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No. 63708-8-1

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

DAVID STREETER-DYBDAHL

Respondent,

Vs.

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

Appellants.

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

AMENDED
BRIEF OF RESPONDENT

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 ORIGINAL

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6 Moore's Fed. Prac. (2d ed.) ¶ 56.16(4), pp. 2139, 2141' 3

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I. ASSIGNMENTS OF ERROR

Respondent Dybdahl urges the Court to uphold the ruling of the trial court below, denying Appellant Huynh's Motion to Dismiss/Motion for Summary Judgment based upon insufficient service of process by Dybdahl.

Respondent believes genuine issues of material fact exist in this case, precluding Summary Judgment.

II. STATEMENT OF THE CASE

On September 20, 2005, Appellant Nguyet Huynh (hereinafter "Ms. Huynh") rear-ended Respondent David Streeter-Dybdahl (hereinafter "Dybdahl") on Interstate 5 in Seattle, causing Dybdahl to suffer injuries. Ms. Huynh was determined to be at fault for the accident by the responding police officer and was cited for traveling too fast. (CP 67)

Dybdahl was unable to resolve his claim against Ms. Huynh within the three year statute of limitation and filed suit on September 18, 2008 before it expired. Dybdahl then had process served upon an adult male at the 722 MLK Jr. Way S. address, who accepted it as or for "Nguyet Huynh" on November 23, 2008, within the 90 day "relation back" period. (CP 55)

On the date of the accident, Ms. Huynh's residential address on her driver's license, which she provided to the responding police officer, was

722 Martin Luther King Jr. Way S, Seattle, Washington (hereinafter “722 MLK residence”), even though she apparently had not resided there since 2002. Approximately four months later, in January, 2006, Ms. Huynh again gave the MLK residence as her address when she renewed her Washington driver’s license. (CP 59, 63, 64)

On November 28, 2008, the date process was served at the 722 MLK residence address, Ms. Huynh’s residential address listed with the D.O.L. continued to be the 722 MLK residence. (Id.) Ms. Huynh had apparently never notified the D.O.L. of a change in her address within 10 days as required by RCW 46.20.205,¹ and as stated on the back of every Washington Driver’s license.

Ms. Huynh has refused to answer discovery as to why she gave the 722 MLK Jr. Way S. address as her residence for her driver’s license in 2005, 2006 or 2008, so the reason remains a mystery. Instead Ms. Huynh has steadfastly maintained the blanket defense that she was never served, because she did not reside at the 722 MLK address on the date of the

¹ RCW 46.20.205 - Change of address or name – provides, in relevant part:

(1) Whenever any person after applying for or receiving a driver's license or identicaid moves from the address named in the application or in the license or identicaid issued to him or her, the person shall within ten days thereafter notify the department of the address change. The notification must be in writing on a form provided by the department and must include the number of the person's driver's license. The written notification, or other means as designated by rule of the department, is the exclusive means by which the address of record maintained by the department concerning the licensee or identicaid holder may be changed.

accident, or on the date process was served at that address nearly three years later.

Ms. Huynh's brother, Tu Huynh, who resided at the 722 MLK address on the date of service, and matches reasonably well the physical description of the person served in the Declaration of Service, denies ever being served, although he testified in deposition that he was not working and was most likely home when service was made, and could not think of anyone else matching the description in the Declaration of Service who might have been there to receive service other than himself. (CP 80)

Dybdahl would like to conduct discovery to find out why appellant Huynh continued to give the 722 MLK address as her residence to the D.O.L. and law enforcement if she did not live there since approximately 2002, and the extent of her contacts and/or use of the 722 MLK residence, but Ms. Huynh refused to Answer or allow discovery on the subject while the matter was before the trial court, then filed this appeal after failing to obtain dismissal of Dybdahl's claims at Summary Judgment before the trial Court, freezing further discovery on the subject pending this appeal.

Ms. Huynh assigns error to the trial court's failure to grant her a dismissal of Dybdahl's claims against her, alleging that she was never served with process in the underlying lawsuit.

Dybdahl believes the service was valid substitute service under

RCW 4.28.080, served upon a co-resident of an abode of defendant.²

III. STATEMENT OF ISSUES

Was the 722 MLK residence where service was made an “abode” of defendant Huynh, such that service upon a co-resident there would constitute valid service under RCW 4.28.080?

