not done. No where in the case file is there any proof that Kelli did the steps required by law to be granted publication.

Doug admits in the response brief on page 8 line 3, that I was served on these matters in 2015. In fact it was October 5th, 2015 and it Was Doug Hughes who served me.

With no proper receipt of service on file to grant publication, the courts lacked jurisdiction to grant default decrees in this case.

Being served in October 2015 makes filing the motion to vacate done in reasonable time under one year. Also opens the length of time under CR 60(4) to be well reasonable,

Mr Hughes mentions all kinds of assertions to serve me but only has one valid assertion to rely upon. There is an affidavit from a Sherriff who attest he could not serve me. However, on a parallel case I was served at my home by the Sherriff..

There is no other proof of service or attempted service by Ms. Benjamin. Only her own statements that she attempted certified mail yet has no receipt from the post office which is given at the time of purchase. The receipt is given regardless of if it was delivered or not. In Kelli's declaration for publication list only other then the above mentioned, that she made copies of the summons to serve me but doesn't imply that they

were even attempted at serving or by whom, or when, or where. Just simply that she made copies.

If this self assertion is a claim to attempted service then it falls very short by standard to be granted publication.. I don't have to argue if or when I was served. Doug himself says in Kelli's response brief that I was served in 2015. October nonetheless, Don't take my word for it, take Dougs.

6. Legal and factual basis of claims of being served on a parallel case.

Doug Claims that there is no legal or factual basis to establish my ability to be served. Well on docket #08-2-04090-3 it shows that I was served for orders of restraints on 9/03/08 and also on 9/19/08 and was done so by the police. The same police who attempted service for the dissolution decree but were unable to. These are facts from the Washington courts website

7. Judgment and jurisdiction

in this case should be reversed as there was no perfection of service with due diligence to support the granting of publication . Therefore the courts lacked jurisdiction

RCW 4.28.080 Summons, how served

RCW 4.28.100 Service of summons by publication—When authorized

. RCW 4.28.110 Manner of publication and form of summons.

RCW 4.28.200 Right of one constructively served to appear and defend or reopen.

RCW 26.50.085 Hearing reset after ex parte order—Service by publication—

Circumstances.

RCW 26.50.123 Service by mail.

RCW 26.09.150 Decree of dissolution of marriage or domestic partnership, legal

separation, or declaration of invalidity—Finality—Appeal—Conversion of decree of legal separation to decree of dissolution—Name of party.

RCW 4.28.020 Jurisdiction acquired,

8. Invalid approach

Mr. Hughes rather than focus on the facts of the case would like to bring up my shortcomings of knowledge when implicating laws and statutes. He refers to my work as “cut and paste”. Well most of my research is done online and yes if its relevant then I may cut and paste it into what I,m writing. How else would a pro se litigant gain such knowledge. I would only hope the courts consider that Im not a practicing attorney and see that I by myself have come this far not because of cutting and pasting, but because I love my daughter and will research and learn and cut and paste if need be the laws relevant to my success in being a father.

Plaintiff admits to some technical missteps attributable to the learning curve. However, none of which is fatal to his claim as has been demonstrated . The Plaintiff is proceeding without the benefit of legal counsel. Additionally, he is not a practicing attorney nor has he been trained in the complex study of law. As such, Plaintiff's Sui Juris papers are to be construed liberally. See *Haines v. Kerner*, 404 U.S. 519-20, (1972). “A pro se/ Sui Juris litigant should be given a reasonable opportunity to remedy defects in his [or her] pleadings if the factual allegations are close to stating a claim for relief.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Accordingly such pleadings should be held to a less stringent standard than those drafted by licensed, practicing attorneys.

9. Mr. Benjamin is Entitled to Reversal and Vacation of the Dissolution

for several reasons mentioned. These are all backed by facts of law and not self served assertions. Doug himself, although states I knew about this case for years,

Admits that I wasn't served on it until 2015. This contradicting his argument of service and knowledge of the case. Doug himself was the first to serve me on this case and did so in October of 2015

10. Mr. Benjamin is Similarly Situated to a Criminal Defendant

Mr. Benjamin feels that he is "similarly situated" to a criminal defendant. Cf. Resp. Br., p.23; and App. Br., p.40. On close examination, Mr. Benjamin is in a similar position or in some ways, a worse position. A criminal defendant is confined for a specified period of time. His property may be forfeited as part of his sentence, i.e., liquidated. If a criminal defendant owns other property, e.g., a second home, he retains control of that property.

