69106-6

69106-6

NO. 69106-6-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

THERESA SCANLAN, Appellant

v.

KARLIN TOWNSEND and "JOHN DOE" TOWNSEND,
husband and wife, respondents

BRIEF OF APPELLANT

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INTRODUCTION

Plaintiff Theresa Scanlan's process server gave defendant Karlin Townsend's father, Charles William Pyne, a copy of the summons and complaint at his house under the mistaken assumption that Ms. Townsend also resided there. Mr. Pyne told the process server he would give the documents to Ms. Townsend. Mr. Pyne then gave the documents to Ms. Townsend in person before the 90-day statutory toll of the statute of limitations expired. Ms. Townsend moved for summary judgment dismissal of the case based on insufficient service of process. The trial court granted the motion due to insufficient proof of service.

Ms. Scanlan appeals, arguing the trial court erred in dismissing her case because there was sufficient proof of service and because proof of service is not necessary for the court to have personal jurisdiction over a defendant. Ms. Scanlan also affirmatively contends that the trial court has personal jurisdiction over Ms. Townsend because she was personally served by her father within the statute of limitations. Whether personal service obtained in this manner is valid is a question of first impression in Division One.

Ms. Scanlan respectfully requests the Court reverse the trial court's order granting summary judgment and remand for further proceedings with instructions that Mr. Pyne personally served Ms. Townsend.

ASSIGNMENTS OF ERROR

1. The trial court erred in granting Ms. Townsend's Motion to Dismiss for Lack of Service because there was sufficient proof of service.
2. The trial court erred in granting Ms. Townsend's Motion to Dismiss for Lack of Service because the act of service establishes jurisdiction, not the proof of service.
3. The trial court erred in granting Ms. Townsend's Motion to Dismiss for Lack of Service because Mr. Pyne personally served the Ms. Townsend.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether there is sufficient proof of service when Ms. Townsend and her counsel admit that the defendant's father personally served the summons and complaint on the defendant in Vancouver, Washington in early January, 2012?
2. Whether a court may dismiss a case pursuant to CR 12(b)(5) due to insufficient proof of service of process?
3. Whether Mr. Pyne personally delivering the summons and complaint to Ms. Townsend constitutes valid personal service when a process server gave him the documents and he agreed to give them to the defendant?

STATEMENT OF THE CASE

This case arises out of an automobile collision between a vehicle driven by plaintiff Theresa Scanlan and a vehicle driven by defendant Karlin Townsend[1] that occurred on October 28, 2008, in King County, Washington. CP 1-2. Ms. Scanlan filed a complaint on October 27, 2011, the final day before the expiration of the statute of limitations, alleging Ms. Townsend negligently operated her vehicle causing the collision and injuring Ms. Scanlan. CP 1-2. Pursuant to RCW 4.16.170, Ms. Scanlan had 90 days to serve her complaint on Ms. Townsend. The toll of the statute of limitations expired on January 25, 2012.

On December 21, 2011, well within the 90 day statutory period, Ms. Scanlan's process server served the summons and complaint in this case on the Ms. Townsend's father, Charles William Pyne, at his home in Vancouver, Washington. CP 3. Ms. Scanlan's process server recalls Mr. Pyne saying that the defendant was living with him and that he would give the documents to the defendant. CP 45. However, Mr. Pyne has declared that he never told the process server that the defendant was residing with him and the defendant denies living there at the time service was attempted. CP 123-24, 11. Regardless, it is undisputed that Mr. Pyne did

[1] Counsel is aware that Ms. Townsend now goes by the name Karlin Emerson. For the sake of consistency with the case caption and to avoid confusing the Court, this brief will nonetheless refer to refer to the defendant as Ms. Townsend. Counsel means no disrespect.

take the summons and complaint from the process server and give them to Ms. Townsend when she came to visit him at his Vancouver residence sometime in late December 2011, or early January 2012. CP 109. All of this occurred within the 90-day toll of the statute of limitations after Ms. Scanlan filed her complaint.

Ms. Townsend brought on a motion to dismiss for lack of service on July 13, 2012. CP 4-9. She claimed that Ms. Scanlan did not affect substitute service on her because she did not reside at her father's Vancouver residence at the time of service and that the case should be dismissed with prejudice because the statute of limitations had expired. Id. In response, Ms. Scanlan argued that she properly served Ms. Townsend through substitute service on Mr. Pyne (based on the belief that Ms. Townsend actually did live with Mr. Pyne at the time of service), or, in the alternative, that Mr. Pyne personally served Ms. Townsend before the 90-day statutory period expired. CP 85-96. The court reserved its ruling on the motion at the end of the hearing. RP 17-18.