This case requires the court to consider the question of whether a defendant who voluntarily provides an address to the State of Washington Department of Licensing (“DOL”) as their residential address, should be able to provide a false or erroneous address to the DOL, in violation of state law, and then benefit from that violation by later claiming they did not live at the address they previously told the state, and the public, they resided at.

IV. ARGUMENT

Before the trial Court, Ms. Huynh repeatedly raised the issue of property or tax records as being readily available and better indicia of a person’s residence. (RP 4,7) However, the property records show Nguyet Huynh owning the 722 MLK residence until 2006, while she claims to have moved from that address in 2002. (CP 60) Thus, the property tax

² RCW 4.28.080, entitled “Summons, how served,” provides:
Service made in the modes provided in this section shall be taken and held to be personal service. The summons shall be served by delivering a copy thereof, as follows:

(15) In all other cases, to the defendant personally, or 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.

and land records in this case are not reliable indicators of a person's residence, unlike a person's driver's license, which requires it to be stated, and updated within 10 days of changing addresses.

1. Dybdahl's Declaration of Service

Dybdahl's Declaration of Service is flawed, but not fatally flawed. The Declaration names the wrong person served, but there are reasonable explanations for the errors, and sufficient facts to substantiate effective service. First, defendant's brother Tu M. Huynh, who resides at the 722 MLK address, does not speak fluent English and required an interpreter at his deposition. Thus, any process server would likely have communication difficulties or limitations when serving papers upon Tu Huynh without an interpreter present.

Second, Tu M. Huynh routinely accepted important papers for his sister at the 722 MLK residence, and had a special box in the home where he placed important papers for safekeeping until his sister came by to pick them up, approximately twice per month. (CP 77) Thus, accepting papers on behalf of his sister, Nguyet Huynh, was routine and the likelihood of Tu Huynh responding affirmatively to his sister's name, under these circumstances, would be very strong.

Obviously, the process server mistook that he was not serving Ms. Huynh herself. However, the Declaration of Service establishes service

upon a person “then resident therein” matching Tu M. Huynh’s description at the 722 MLK property, which, if also an abode of Ms. Huynh, would constitute effective substitute service upon her under 4.28.080(15). (See fn2, supra).

The Declaration of Service describes the person served as an Asian male in his 30s, approximately 5-8’ tall, 140 lbs, and “then resident therein.” (CP 55) This description accurately describes Tu M. Huynh, Ms. Huynh’s brother who resides at the MLK residence and who testified under deposition to being approximately 5 feet 7 inches tall and weighing approximately 155 lbs. when service was made, and who further testified that he believed he was home during the time service was made, and could not think of anyone else matching the description of the person served according to the Declaration of Service, besides himself. (CP 79, 80)

Thus, the Declaration of Service, taken in the light most favorable to Dybdahl at Summary Judgment, demonstrates, despite the erroneous name and the probable language barriers, that a person of suitable age and discretion who resided at the 722 MLK residence was served with process, within the time frame to relate back to the filing of the complaint within the statute of limitations for Dybdahl’s action.

Therefore, despite Tu M Huynh’s assertions that he was never served with process for his sister, Dybdahl, as the non-moving party at Summary

Judgment, receives the benefit of the inference that service was in fact made at the residence, as matters of credibility are normally matters for a jury or fact-finder and cannot be determined at Summary Judgment.

2. Was Process Served Upon an Abode of Defendant Nguyet Huynh?

The key question, is whether the 722 MLK property constitutes an “abode” of Huynh. If so, then the prima facie evidence of proper service upon a resident of that address, would constitute valid, effective service under 4.28.080(15).

In Sheldon vs. Fetting, 129 Wn.2d 601 (1996), the Washington Supreme Court recognized that a person can have more than one house of usual abode for purposes of service of process. “More recently we have applied liberal construction to substitute service of process statutes in order to effectuate the purpose of the statute, while adhering to its spirit and intent.” Sheldon at 607. A defendant may maintain more than one house of usual abode if each is a center of domestic activity *where it would be most likely that the defendant would promptly receive notice if the summons and complaint were left there.* Id. at 612. (*Italics Mine*).

In Sheldon, process was deemed sufficient when left with defendant’s brother at her parents’ house in Seattle where she had resided for two months before moving to Chicago for an extended period of time.

The court highlighted the fact that defendant registered her vehicle at her parents address, gave the address to law enforcement when she received a speeding ticket, and received correspondence at her parents Seattle home. Id. at 610.

