

No. 63708-8-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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DAVID STREETER-DYBDAHL,

Respondent,

vs.

NGUYET HUYNH and "JOHN DOE" HUYNH, wife and husband and their  
marital community,

Appellants.

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APPEAL FROM KING COUNTY SUPERIOR COURT  
Honorable Timothy A. Bradshaw, Judge

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BRIEF OF APPELLANTS

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## **I. NATURE OF THE CASE**

Plaintiff David Streeter-Dybdahl and defendant Nguyet Huynh had a car accident. Plaintiff waited until the day before the three-year limitations period expired before filing suit. Plaintiff then waited another sixty days before attempting service of process on Ms. Huynh.

The declaration of service states that personal service was made on Ms. Huynh. Yet the description of the person served clearly describes someone (a tall, heavy male) other than Ms. Huynh (a short, slender female). Further, Ms. Huynh actually lived elsewhere. The address where service of process was attempted was not her “usual abode” to accommodate substitute service.

The 90-day service period ended without plaintiff ever obtaining service of process on Ms. Huynh. She moved to dismiss but the motion was denied. The superior court erred in refusing to dismiss plaintiff’s complaint. Having accepted discretionary review, this Court should reverse and remand to the superior court with instructions to dismiss the claims against Ms. Huynh.

## **II. ASSIGNMENT OF ERROR**

The superior court erred in denying Ms. Huynh’s motion to dismiss for lack of jurisdiction because plaintiff never properly effectuated service of process before the statute of limitations expired. (CP 106-07)

### III. ISSUES PRESENTED

1. Did the superior court commit reversible error when it denied Ms. Huynh's motion to dismiss even though plaintiff failed to personally serve Ms. Huynh with service of process?

2. Did the superior court commit reversible error when it denied Ms. Huynh's motion to dismiss even though plaintiff failed to obtain substitute service of process when the summons and complaint were delivered to an unknown male at an address that was not Ms. Huynh's "usual abode"?

### IV. STATEMENT OF THE CASE

Plaintiff David Streeter-Dybdahl and Nguyet Huynh were in a motor vehicle accident on September 20, 2005. (CP 2) Two years and 364 days later, on September 18, 2008, plaintiff filed a lawsuit. (CP 1-3) More than sixty days later, a process server attempted service of process on Ms. Huynh. (CP 4) The declaration of service filed three weeks later (on the day before the 90-day tolling period expired) memorialized the service attempt:

**That on the 23rd day of November, 2008 @ 02:19 PM, at the address of 722 MARTIN LUTHER KING JR WAY S, SEATTLE, within KING County, WA, the undersigned duly served the following documents(s): SUMMONS; COMPLAINT FOR DAMAGES; ORDER SETTING CIVIL CASE SCHEDULE in the above entitled action upon NGUYET HUYNH, by then and there, at the residence and usual place of abode of said person(s),**

residence and usual place of abode of said person(s), personally delivering TWO true and correct copy(ies) of the above documents into the hands of and leaving same with **NGUYET HUYNH, A NAMED DEFENDANT**, being a person of suitable age and discretion, then resident therein.

**Desc: Sex: MALE – Age: 30’s – Skin: ASIAN – Hair: BROWN – Height: 5’8” – Weight: 140.**

*(Id.)* (emphasis in original).

In fact, the defendant, Nguyet Huynh, is a 5’1”, 110-pound, 34-year-old woman. (CP 15) Since April of 2008, she and her husband, Bi Van Pham, have lived in a house at 2131 133<sup>rd</sup> St. SW, Lynnwood, WA 98087 (hereafter, the “Lynnwood address”). *(Id.)* Snohomish County property records reveal that they bought the Lynnwood house on April 1, 2008. (CP 18-19) Ms. Huynh has not lived at 722 Martin Luther King Jr. Way S., Seattle, WA, (hereafter the “MLK address”) since 2002. (CP 16) She was never personally served with a copy of the summons and complaint. *(Id.)*

Ron Belec, an employee of the process-serving company (though not the person who actually attempted to serve Ms. Huynh), submitted a declaration indicating that Ms. Huynh had an ownership interest the MLK address from 1998 to July of 2006. (CP 56-59) Mr. Belec stated that the Washington Department of Licensing listed the MLK address for Ms. Huynh as of January 18, 2006. (CP 59) Mr. Belec’s investigation

occurred only after Ms. Huynh filed her motion to dismiss. (CP 20-23, 56-59) For the November 2008 attempt, the process server simply received instructions and delivered the documents to the address provided to him. (CP 58)