Later that day the Court issued its written ruling, holding that the "Defendant's deposition testimony that her father gave her the summons and complaint is insufficient proof of service." CP 126-28. Most of the argument at the hearing was directed towards whether service was proper

under Washington law. However the court did briefly discuss the issue of proof of service with Ms. Townsend's counsel during the hearing:

> THE COURT: But as I understood it, (in Gerean v. Martin-Joven) there was no – no Declaration on the part of the father that he had done the service, whereas in Brown-Edwards the neighbor, they – the Plaintiff got the neighbor to sign an Affidavit or a Declaration or something saying that she had done the service. And, you know, the [dissent], one of them says something about well, you know[,] is it service if the paper flies by someone in the wind and they pick it up and get it.
>
> ...
>
> THE COURT: Well, how is – how is the Defendant in Brown not personally served? How was that? I mean, she – the neighbor – you know, obviously you don't have to have someone who has a certification of a process server.
> MR. ABRAHAMSON: Right
> THE COURT: You or I could serve, as long as we're not a party.
> MR. ABRAHAMSON: Well, the other distinction with this case is that in Brown they did go get an Affidavit of Service from the neighbor.
> THE COURT: Um hum.
> MR. ABRAHAMSON: There's nothing like that in this case.
> THE COURT: Um hum.
> MR. ABRAHAMSON: From Mr. [Pyne]
> THE COURT: But isn't an Affidavit of service a sworn statement that I am competent and I served this? I guess the thres [sic] – maybe it comes down to if the person who's being served swears that they were served, is that the same thing as the person who's doing the service, swearing that they were served?
> MR. ABRAHAMSON: You're going to have to run that one by me again.
> THE COURT: Well, in this case, the proof of service –
> MR. ABRAHAMSON: Yes.

> THE COURT: -- comes from the Defendant herself when she was asked in her deposition, did your father give it to you.
> MR. ABRAHAMSON: Correct.
> THE COURT: At first in her deposition she said, you know, he told me it was at his home. And that's not good enough. Right? If he went to her home and left it under the doormat, that wouldn't work. But then she was asked did your father give it to you and she said yes. And that's under – that's a statement under oath. Yes, I was personally served with these documents.
> MR. ABRAHAMSON: Yeah. And we're not disputing that.
>
> ...
>
> THE COURT: Well, however, I mean, I'd be interested if there are any cases in Division I that make this distinction because it – there's nothing in this statute that says, again, that you have to have some person who works for a process serving company do it. You just need to – you know, it's not enough to put in motion something that fortuitously results in service, but I think that Brown-Edwards stands for the idea that once you've established by sworn testimony that personal service was done, that's sufficient, regardless of who the server is, the process server is.

RP 5-9. Despite this discussion of proof of service (that seems to indicate the Court was favoring Ms. Scanlan during the hearing), the court nonetheless ruled that proof of service was inadequate. In support of its ruling, the court cited Gerean v. Martin-Joven, 108 Wn. App. 963, 33 P.3d 427 (2001). CP 126-28.

Ms. Scanlan timely filed her notice of appeal on July 16, 2012. CP 129-32.

ARGUMENT

Whether a court has jurisdiction to hear a case is a question of law. Shoop v. Kittitas County, 149 Wn.2d 29, 33, 65 P.3d 1194 (2003). Proper service is necessary for a court to obtain jurisdiction over a defendant. Woodruff v. Spence, 76 Wn. App. 207, 209, 883 P.2d 936 (1994). Accordingly, sufficiency of service of process is a question of law. Harvey v. Obermeit, 163 Wn. App. 311, 327, 261 P.3d 671 (2011).