In the present case, the place of service was the Huynh family home, where Ms. Huynh told the Department of Licensing and law enforcement that she lived, and where her family continued to receive correspondence for her and keep it in a safe place – a particular box – where Ms. Huynh would routinely retrieve mail and documents when she would stop by, approximately twice a month, according to her brother. (CP 77)

Clearly the 722 Martin Luther King Jr. address was retained and utilized by defendant as one of her centers of domestic activity or “abodes” under RCW 4.28.080(15), much like in Sheldon. Because defendant’s family kept a special box for mail and important documents for defendant at the home, and because she frequently visited the home and checked the box for mail, etc., it was a likely location for her to receive notice of a lawsuit if papers were served there.

Ms. Huynh here attempts to benefit from her earlier disregarding of the law by now repudiating the residential address she voluntarily provided to law enforcement on the date of the accident, and later to the DOL when she renewed her license in January, 2006, approximately four

months after her accident with Dybdahl.

Dybdahl urges the Court not to overlook the legal conundrum Ms. Huynh is urging this Court to embrace, and to estop Ms. Huynh from capitalizing on her own carelessness and violation of the law, when she continually listed as her residence an address that she now steadfastly claims was, in fact, not her residence. Ms. Huynh should not be allowed to disregard her mandatory duties under the motor vehicle licensing laws, then use that failure to comply with the law to exculpate her from being held legally responsible for her negligent actions.

Ms. Huynh relies heavily on Gross and Vukich, *infra*, cases where parties had moved and not yet updated their address information, or kept a vehicle registered at a certain address when they had left the state, but Ms. Huynh fails to cite a controlling case that compels this Court to find in her favor, because of the unique facts in this case.

This case differs from Gross v. Evert-Rosenberg, 85 Wn. App 539 (1997) in three critical ways. First, Gross's son-in-law filed a declaration indicating that he told the process server Evert-Rosenberg no longer lived there. That information would put a process server on notice that the address was no longer valid and that the defendant resided elsewhere.

In this case, the resident at the 722 MLK residence gave no such notice, but did just the opposite, by accepting papers for defendant Nguyet

Huynh, and not saying or doing anything to indicate or notify the process server that defendant did not reside at the home. Thus, the process server justifiably relied upon the apparent validity of the address in the absence of any protest or notification that the service was improper in any way.

Second, Evert-Rosenberg had updated her driver's license address and obtained a new driver's license from the D.O.L., whereas Ms. Huynh did not, and for many years represented the 722 MLK residence as her home address, despite not living there since approximately 2002.

Third, the property tax records and voter registration records were not updated at the time of service, and still showed Evert-Rosenberg as the owner of the residence where service was made, yet the court found that ownership of the property did not equate with residence, and therefore service of process at the former residence was ineffective.

In this case, Ms. Huynh states that she did not reside at the 722 MLK address since 2002, and that she relinquished all interests in the 722 MLK residence in 2006. (CP 15-16) She does not, however, state why she continued to use the 722 MLK residence as her residential address after she apparently moved from there in 2002, and renewed it at the 722 MLK address in January, 2006, approximately 4 years after she claims to have moved from there.

This case is also factually distinguishable from Vukich v. Anderson,

97 Wn. App. 684 (1999) in several critical ways. First, like in Gross v. Evert-Rosenberg, the process server was notified by a person at the residence where service was attempted that that the defendant no longer resided there.

In Vukich, the defendant Mr. Anderson leased the home to a tenant, and that tenant informed the process server that Mr. Anderson did not reside at the premises any longer when service was attempted. Again, unlike the present case, the process servers in Gross and Vukich were notified and had the opportunity to update their information, and locate and serve the defendant before the statute of limitations ran. The process server in this case received no notice whatsoever, and therefore had no opportunity to locate Huynh or discover an updated address for her. Instead, the person at the 722 MLK address accepted the documents for “Nguyet Huynh,” causing the process server to believe he’d affected proper service, and confirming his belief that he had served the proper address for Ms. Huynh.

The residence in Vukich had also been leased to a non-family member, meaning the residence was wholly possessed by a different person, unrelated to the defendant Anderson. The process server in Vukich was told not only that Mr. Anderson did not live there, but that the property was leased, further notifying the process server that the defendant

was living elsewhere.³ Again, Dybdahl's process server never received such notice as the process servers did in Gross and Vukich, supra, and therefore had no notice and opportunity to update Huynh's address information, or have any suspicion whatsoever that his service at the 722 MLK residence was anything other than proper and effective service on Ms. Huynh.