Ms. Huynh's brother, Tu Huynh, lived at the MLK address at the time of the attempted service. (CP 95) He had lived there since 1998. His sister moved out between 2003-2004. (*Id.*) "[F]rom time to time" mail for Ms. Huynh arrived at the MLK address. (*Id.*) She came by her brother's residence at the MLK address "[f]rom time to time," perhaps 1-2 times per month, and picked up any mail that has been delivered there. (CP 95-96)

Tu Huynh never received the summons and complaint for the lawsuit against Ms. Huynh. (CP 96-98) He was not even aware of the lawsuit until later receiving a subpoena for his deposition. (CP 98)

Less than 90 days after the complaint was filed, Ms. Huynh's attorney attempted to contact plaintiff's counsel regarding "proof and confirmation of service." (CP 88) Ms. Huynh answered the complaint on December 23, 2008. (CP 5-6) She asserted the affirmative defenses of insufficient service of process and lack of jurisdiction. (*Id.*)

Ms. Huynh then moved to dismiss plaintiff's complaint on the grounds of insufficient service of process, lack of jurisdiction, and that

plaintiff's claims were barred by the statute of limitations. (CP 20-23) In response, plaintiff filed a motion to compel discovery. (CP 28-31) The court issued an order directing Ms. Huynh to respond to "only questions/requests related to insufficiency of process claims." (CP 42-43)

Plaintiff filed a memorandum and materials in opposition to the motion to dismiss (which the court converted to summary judgment), and Ms. Huynh filed materials in reply. (CP 46-104) After a hearing, the court issued an order denying Ms. Huynh's motion without explanation. (RP 1-62; CP 106-07) Ms. Huynh filed a Notice of Discretionary Review and an Amended Notice of Discretionary Review. (CP 108-11, 114-17) The Commissioner issued his ruling on August 14, 2009, which granted the motion for discretionary review.

## **V. ARGUMENT**

### **A. STANDARD OF REVIEW.**

On appeal from a summary judgment order, a reviewing court undertakes the same inquiry as the trial court. *Gross v. Sunding*, 139 Wn. App. 54, 59, 161 P.3d 380 (2007). Whether service of process was proper is a question this Court reviews de novo. *Pascua v. Heil*, 126 Wn. App. 520, 527, 108 P.3d 1253 (2005). When service of process is challenged, the plaintiff has the initial burden of proof to establish a prima facie case of sufficient service. *Gross*, 139 Wn. App. at 60. While an affidavit of

service of process is presumptively valid on its face, a party challenging service of process can show the service was improper and irregular by clear and convincing evidence. *Woodruff v. Spence*, 76 Wn. App. 207, 209-10, 883 P.2d 936 (1994). Plaintiff carries the burden of proving that service was proper. *Witt v. Port of Olympia*, 126 Wn. App. 752, 757, 109 P.3d 489 (2005). Whether the MLK address qualified as a usual abode is a legal, not a factual, determination. *Sheldon v. Fettig*, 77 Wn. App. 775, 779, 893 P.2d 1136 (1995), *aff'd*, 129 Wn.2d 601, 919 P.2d 1209 (1996).

**B. MS. HUYNH WAS NOT SERVED WITH SERVICE OF PROCESS.**

The superior court erred in denying Ms. Huynh's motion to dismiss. She provided clear and convincing evidence that she was not served, the declaration of service was irregular, and that no substitute service was made. This Court should reverse and remand.

“Basic to litigation is jurisdiction, and first to jurisdiction is service of process.” *Rodriguez v. James-Jackson*, 127 Wn. App. 139, 143, 111 P.3d 271 (2005). Service must be both constitutionally adequate *and* in compliance with statutory requirements. *Woodruff v. Spence*, 88 Wn. App. 565, 571, 945 P.2d 745 (1997), *rev. denied*, 135 Wn.2d 1010 (1998).