A trial court's dismissal of an action on legal grounds, whether through a motion to dismiss or a motion for summary judgment, is reviewed de novo on appeal. Witt v. Port of Olympia, 126 Wn. App. 752, 757, 109 P.3d 489 (2005); Sheldon v. Fettig, 77 Wn. App. 775, 779, 893 P.2d 1136 (1995). Such a review requires the appellate court to engage in the same inquiry as the trial court. Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

A motion to dismiss under CR 12(b) is treated as a motion for summary judgment if, as here, matters outside the pleadings are presented to the court and not excluded. Bailey v. State, 147 Wn. App. 251, 259, 191 P.3d 1285 (2008). A motion for summary judgment should be granted only if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of a genuine issue of material fact and that the

moving party is entitled to judgment as a matter of law. CR 56(c); Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

The trial court granted Ms. Townsend's Motion to Dismiss for Lack of Service because it held that Ms. Townsend's deposition testimony that Mr. Pyne handed her the summons and complaint was not sufficient proof of service. CP 126-28. This ruling is an error of law because (1) Ms. Townsend's deposition testimony and her counsel's oral argument constituted valid admissions of service under CR 4(g)(5), and (2) A court obtains personal jurisdiction over a defendant through the fact of service, not the proof of service. Additionally, Ms. Townsend was properly served. The trial court had personal jurisdiction over the defendant and erred in dismissing the case.

I. MS. TOWNSEND'S DEPOSITION TESTIMONY AND HER COUNSEL'S ORAL ARGUMENT CONSTITUTE VALID PROOF OF SERVICE UNDER CR 4(g)(5).

While it is true that proof of service should ordinarily and preferably be in the form of an affidavit, Terry v. City of Tacoma, 109 Wn. App. 448, 455, 36 P.3d 553 (2001), CR 4(g)(5) states that proof of service may take the form of an admission by the defendant, his agent, or his attorney. Hamil v. Brooks, 32 Wn. App. 150, 151, 646 P.2d 151 (1982). CR 4(g)(7) requires that proof of service must state the time, place, and manner of service. *Id.* In Hamil, Division One held that an

admission of service by the defendant made during a sworn deposition was not just sufficient to satisfy the proof of service requirement, but that it constituted "the best possible evidence that he received the summons and complaint." Id. at 152.

Just like the defendant in Hamil, Ms. Townsend admitted at her deposition that she received the summons and complaint from her father:

> Q. Did – you get documents from your dad?
> A. They told me that they were there.
> ...
> Q. This (Declaration of Service) goes on to state, He (Mr. Pyne) replied he would take the documents and make sure she (the defendant) got them when she get [sic] back. Did he give you those documents?
> A. Yes, he did.
> Q. Okay. And when did he give you the documents in relation to this conversation that apparently happened on the 21st of December of 2011?
> A. I don't know.
> Q. Was it a few days? Was it weeks?
> A. It was probably at least a couple of weeks because I don't go down there that often.
> Q. Are you saying that during that whole Christmas/New Year's period of time in 2011, that you didn't go visit your parents at all?
> A. I was working.
> Q. The whole time?
> A. Yes.
> Q. Did you celebrate Christmas with them at any point?
> A. Must have been after that.
> Q. Okay so after the first of the year, maybe?
> A. Yeah. Yes.
> Q. And would you have gone to their house, or would they have come to visit you in Seattle, or what?
> A. I can't remember if they came up here. I think I went down there.

CP 109. This is sworn testimony by Ms. Townsend as to the time (early January), location (her father's Vancouver residence), and method of service (personal) and is therefore valid proof of service.

Ms. Townsend's counsel also admitted that the defendant received the summons and complaint at oral argument:

> THE COURT: In this case, the Defendant swore in her deposition that her father gave her the Complaint and Summons. She swore in her deposition of page 23:
>
> > "Q. Did he give it to you?"
> >
> > "A. Yes, he gave it to me."
> >
> > "Q. When?"
> >
> > "A. It would have been probably a couple of weeks after the 21st of December."
>
> So that would put us within the (90 day) time period. The father, Charles [Pine], states in his Declaration, "I am competent."
> MR. ABRAHAMSON: And that – We are not disputing that. We -- we will stipulate to the fact that the Defendant in this case did have actual receipt of the Summons and Complaint before the 90 days. Our argument is that they have not complied with the statute…

RP 4-5. This exchange between the Court and Ms. Townsend's counsel constitutes an admission as to the time of service and the manner of service.

The proof of service issue was largely ignored at the hearing and never seriously argued by Ms. Townsend's counsel as a basis for dismissal. Despite the admissions of Ms. Townsend and her counsel regarding receipt of the summons and complaint, the Court nonetheless ruled that Ms. Scanlan had presented insufficient proof of service and dismissed the case because the statute of limitations had run.