Sheldon v. Fetting, 129 Wn.2d 601 (1996), held that a person can have more than one "house of usual abode" for purposes of service of process. "More recently we have applied liberal construction to substitute service of process statutes in order to effectuate the purpose of the statute, while adhering to its spirit and intent." Sheldon at 607. A defendant may maintain more than one house of usual abode if each is a center of domestic activity where it would be most likely that the defendant would promptly receive notice if the summons and complaint were left there. *Id.* at 612.

In Sheldon, process was deemed sufficient when left with defendant's brother at her parents' house in Seattle where she had resided for two months before moving to Chicago for an extended period of time. The court highlighted the fact that defendant registered her vehicle at her parents address, gave the address to law enforcement when she received a

³ Vukich v. Anderson, 97 Wn. App. 684, 686 (1999).

speeding ticket, and received correspondence at her parents Seattle home. Id. at 610.

In the present case, the place of service was the Huynh family home, where defendant told the Department of Licensing and law enforcement that she lived, and where her family continued to receive correspondence for her and keep it in a safe place – a particular box – where defendant would routinely retrieve mail and documents when she would stop by, approximately twice a month, according to her brother’s deposition testimony. (CP 77)

Clearly the 722 Martin Luther King Jr. address was retained and utilized by defendant as one of her centers of domestic activity or “abodes” under RCW 4.28.080(15), much like in Sheldon. Because defendant’s family kept a special box for mail and important documents for defendant at the home, and because she frequently visited the home and checked the box for mail, etc., it was a likely location for her to receive notice of a lawsuit if papers were served there. (CP 77-78)

According to plaintiff’s process server, a suitable aged male, matching the description of plaintiff’s brother accepted the documents for defendant with no indication of any problem or that defendant would not receive them. And defendant indisputably received notice of the lawsuit in time to file a Notice of Appearance, draft an Answer to the Complaint

before process was even served at the 722 MLK residence, and propound discovery. (CP 5-6)

The key questions that should be answered are:

1) Why Ms. Huynh continued to register her vehicles at the 722 MLK residence address if she did not live there;

2) To what degree Ms. Huynh in fact utilized the 722 MLK residence as a “center of domestic activity” or “abode” during the periods of time she apparently resided elsewhere;

3) How and when she was notified of the lawsuit filed against her; and

4) Who accepted the legal process served at the 722 MLK residence address if it was not her brother, Tu M. Huynh?

Before the court can determine whether Ms. Huynh was using the 722 MLK address as a second “abode”, it must determine the nature and degree to which she continued to use the address after she apparently moved away from it in 2002. While the sufficiency of process service is ultimately a matter of law for the court to decide, the facts involved in the carrying out of service in this case are far from known.

Ms. Huynh’s counsel would not answer discovery or allow her client to be deposed, other than to say her client was never served. In light of Ms. Huynh’s voluntary registering of her vehicle at the 722 MLK address

and her providing of that address to law enforcement on the date of the accident, Mr. Dybdahl should be allowed to discover the reasons Ms. Huynh's use of that address, and whether those reasons and their attendant facts support the finding of the use of the 722 MLK residence as a second abode of Ms. Huynh's under the Sheldon case, supra.

3. Has Ms. Huynh Waived her Insufficiency of Process Defense?

A genuine issue of material fact exists whether Ms. Huynh waived her Affirmative Defense of Insufficiency of process by her knowing concealment of the apparent mistaken service upon her brother at the 722 MLK Jr. Way S. address.

The defense of insufficiency of process may be waived by (1) dilatory conduct, or (2) conduct inconsistent with asserting the defense. Lybbert v. Grant County, 141 Wn.2d 29, 38-39, 1 P.3d 1124 (2000). "A defendant cannot justly be allowed to lie in wait, masking by misnomer its contention that service of process has been insufficient, and then obtain a dismissal on that ground only after the statute of limitations has run, thereby depriving the plaintiff of the opportunity to cure the service defect." *Id* at 40 (quoting Santos v. State Farm Fire & Cas. Co., 902 F.2d 1092 , 1096 (2d Cir. 1990)).

Washington Courts have held that a defendant who engages in discovery and deliberately fails to raise the Insufficiency of Process

defense until after the statute of limitations has run may waive the defense. In King v. Snohomish County, 146 Wn.2d 420, 47 P.3d 563 (2002), the Supreme Court held that a defendant who engaged in dilatory conduct by providing evasive answers to discovery concerning an insufficiency of process defense, engaging in litigation and discovery, and waiting until after the statute ran to assert the defense, waived it.