Constitutional due process requires that a plaintiff use a method of service “reasonably calculated to inform the defendant of the lawsuit.” *Gerean v. Martin-Joven*, 108 Wn. App. 963, 971, 33 P.3d 427 (2001), *rev.*

*denied*, 146 Wn.2d 1013 (2002). However, the fact that the defendant received actual notice of the suit is not sufficient. *See Lepeska v. Farley*, 67 Wn. App. 548, 552, 833 P.2d 437 (1992). “[A]ctual knowledge of pending litigation . . . standing alone is insufficient to impart the statutory notice required to invoke the court’s in personam jurisdiction.” *Thayer v. Edmonds*, 8 Wn. App. 36, 40, 503 P.2d 1110 (1972), *rev. denied*, 82 Wn.2d 1001 (1973). Washington statutes mandate that a copy of the summons either be delivered to the defendant personally or by substitute service. *Gerean*, 108 Wn. App. at 969.

RCW 4.28.080 sets forth how a summons must be served on a defendant. The statute generally requires personal service of a summons on the defendant. The statute also permits substitute personal service on the defendant “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). Plaintiff here failed to accomplish either method of service of process. Ms. Huynh was not personally served, and there was not substitute service of process. The superior court erred in refusing to dismiss plaintiff’s case.

**1. There Was No Personal Service of Process.**

Plaintiff did not personally serve Ms. Huynh. The declaration of service states that a 5’8”, 140-pound man was served. (CP 4) Ms. Huynh

is a 5'1", 110-pound woman. (CP 15) On its face, the declaration of service is invalid. Rather, plaintiff contends that substitute personal service was achieved. (CP 49-50) Plaintiff's claim of substitute service is directly refuted by the plain and unambiguous language of the declaration of service (which patently avers personal service). (CP 4) Setting aside the deficiencies of the declaration of service, the facts of this case and applicable precedent demonstrate that plaintiff failed to achieve substitute service.

**2. There Was No Substitute Service of Process.**

RCW 4.28.080(15) lists three requirements for valid substitute service of process: (1) the summons must be left at the defendant's "house of his or her usual abode"; (2) the summons must be left with a "person of suitable age and discretion"; and, (3) the person with whom the summons is left must be "then resident therein." *Salts v. Estes*, 133 Wn.2d 160, 161, 943 P.2d 275 (1997) (substitute service not effective on person who was monitoring house while defendant on vacation). Each of the three requirements must be met.

The Supreme Court has determined that "'house of [defendant's] usual abode' in RCW 4.28.080(15) is to be liberally construed to effectuate service and uphold jurisdiction of the court." *Sheldon v. Fettig*, 129 Wn.2d 601, 609, 919 P.2d 1209 (1996). As the Supreme Court later

acknowledged in *Salts v. Estes*, though, the *Sheldon* case marks the outer boundaries of RCW 4.28.080(15). 133 Wn.2d at 166. No Washington jurisprudence permits a wholesale disregard of the language of a statute. In fact, the *Salts* Court specifically recognized and followed the established rules of statutory construction. The *Salts* Court stated:

Our duty is to effectuate the intent of the Legislature in enacting a statute. If a statute is unambiguous, as is RCW 4.28.080(15), we are obliged to apply the language as the Legislature wrote it, rather than amend it by judicial construction. *GESA Fed. Credit Union v. Mutual Life Ins. Co.*, 105 Wn.2d 248, 252, 713 P.2d 728 (1986). We must provide consistency and predictability to the law so the people of Washington may conform their behavior accordingly. The language of RCW 4.28.080(15) sets forth the standards for substituted service of process. We best accomplish the purpose of establishing predictable standards by not stretching the meaning of those standards beyond their plain boundaries.

133 Wn.2d at 170.

If a defendant does not reside at an address, the address is not her “usual abode.” As Tegland explained:

The papers must be left at the defendant’s place of abode; *i.e.*, at the defendant’s place of residence. ***Delivery to a location where the defendant does not reside*** (for example, a house owned but not occupied by defendant) ***is insufficient.***

14 K. Tegland, WASHINGTON PRACTICE CIVIL PROCEDURE § 8.6, at 202 (2003) (emphasis added).

The evidence undisputedly establishes that service was attempted only at the MLK address, an address where Ms. Huynh did not reside. Ms. Huynh lived in Lynnwood, and had lived in Lynnwood since April of 2008. (CP 15) She had not lived the MLK address since at least 2002. (CP 16)

Plaintiff does not dispute that Ms. Huynh's usual abode in 2008 was in Lynnwood. Instead, he argues that (a) a person can have more than one abode, and (b) the MLK address qualified as an alternate abode. (CP 49-50) Plaintiff's argument is not supported by the facts or the law. In *Sheldon*, the Supreme Court acknowledged it is possible for a person to have two usual places of abode "if each is a center of domestic activity where it would be most likely that defendant would promptly receive notice if the summons were left there." 129 Wn. 2d at 611-612 (emphasis added). Not only does *Sheldon* mark the "outer boundaries" of RCW 4.28.080(15), the holding is limited to its unique facts.