The trial court cited Gerean v. Martin-Joven, 108 Wn. App. 963, 33 P.3d 963 (2001), for the proposition that deposition testimony is insufficient proof of service. However, Gerean simply does not stand for this proposition. In Gerean, a process server gave copies of the summons and complaint to the defendant's father at the father's house. Id. at 967. The server apparently thought he had affected valid substitute service. Id. The defendant did not live with her father, but her father gave the summons and complaint to the daughter in person the next day. Id. The trial court granted the defendant's motion for summary judgment dismissal for insufficient service of process and Division Three upheld the dismissal on appeal. Id. at 968, 972. Although it is true that the plaintiff in Gerean did not have an affidavit of service from the defendant's father, Division Three decided the case on service grounds, not proof of service grounds. Id. at 972. Indeed, the Gerean Court hardly discusses proof of service except to describe the factual background of the case.

The trial court erred in dismissing the case due to lack of service because there was sufficient proof of service.

II. THE FACT OF SERVICE CONFERS JURISDICTION ON THE COURT, NOT THE PROOF OF SERVICE.

It is a longstanding rule of law in Washington that the fact of service confers jurisdiction to the court over the defendant, not the return of service. Jones v. Stebbins, 122 Wn.2d 471, 482, 860 P.2d 1009 (1993); John Hancock Mut. Life Ins. Co. v. Gooley, 196 Wash. 357, 363, 83 P.2d 221 (1938). It follows logically that "failure to make proof of service does not affect the validity of the service." CR 4(g)(7); Diehl v. Western Washington Growth Management Hearings Bd., 153 Wn.2d 207, 216, 103 P.3d 193 (2004). Accordingly, it is always a reversible error of law for a trial court to grant a motion to dismiss for lack of service solely because it concludes that proof of service was inadequate. The fact that there was no affidavit of service is irrelevant to whether the court obtained personal jurisdiction over the defendant. The trial court should be reversed.

III. MR. PYNE'S DELIVERY OF THE SUMMONS AND COMPLAINT TO THE DEFENDANT WAS PROPER PERSONAL SERVICE.

Ms. Townsend will likely argue that dismissal was proper regardless of the trial court's erroneous reasoning. An appellate court may affirm a trial court decision on any correct ground. Gontmakher v. The

City of Bellevue, 120 Wn. App. 365, 369-70, 85 P.3d 926 (2004). Accordingly, it is necessary to address the service of process issue underlying Ms. Townsend's Motion for Summary Judgment.

Mr. Pyne personally served Ms. Townsend because he was qualified to be a process server in this case, he received the summons and complaint from the process server and agreed to deliver them to Ms. Townsend, and he personally delivered the documents to Ms. Townsend before the expiration of the 90-day toll of the statute of limitations.

1. Mr. Pyne was qualified to serve process.

Any person who is (1) over 18 years old, (2) competent to be a witness, and (3) not a party to the action, may serve process. CR 4(c); Brown-Edwards v. Powell, 144 Wn. App. 109, 111, 182 P.3d 441 (2008). Any person means any person. Roth v. Nash, 19 Wn.2d 731, 734-35, 144 P.2d 271 (1943). The rule does not require that the "process server have a contractual obligation to serve process." Brown-Edwards, 144 Wn. App. at 111. The process server also need not intend to serve process. Id. A person who comes into possession of a summons and complaint through defective service may be a competent process server. Id.; see CR 4(c). The rule only prohibits a person from affecting service if they are underage, incompetent, or a party to the action. Brown-Edwards, 144 Wn. App. at 111-12.

Mr. Pyne was competent to serve process. Mr. Pyne has declared that he is over 18 years old and is competent to testify. CP 123. Mr. Pyne is not a party to this action. It is irrelevant that Mr. Pyne was not a professional process server at the time of service. It is also irrelevant that Mr. Pyne was not obligated to deliver the summons and complaint to the defendant. Mr. Pyne was qualified to serve process in this case.

2. Mr. Pyne personally served Ms. Townsend.

A defendant may be served by handing a summons to him or her in person or by leaving a copy of the summons at the house of the defendant's usual abode with some person of suitable age and discretion, then resident therein. RCW 4.28.080(15); Gerean v. Martin-Joven, 108 Wn. App. 963, 969, 33 P.3d 427 (2001).