In O'Neill v. Farmers Insurance Co. of Washington, 124 Wn.App 516, 125 P.3d 134 (2004), the Division I Court of Appeals, distinguishing O'Neill from King, supra, and finding no waiver of the defense, stated that “because Farmers raised the defense within the statute of limitations, the O’Neills had the chance to properly serve Farmers.” Farmers first raised the issue before the Statute of Limitations had run and the Court found that “the record contains no evidence that Farmers delayed filing its motion to ensure the statute of limitations precluded re-filing the lawsuit.” O'Neill at 529.

Several “King Factors” supporting waiver exist here. First, Ms. Huynh had notice of the lawsuit even before service occurred, as her attorney drafted her Answer to Plaintiff’s Complaint, including insufficiency of process defenses, two days before service of the complaint upon defendant’s brother. (CP 5-6)

Second, knowing Dybdahl’s process server had served the Complaint

upon a suitable aged adult at one of her current residential addresses (according to the WA. Dept. of Licensing), Ms. Huynh did nothing until after the 90 day relation-back period and statute of limitations on Dybdahl's claim had expired, then filed and served her Answer challenging the sufficiency of process.

Third, Ms. Huynh engaged in discovery by serving pattern interrogatories, requests for production and a Request for a Statement of Damages upon plaintiff, but refused to answer and respond to discovery served upon her. (CP 28-36, 42-43, 65-66, 70-73) An inference can be drawn that Ms. Huynh knew or anticipated that Dybdahl would serve process at the 722 MLK Way Jr. address, and planned to capitalize on the apparent erroneous information that she provided to the Dept. of Licensing to deny plaintiff his day in court.

An inference can also be drawn that Ms. Huynh authorized her brother to accept legal papers at the 722 MLK Jr. Way S. address for her, as according to the declaration of service, he willingly accepted service of the papers for "Nguyet Huynh" without protest or any indication whatsoever that defendant did not reside there, or that he would not or could not accept the process for defendant. Ms. Huynh's brother's deposition testimony indicates he regularly and routinely collects mail and other important papers for defendant at the 722 MLK Jr. Way address and that

she receives such documents when she comes to the house once or twice a month.

The evidence and inferences therefrom indicate that Ms. Huynh knew of the lawsuit, knew that Dybdahl was planning to serve process on her, knew he would likely serve process at the 722 MLK Way address, knew her brother would accept service of the papers without protest, thereby misleading Dybdahl into believing valid service had occurred, and knew not to raise the insufficient process issue until after the statute of limitations had expired.

When “the defense has access to and under its control the necessary facts to contest service well prior to the end of the 90 day period following attempted service,” but fails to do so, it is “dilatory within the spirit of Lybbert” (supra). Blankenship v. Kaldor, 114 Wn. App. 312, 57 P.3d 295 (2002).

Ms. Huynh in this case knew the necessary facts to contest service as soon as her brother was served with process at the address she designated with the Dept. of Licensing. At that time, ample time remained for Dybdahl to cure any defects in service had they been apprised of the issue with a timely Answer. Somehow Ms. Huynh’s insurer knew to draft an Answer on November 21, 2008, contesting service before it even occurred, but was careful not to serve that answer until the statute of

limitations had safely expired.

When taken in their entirety, the inferences indicate a substantial likelihood of dilatory conduct on the part of Ms. Huynh creating a genuine issue of material fact for trial, precluding summary judgment in for Ms. Huynh before the trial court.

4. Do credibility issues create a genuine issue of material Fact precluding Summary Judgment in this case?

When, at the hearing on a motion for summary judgment, there is contradictory evidence, or the movant's evidence is impeached, an issue of credibility is present, provided the contradicting or impeaching evidence is not too incredible to be believed by reasonable minds. The court should not at such hearing resolve a genuine issue of credibility, and if such an issue is present the motion should be denied. 6 Moore's Fed. Prac. (2d ed.) ¶ 56.16(4), pp. 2139, 2141' 3 Barron & Holtzoff, Fed. Prac. and Proc. § 1234, p.134, cited in Hudesman v. Foley, et al., Smith, 73 Wn.2d 880, 441 P.2d 532 (1968), accord Moringa v. Vue, 85 Wn. App. 822, 935 P.2d 637 (1997).

In this case, Dybdahl's process server swears to have served the documents upon a suitable aged adult meeting Ms. Huynh's brother's description on November 23, 2008, at Ms. Huynh's residential address listed on her driver's license.