Mr. Benjamin, by contrast, is under an indeterminate restriction or life sentence keeping him from seeing his daughter. Hedin, 528 N.W. 2d. at 573, ¶3. All of his property has been forfeited, i.e., it is subject to liquidation to pay for the child support (CP 906-8). He does not have the right to parent his own child. That right has been taken away for no reason against his constitutional rights to bare and raise children . He has had orders of restraints put against him indefinitely for no reasons valid. He cant even go watch his daughters softball games. Now his license is being taken away as child support has been implemented far enough back that the debt is large enough to put liens on his vehicles and revoke his license to drive.

Mr. Benjamin's child is being concealed from him and the courts are aiding in doing so. There is no proof of any domestic abuse whatsoever. Kelli makes claims to visiting hospitals and also says she will provide police records but has yet to do so. That is because there is no such documents. There is no such proof and therefore will never be

produced.

11. The Appearance of Fairness Requires Remand to a Different Judicial Officer

In *Custody of R*, 88 Wn. App. 746, 762-63, 947 P.2d 745 (1997), the appellate court remanded to a different judge to promote the appearance of fairness. Therein, the trial judge had denied the appellant a continuance under circumstances suggesting bias. *Custody of R* made no finding of bias, but nonetheless remanded to another judge. It stated: the “judiciary should avoid even mere suspicion of bias.”

In the case at bar, the commissioner not only denied Mr. Benjamin his right to parent. she also denied his right to a fair trial Mr. Benjamin was denied all semblance of due process. For this reason also, Mr. Benjamin has requested that any remand be to a new Judicial Officer.

12. CONCLUSION

Greg Benjamin has been stripped of several amended rights. Kelli purposefully did not try to serve mr. Benjamin as her whole ideal was to manipulate the courts to gain custody of the minor child. This would make it so Mr. Benjamin had no real fair chance at gaining custody of said child. Mr. Benjamin has proven his involvement in raising their daughter and has also proven to have considerable time with the child on a weekly basis. This fact alone shows Kelli’s purported allegations of abuse to be untrue. Things have been successful for years. When Kelli doesn’t get what she wants, in turn manipulates unfounded orders of restraints to gain control of the child and to punish Mr. Benjamin by not allowing him visitations. A violation of his amended rights to bare and raise children. The Laws are very clear on what they intend and service of summons clearly states that a complaint shall be filed with the Post Office showing

record thereof. Without record of this the courts erred in granting publication.

Though the Liberty Lake Splash is on the clerks list for publication, by law it does not qualify to be on the list. It may meet all criteria but because it is a free paper, it is not considered to be a paper of :general circulation by federal law which supersedes state law. The Liberty Lake Splash in their own resolution state that they will have to post their legal notices and summaries in a legal paper that meets the criteria. To this day The Splash does not print legal notices. In looking through issue after issue of the Splash I have found not one other publication of legal notices whatsoever. That’s because the Splash does not print them because they do not qualify as a paper of “general Circulation”

Affiant, a natural freeborn American Divine Being-manifested in human flesh do Declare by virtue of Divine Law: under the Zodiac Constitution; and the United States Constitution; and upon the honor of our Fore-Mothers and our Fore- Fathers that the above Reply declaration is true and correct to the best of my knowledge and honorable intent.

Respectfully submitted this 11th day of August, 2017


Greg Benjamin Sui Juris

Division III Court of Appeals

FILED

In re:

Petitioner

Greg Benjamin

Respondent

Kelli Benjamin

:

No. 347991

Proof of Service

()

AUG 11 2017

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Proof of Service

Server declares:

1. My name is Greg Benjamin and I am 18 or older. I served by certified mail court documents for this case to *Kelli Benjamin* by :

Mailing the documents to *Kelli Benjamin* at the last known address.

1418 N. Hodges Rd. Spokane, Washington 99216

Date: August 11th, 2017 Time: 3:15 p.m.

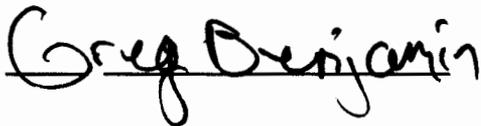
Documents Served.

Appellate reply Brief

Stay of Proceedings on final child support order

I declare under penalty of perjury under the laws of the state of Washington that the statements on this form are true.

Signed at *Spokane, Washington* on *August 11, 2017*



Greg Benjamin

Print or type name of server