Mr. Pyne served Ms. Townsend with a copy of the summons and complaint within the 90-day toll of the statute of limitations. Ms. Townsend testified at her deposition that Mr. Pyne gave her a copy of the summons and complaint in person in late December 2011, or early January 2012. This would have been well in advance of the January 25, 2012 deadline. Ms. Townsend's counsel also admitted that she received the summons before the expiration of the statute of limitations. Accordingly, there can be no question that Ms. Townsend was personally served by a qualified process server.

3. Service was not accidental or fortuitous under Gerean v. Martin-Joven.

At the hearing below, the defendant argued that the service by Mr. Pyne was invalid because it was accidental or fortuitous under Gerean v. Martin-Joven, 108 Wn. App. 963, 33 P.3d 427 (2001). In Gerean, the plaintiff's process server went to the defendant's father's house and asked whether the defendant was there. Id. at 967. The father said she was not there and asked why the server was looking for his daughter. Id. Instead of responding, the server handed him the summons and complaint and left. Id. The father then personally delivered the documents to the defendant at her home. Id. at 966. The defendant filed a summary judgment motion to dismiss for lack of service. Id. at 968. At the hearing the plaintiff argued that "service was sufficient under one of two theories: accidental personal service, and substitute service by estoppel." Id. The trial court disagreed and granted the motion dismissing the case. Id. On appeal, the plaintiff argued that "by setting in motion a series of events that culminated in [the defendant] receiving the summons, she complied with the statute." Id. at 969.

The Gerean Court's opinion is legally unpersuasive. The court misinterprets RCW 4.28.080 when it holds that the statute "requires that the person receiving the documents, if not the defendant herself, must be

served at the defendant's abode while currently residing there." *Id.* at 971. The statute says nothing about accidental or fortuitous service, delivery of the summons and complaint to parties other than the defendant, or the possibility of a non-process server third-party affecting service. The court rules are likewise silent on these issues. There is no statutory or rule based reason for prohibiting Mr. Pyne from affecting service on Ms. Townsend.

Gerean is factually distinguishable from the present case. The defendant's father in Gerean did not agree to deliver the summons to the defendant whereas Mr. Pyne did represent to the process server that he would deliver the summons to Ms. Townsend. This makes Mr. Pyne's service of the summons on Ms. Townsend intentional, as opposed to accidental or fortuitous.

This results in a legal distinction between Gerean and the present case. The Gerean Court held that "the argument that defective substitute service is cured if the summons is fortuitously delivered by a person who is over the age of 18 and not a party to the lawsuit boils down to the argument that actual notice should be sufficient." *Id.* at 972. The Gerean Court never addressed the possibility that delivery by a third-party might be intentional rather than fortuitous. At least in that sense Gerean is not on point and does not control the outcome of the present case.

4. If a person is erroneously served with a summons and later personally delivers that summons to the defendant, that person has affected personal service on the defendant.

It is possible for a person who erroneously receives a summons to then serve a defendant in a way that satisfies the requirements of RCW 4.28.089(15). Division Three recognized this fact seven years after Gerean in Brown-Edwards v. Powell, 144 Wn. App. 109, 182 P.3d 441 (2008).

In Brown-Edwards, a processer server accidentally served a summons and complaint on the neighbor of the defendants. Id. at 111. The neighbor later personally delivered the documents to one defendant and affected substitute service on the other. Id. In a very straight forward analysis the Brown-Edwards court held that the neighbor met all of the requirements to qualify as a process server and held that the neighbor had properly served one defendant through personal service and the other through substitute service. Id. at 111-12. The Court noted that the service statute states, "Service made in the modes provided in this section *shall* be taken and held to be personal service." Id. at 112. (emphasis in original). The Court upheld the trial court's denial of the defendant's motion to dismiss. Id. at 113.

The Brown-Edwards Court noted that its decision was (at least superficially) inconsistent with its decision in Gerean and explained why it ruled one way in Gerean and the other in Brown-Edwards: "[In Gerean]

we did not address whether [the defendant's father's] act of delivering the summons to [the defendant], by itself, satisfied the statutory requirement for personal service. The question framed by the contentions in *Gerean* was whether the hired process server-and not [the defendant's father]-properly served [the defendant]." Id. at 113. [internal citations omitted]. The Brown-Edwards court explicitly held that Gerean should be "limited to its facts and the particular arguments made there." Id. at 112. (emphasis added).