Ms. Huynh's brother testified in deposition that he is authorized to receive mail and papers for his sister at that address and that he keeps such items in a safe place for his sister to retrieve when she regularly visits the home, where her father also lives.

There is a genuine issue of material fact whether, in light of the circumstances, the 722 MLK Jr. Way residence constitutes an "abode" for Ms. Huynh, and whether process served there would be reasonably calculated to reach defendant.

Ms. Huynh's brother now claims, contrary to the process server's declaration under oath, that he never received the Summons and Complaint at all. Thus, there is a credibility dispute between Ms. Huynh's brother and Dybdahl's process server that could not be resolved at Summary Judgment.

If Ms. Huynh's brother accepted service of the documents as described by plaintiff's process server, then in the light most favorable to plaintiff's witnesses, the Court must recognize the credibility issue before the Court concerning Ms. Huynh's brother's testimony.

If Ms. Huynh's brother delivered the documents to her, as he testified he routinely does with any important documents, such as mail, that he receives at the 722 MLK Jr. Way residence, addressed to his sister, then valid service of process occurred before the Statute of Limitations expired

in this case. See Brown Edwards v. Powell, 2008-WA-A0418.004 (2008).

Because Dybdahl's process server disputes Ms. Huynh's brother's statements concerning the service encounter, Dybdahl's process server must be believed for purposes of Summary Judgment, and the Court must find a credibility issue concerning those events that precluded Summary Judgment on the issue before the trial court.

V. CONCLUSION

Ms. Huynh seeks a dismissal of Dybdahl's claims against her, claiming to have never been served process, however, Ms. Huynh comes before the Court bearing responsibility for the service problem. State law requires Ms. Huynh to update her address with the D.O.L. within 10 days after she changes her address, but she repeatedly failed to do so, and deliberately kept her address with the D.O.L. listed at the 722 MLK residence address when she renewed her license approximately four months after the accident with Dybdahl, even though she claims she did not live at the 722 MLK residence since 2002.

Compounding the issues in this case is the fact that when the process server went to the 722 MLK address, a person matching Huynh's brother's description accepted the documents for "Nguyet Huynh" without saying anything that would put a process server on notice that he had the wrong address. That scenario is decisively different than in Gross

or Vukich, where the process server's were immediately notified that the person for whom papers were being served did not reside at the address. That simply did not happen in this case. Dybdahl had no way of knowing anything was wrong with the service address for Ms. Huynh until after it was too late to do anything about it.

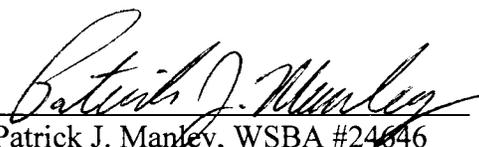
This case presents a difficulty not addressed by the cases cited by Ms. Huynh, in that she cites no cases where service was accepted without protest or notifying the server of any problem, and a party then waited patiently until the statute of limitations or relation back period expired, then moved for dismissal for insufficient process.

Under the circumstances of this case, it would be inequitable for the court to allow Ms. Huynh to profit from her own disregard of the state law that requires her to update her address within 10 days of changing her address. The court should estop Ms. Huynh from providing false or inaccurate information, which was then relied upon by Dybdahl while the apparent truth was concealed until after it was too late for him to protect his claim.

This case presents facts unique to itself, and cannot be controlled by existing cases relied upon by Ms. Huynh.

The court should remand this case for trial.

Respectfully submitted this 4th day of January, 2010.


Patrick J. Manley, WSBA #24646
Attorney for Respondent Dybdahl

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

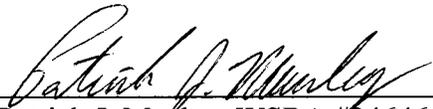
DAVID STREETER-DYBDAHL)	
)	
Respondent,)	NO. 63708-8-I
)	
vs.)	DECLARATION OF
)	SERVICE OF
)	RESPONDENT'S
)	AMENDED BRIEF
NGUYET HUYNH and 'JOHN DOE')	
HUYNH, wife and husband and their)	
marital community,)	
)	
Appellants.)	

I, Patrick J. Manley, Attorney for Respondent David Streeter Dybdahl, certify and swear under penalty of perjury under the laws of the State of Washington that I served upon the following persons with a copy of Respondent's Brief by delivering a true and correct copy thereof to the each person named below at the addresses provided on the date of this certification.

Marilee Erickson, Esq.
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