In *Sheldon*, the plaintiff attempted substitute service on the defendant, a young woman, at her parents' house in Seattle. 129 Wn.2d at 604. The defendant had lived with her parents before moving to Chicago for flight attendant training. *Id.* After her training, she leased an apartment in Chicago, but she went "home to Seattle" whenever she could. *Id.* at 605. Indeed, she spent 4-5 days at her parents' house the month that

service was attempted and 5-6 days there the month before. *Id.* The *Sheldon* Court affirmed the decision of the appellate court which had noted that young adults often find themselves in the early stages of transitioning from their parents' houses to being on their own.<sup>1</sup> The *Sheldon* Court determined that its case represented the “quintessential example of a highly mobile person splitting her time between two places.” *Id.* at 612. Under those unique circumstances, a young adult may have a second usual place of abode at her parent’s house.

The facts here are not comparable to *Sheldon*. Ms. Huynh is a 34-year-old, married woman. She was not in college, returning regularly to her parents’ house at the MLK address. She was not transitioning to living out on her own. She was not a highly mobile person splitting her time between two houses. *Sheldon* does not control here.

This Court’s decision in *Gross v. Evert-Rosenberg*, 85 Wn. App. 539, 933 P.2d 439, *rev. denied*, 133 Wn.2d 1004 (1997), provides a more useful comparison. After an accident but before the attempted service of process, defendant moved. *Id.* at 541. She still owned the prior residence

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<sup>1</sup> Washington courts had previously recognized that the parental home of an unmarried college student may continue to be a place for substitute service under certain circumstances. *Romjue v. Fairchild*, 60 Wn. App. 278, 282, 803 P.2d 57, *rev. denied*, 116 Wn.2d 1026 (1991). The Court of Appeals determined that the same principal applied in its case. *Sheldon v. Fettig*, 77 Wn. App. 775, 783, 893 P.2d 1136 (1995), *aff’d*, 129 Wn.2d 601 (1996).

but leased it to her daughter. *Id.* Plaintiff attempted to serve defendant at her prior residence. *Id.* at 541-42. On the first attempt, a “John Doe” at that address refused to accept process but stated that defendant lived there. *Id.* at 541. On a second attempt, the summons and complaint were left at the home with “John Doe,” who was later identified as defendant’s son-in-law. *Id.* at 541-42. At the time of the attempted service, the defendant had notified the post office of the change, notified her usual creditors, and obtained a new driver’s license. *Id.* at 541. She had not changed her voter registration or property tax billing address. *Id.*

The *Gross* Court concluded that defendant’s former residence was not her usual abode. Plaintiff’s case was dismissed for insufficient service of process. The court explained:

[H]ere . . . the parent, moved to a new home, retaining ownership of the Federal Way house but actually residing in another abode. Although the tenants in the old home were related to Evert-Rosenberg, they had a completely different center of domestic activity. . . .

*Id.* at 543. The court specifically declined to extend the *Sheldon* holding, noting that *Gross* did not involve an adult-child who maintained a second center of domestic activity at her parents’ house. *Id.*

In *Vukich v. Anderson*, 97 Wn. App. 684, 690, 985 P.2d 952 (1999), Division III also declined to extend *Sheldon*, instead following *Gross*. The defendant, Mr. Anderson, moved from Washington to

California. *Id.* at 686. He leased his Washington house and bought a house in California. *Id.* Mr. Anderson maintained contacts with the Washington house: he received mail there; registered his car there; and even litigated a small claims matter at the court there. *Id.* The *Vukich* Court concluded that the Washington house was not the center of defendant's domestic activity, and therefore, substitute service of process at the Washington house was not effective. *Id.* at 691.

As in *Gross* and *Vukich*, Ms. Huynh moved out of the MLK address before plaintiff commenced suit. She had established her residence at the Lynnwood address. But unlike the defendants in *Gross* and *Vukich* who still owned their previous abodes, Ms. Huynh transferred all of her interests in the MLK address. By the time service was attempted at the MLK address, she only had passing contact with that address. The MLK address was clearly not her center of domestic activity. As in *Gross* and *Vukich*, there is no valid substitute service of process here.

