

73507-1

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No. 73507-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION 1

AVIS HAMLIN

v.

MARK HAMLIN

REPLY BRIEF

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PHIL MAHONEY, WSBA #1292  
Attorney for Petitioner and Appellant  
LAW OFFICE OF PHIL MAHONEY  
2366 Eastlake Ave E., #227  
Seattle, WA 98102

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DIVISION 1

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As pointed out in appellant's opening brief the judgment herein is void unless there is valid service and the Respondent did not contest this. Therefore the vacation of the judgment is dependent on whether the evidence presented by Respondent in support of his motion to serve by publication is adequate. The Appellant's position is that the crucial evidence inadmissible and that therefore permission to serve by publication was improper.

As pointed out in Appellant's opening brief, with the exception that Declarations and Affidavits may be used as evidence, the rules of evidence apply to motions. Respondent doesn't deny this. Therefore if matters alleged in the Declarations herein are in violation of the rules of evidence there will not be a sufficient basis in support of their motion to serve by publication and their judgment is void.

ER 602 states that evidence given must be by personal knowledge. ER 603 requires that statements must be under oath. ER 802 states that hearsay is inadmissible. All of the pertinent allegations made by Respondent are in violation of these rules of evidence so that the Declarations submitted in support of service by publication, when excised of allegations in violation of the rules of evidence, do not contain any evidence which would support publication.

Respondent states that Appellant must have known about the suit because a third party filed a complaint against Ms. Roe for filing the law suit. No evidence was introduced to show that this third party was an agent of Appellant. The fact that a third party took some action is not relevant and that fact is therefore inadmissible under ER 402.

Ms. Roe's declaration to show that Appellant was avoiding service was to recite a hearsay statement from ABC Legal Services who gave her a hearsay statement from one of their unidentified servers that he believed that Appellant was in her home but refused to

answer the door. Not only is the hearsay within the hearsay not sworn but it is insufficient to present an inference that Appellant was home. Many people may leave a light on in their home when away. A further hearsay statement was made by Ms. Roe as a purported report from the server who never mentions knowing that Appellant was inside her home.

On pp.10 and 11 of Respondent's brief she states that she had personal knowledge of some of the matters in her declaration. She states that she personally looked in "data bases" to verify Appellant's address. This is the only thing Ms. Roe did of which she had personal knowledge. Appellant's address is not evidence from which the court can conclude that Appellant was avoiding service.

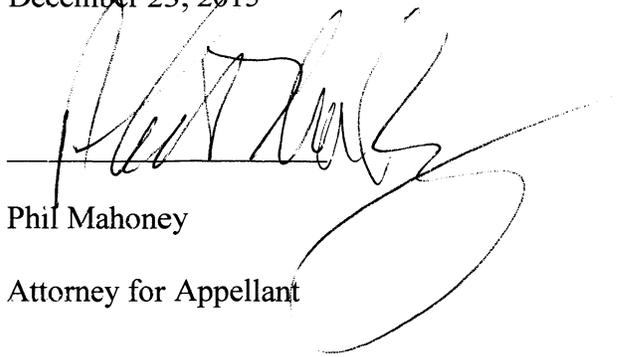
Ms. Roe admits, p.11 of Respondent's brief, that the other pertinent allegations in her declaration were unsworn hearsay from unidentified persons, "Counsel declared that she was told by the process server that Appellant seemed to be inside her home, but was refusing to open her door. Again, counsel is swearing to what she was personally told." (emphasis added). Thus Respondent is admitting in his brief that the claimed evidence of Appellant avoiding service is inadmissible evidence.

On p. 14 of Respondent's brief he justifies service by publication by an ad hominum attack on Appellant with no factual support presented, "Further, given Appellant's history in responding to lawsuits, there is no reason to believe she would have authorized an attorney on a non-related matter to accept service, nor is there a declaration under oath to that effect." There is nothing in the record about Appellant's litigation history.

#### CONCLUSION

For the reasons stated above the court should reverse the \$500,000.00 judgment entered below and remand for trial.

December 23, 2015

A handwritten signature in black ink, appearing to read 'Phil Mahoney', is written over a horizontal line. The signature is stylized and extends to the right of the line.

Phil Mahoney

Attorney for Appellant