Ms. Scanlan has consistently made the same type of arguments advanced by the plaintiff in Brown-Edwards: That Mr. Pyne was qualified to serve process and personally served Ms. Townsend with the summons and complaint. Service in this manner complies with all of the personal service requirements and is good service. Ms. Scanlan has never argued that her process server affected personal service or substitute service, or set into motion a series of events that led to Ms. Townsend being served.

It is anticipated that Ms. Townsend will argue the Brown-Edwards Court erred when it distinguished the question presented in Gerean (whether the plaintiff's process server set into motion a series of events that culminated with the defendant receiving the summons) from the question presented in Brown-Edwards (whether the neighbor properly served the defendants). More specifically, Ms. Townsend will likely argue

that the Gerean court specifically addressed whether a defendant's father can personally serve a defendant after erroneously receiving a summons. There are two possible responses to such an argument.

One reponse is that the arguments presented in Gerean were fundamentally different than those presented in Brown-Edwards. At the start of the Gerean Court's discussion of the personal service issue, the Court characterizes the plaintiff's service of process argument as follows: "Ms. Gerean contends that, by setting in motion a series of events that culminated in [the defendant] receiving the summons, she complied with the statute. Gerean, 108 Wn. App. at 970. Although the Gerean Court does address the qualifications of the defendant's father to serve process on the defendant, it does so in the context of a discussion of whether personal service must comply with the service statute, RCW 4.28.080, or the less demanding constitutional due process notice requirement. Id. The Gerean opinion is not perfectly clear on this point, but reading between the lines with the aid of the Court's analysis of Gerean in Brown-Edwards, it appears that the Gerean Court was rejecting the plaintiff's argument that she set into motion events that resulted in the defendant's father personally serving the defendant (thereby satisfying constitutional due process). This issue is distinct from the issue in Brown-Edwards, which asked whether a non-process server third party could affect service.

It is worth noting that the majority opinions of both Gerean and Brown-Edwards were authored by the Honorable Dennis J. Sweeney. It is unlikely that Judge Sweeney forgot or misstated the arguments made in Gerean in Brown-Edwards. This, combined with the Gerean Court's hazy descriptions of the arguments in that case, lends credibility to the Brown-Edwards analysis of Gerean, and therefore lends credibility to Ms. Scanlan's appeal.

The other possible response is to agree that the Brown-Edwards Court mischaracterized the Gerean decision and concede that the Gerean Court considered and rejected the argument that the defendant's father personally served the defendant. However, acceptance of this theory compels one to accept that the Gerean Court rejected the personal service argument because it held that RCW 4.28.080 "requires that the person receiving the documents, if not the defendant herself, must be served *at the defendant's abode while currently residing there*." Gerean, 108 Wn. App. at 971. (emphasis in original). As discussed earlier, this is an erroneous reading of the statute. The statute actually requires that the defendant be served personally or through substitute abode service. RCW 4.28.080(15). It says nothing about "persons receiving documents," nor does it require service by process servers or ban service by third-parties who are not contractually bound to complete service.

CONCLUSION

The trial court erred in granting the defendant's Motion to Dismiss for Lack of Service due to insufficient proof of service. The defendant and her counsel have both conceded that Mr. Pyne personally delivered the documents to her within the 90-day statutory toll of the statute of limitations. And even if the court finds the admissions of the defendant and her attorney are not sufficient proof of service, it is the act of service that establishes a court's jurisdiction over the defendant. Accordingly, a court may not dismiss a case due to lack of proof of service.

Additionally, so long as the third-party is competent to serve process under CR 4(c) and personally serves the summons in compliance with RCW 4.28.080, the court should uphold the validity of the service. This is especially true where, as here, the third-party tells the process server that he will give the summons to the defendant. There is no principled reason under the service statute, the court rules, or the common law for holding that service is invalid when done in this manner.

The trial court court's order granting the defendant's Motion to Dismiss for Lack of Service is unlawful and should be reversed. The case should be remanded for further proceedings with instructions that Mr. Pyne personally served Ms. Townsend.

Respectfully submitted this 10th day of October, 2012.

JACOBS & JACOBS

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CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury of the laws of the State of Washington that on the date given below I caused to be served in the manner indicated a copy of the foregoing Brief of Appellant upon the following persons:

Michael Abrahamson Hollenbeck, Lancaster, Miller & Andrews 15500 SE 30th Place, Suite 201 Bellevue, WA 98007	( ) via Mail ( ) via Facsimile (X) via ABC Messenger Delivery ( ) via email

DATED this 10th day of October, 2012.

Ann Forthuber