At the superior court, plaintiff argued that the facts show the MLK address was one of Ms. Huynh's usual abodes. (CP 49-50) Plaintiff's argument was premised on the following factors: Ms. Huynh's driver's

license listed the MLK address;<sup>2</sup> and Ms. Huynh stopped by the MLK address once or twice a month to pick up any mail that might have been collected for her. These factors are insufficient, as a matter of law, to qualify the MLK address as Ms. Huynh's "usual abode." These factors do not establish a situation even remotely similar to *Sheldon*.

First, the address listed on Ms. Huynh's driver's license and the traffic report has no bearing on where she actually resided at the time of service three years later. *Lepeska*, 67 Wn. App. at 551 (address defendant provided to the investigating officer at the time of the accident three years before the lawsuit was commenced not relevant). Also, Ms. Huynh renewed her driver's license with the MLK address in January of 2006, over two years before she moved to her new home in Lynnwood. (CP 15, 63) An old address on her driver's license says very little about where the center of Ms. Huynh's domestic activities was when service was attempted. *See Vukich*, 97 Wn. App. at 690-91 (keeping Washington

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<sup>2</sup> In the event that plaintiff intends to make an argument based on reliance on the information Ms. Huynh supplied to the DOL, it is worth noting that plaintiff's investigation into Ms. Huynh's driver's license address history did not take place until after she filed her motion to dismiss. (CP 56-59) The process server did not conduct any investigation to determine where Ms. Huynh lived prior to attempting service. The server simply attempted to serve the summons at the address provided to him – the MLK address, which was presumably taken from the traffic report generated three years prior. (CP 58-59)

driver's license with old address after moving out of state was insufficient).

Further, domestic activity is not established by the occasional arrival of stray mail. Ms. Huynh's brother was clear that she had not resided at the MLK address for years. (CP 95) Ms. Huynh's brother testified that when Ms. Huynh visited "[f]rom time to time" – perhaps 1-2 times per month – she picked up any collected items that may have arrived for her. (CP 95-96) Occasionally dropping by to visit family and pick up a letter does not establish a person's center of domestic activity. As in *Gross*, a center of domestic activity is not established simply because new tenants are related to the former tenants. 85 Wn. App. at 543. Further, caselaw has established that delivery of mail to a residence does not qualify it as a place of usual abode. *See Vukich*, 97 Wn. App. at 690-91.

RCW 4.28.080(15) requires that substitute service be made on the defendant's "usual abode," not to the defendant's address of record with the Department of Licensing. RCW 4.28.080(15) requires that substitute service be made on the defendant's "usual abode," not at a place where stray mail occasionally arrives. The Lynnwood address is Ms. Huynh's one and only usual abode. The Lynnwood address was the only acceptable location to achieve substitute service. The superior court erred

in denying Ms. Huynh's motion to dismiss for insufficient service of process.

**3. Ms. Huynh Did Nothing to Conceal the Improper Service of Process at the MLK Address.**

Plaintiff may urge this Court to conclude that Ms. Huynh's conduct somehow entitles him to assert tolling of the statute of limitations. This Court should reject any such argument because tolling is not supported by either the facts or the law.

Generally, the defense of insufficient service of process is not waived if it is asserted in a responsive pleading. *Gerean*, 108 Wn. App. at 972-73. Ms. Huynh's answer clearly asserts defenses based on insufficient service of process and lack of jurisdiction. (CP 5-6) Citing to the case of *Lybbert v. Grant County*, 141 Wn.2d 29, 38-39, 1 P.3d 1124 (2000), plaintiff argued to the superior court that an insufficient service of process defense can be waived by dilatory conduct or conduct inconsistent with asserting the defense. (CP 50-53) Although the *Lybbert* Court held that defendant waived the defense, its facts are distinctly different from Ms. Huynh's case. 141 Wn.2d at 45. In *Lybbert*, the defendant did not plead insufficient service, engaged in several months of discovery unrelated to a defense of insufficient service, discussed mediation, failed to respond to interrogatories inquiring about a possible insufficient service

defense, and then asserted the defense after the statute of limitations had run. 141 Wn.2d at 32-34.

The present situation vastly differs from *Lybbert*. Here, attempted service of process occurred less than a month before the expiration of the suit perfection deadline. (CP 4) Ms. Huynh's answer spelled out her affirmative defenses of failure to serve process and insufficient process to obtain jurisdiction. (CP 5-6) Ms. Huynh did nothing to lead plaintiff to believe that service of process was appropriate. In fact, Ms. Huynh's counsel took affirmative steps by sending an e-mail and telephoning plaintiff's counsel to discuss the service issue (before expiration of the suit perfection deadline) but received no response. (CP 84, 88) The declaration of service was filed the day before plaintiff's last day to serve Ms. Huynh. (CP 4)

Contrary to plaintiff's contention to the superior court, there is no evidence – or reasonable inference from the evidence – that Ms. Huynh knew of the lawsuit and instructed her brother to accept service at the wrong address so she could assert a defense of insufficiency of process. (CP 52) Plaintiff is only entitled to RCW 4.16.180 tolling of the statute of limitations if he proves willful evasion of process. *Rodriguez*, 127 Wn. App. at 147. The concealment must be such that “process cannot be served upon [her].” *Bethel v. Sturmer*, 3 Wn. App. 862, 866-67, 479 P.2d

131 (1970) (quoting *Summerrise v. Stephens*, 75 Wn.2d 808, 811, 454 P.2d 224 (1969)) (emphasis in original). Ms. Huynh did nothing to evade service. Ms. Huynh took no action which prevented plaintiff from discovering that she lived at the Lynnwood address. Ms. Huynh took no action which prevented plaintiff from serving her at the Lynnwood address.

Finally, the fact that Ms. Huynh and/or her attorney were aware of the suit is entirely irrelevant. A defendant has no duty to assist the process server. *Thayer v. Edmonds*, 8 Wn. App. 36, 41, 503 P.2d 1110 (1972), *rev. denied*, 82 Wn.2d 1001 (1973). In addition, actual knowledge is insufficient to constitute adequate service of process. *See Lepeska*, 67 Wn. App. at 552.

**4. Dismissal as Matter of Law Is Appropriate Because There Are No Issues of Fact.**

Plaintiff might also argue here, as he did at the superior court, that there was conflicting testimony from the process server and Ms. Huynh's brother over whether her brother was served and that such alleged conflict created a credibility issue which could not be resolved on summary judgment. (CP 53-54) However, whether the MLK address qualified as a usual abode is a legal, not a factual, determination. *See Sheldon v. Fettig*, 77 Wn. App. 775, 779, 893 P.2d 1136 (1995), *aff'd*, 129 Wn.2d 601, 919

P.2d 1209 (1996). There is no factual issue for a jury to decide concerning whether Ms. Huynh was properly served at her house of usual abode. Usual abode is a question for the court, and the record reveals as a matter of law that the MLK address was not Ms. Huynh's usual abode.<sup>3</sup>

If this Court were to conclude it lacks the evidence it needs to make a ruling or concludes there is some legitimate conflict in the evidence, the appropriate remedy is remand to the superior court to conduct a further evidentiary hearing. *See Woodruff v. Spence*, 88 Wn. App. 565, 566, 945 P.2d 745 (1997), *rev. denied*, 135 Wn.2d 1010 (1998). However, because the MLK address was not a usual abode, it is immaterial whether or not there is "an issue of credibility" between the process server and Ms. Huynh's brother. (CP 53) *Gerean v. Martin-Joven*, 108 Wn. App. 963, 969, 33 P.3d 427 (2001), *rev. denied*, 146 Wn.2d 1013 (2002) (all of the criteria of substitute service must be met in order for service to be perfected). Ms. Huynh has demonstrated by clear and convincing evidence that the MLK address was not her usual abode. No issue of fact could have precluded dismissal of plaintiff's action.

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<sup>3</sup> *See Vukich*, 97 Wn. App. at 686 (contradictory statements by resident and process server over whether she said that defendant did not live there did not preclude dismissal of case for lack of service of process).

**VI. CONCLUSION**

The superior court erred when it denied Ms. Huynh's motion to dismiss. Ms. Huynh was not personally served, and – as a matter of law – substitute service did not take place. The statute of limitations has run. This Court should reverse and remand for entry of an order of dismissal with prejudice.

DATED this 28<sup>th</sup> day of October, 2009.

**REED McCLURE**

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