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No. 71338-8-I

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

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STEPHANIE DRUXMAN,

Appellant,

v.

SNOWDON ASSOCIATION, LLC,

Respondent.

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**BRIEF OF APPELLANT STEPHANIE DRUXMAN**

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## I. INTRODUCTION

This case presents an issue of first impression regarding whether a landlord can combine the alternative service procedures of RCW 59.18.055, which do not grant the court personal jurisdiction over the defendant, with the procedures of RCW 59.18.375 which require a defendant to pay money into the court registry. The facts in this case are undisputed. Ms. Druxman contends that the two statutes are mutually exclusive and cannot be used together. Therefore, the trial court improperly defaulted Ms. Druxman for her failure to respond to the payment requirements or sworn statement requirements document detailed in RCW 59.18.375 (hereinafter referred to as the “Requirements Document”) because it was served on her using the alternative method of service described in RCW 59.18.055, a procedure that allows a plaintiff to move forward with an unlawful detainer case without obtaining personal jurisdiction over the defendant.

The Unlawful Detainer Act and the Residential Landlord Tenant Act authorize a summary proceeding with shorter notice periods than other civil actions. A standard civil proceeding is initiated when a plaintiff

causes a summons and complaint to be personally served on a defendant, who is then given 20 days to respond if the defendant is found within the state. CR 4(d). RCW 4.28.100 authorizes service by publication under certain limited circumstances, and then, pursuant to RCW 4.28.110, the defendant is given 60 days to respond to the summons. Instead of service by publication, a court can authorize service by mail, but then the plaintiff must wait 90 days for a response. CR 4(d)(4). By contrast, a landlord in an unlawful detainer case can require a response in as little as seven days if the defendant is personally served with the summons and complaint. RCW 59.12.070, CR 81(a).

In a typical landlord/tenant case, the landlord has the tenant personally served with a summons and complaint. If the tenant responds within the seven day time frame, the landlord files the case and sets a hearing on a motion to show cause why a writ of restitution should not be issued. However, if the tenant fails to respond within the seven day time frame, the landlord will move the court for an order of default against the tenant that includes recovery of both a money judgment and possession of the property through a writ of restitution.

RCW 59.18.055 authorizes an exception to both the standard unlawful detainer process and an exception to the more general civil procedure statutes. This exception allows the landlord to proceed without

personally serving the tenant or waiting the customary 90 days when a defendant is served by mail. Rather, the landlord can post a copy of the summons and complaint on the property and mail the summons and complaint to the tenant and may give the tenant as little as nine days to respond. However, because RCW 59.18.055 is an exception to the general procedure, the statute explicitly does not give the court personal jurisdiction over the defendant. Rather, jurisdiction is limited to the real property.

Because the Unlawful Detainer Act allows a landlord to proceed on an expedited schedule, tenants are not required to make a full written answer to the complaint. Tenants are permitted to make their answer orally at the time of the hearing. RCW 59.18.380. However, when a landlord is bringing an action against a tenant alleging failure to pay rent, RCW 59.18.375 gives the landlord the option of serving the tenant with a Requirements Document. Pursuant to the Requirements Document, the tenant must either pay the amount of money allegedly owed into the court registry, or file a declaration stating that they do not owe the rent that the landlord alleges they owe. If the tenant fails to take either of these two steps, the landlord can obtain a writ of restitution and a money judgment by default.

As explained below, it is beyond the court's jurisdiction to require a defendant to pay money into the court registry pursuant to RCW 59.18.375 prior to the court obtaining personal jurisdiction over the defendant. Also, the statutory language of RCW 59.18.055 and RCW 59.18.375 do not authorize these procedures to be used in concert.

## **II. ASSIGNMENTS OF ERROR**

Appellant Stephanie Druxman contends that the ex parte department of the trial court erred when it defaulted her for failing to respond to the Requirements Document. That error was repeated when the court denied Ms. Druxman's Motion to Vacate the order of default and repeated again when the court denied her Motion to Revise the Commissioner's denial of her Motion to Vacate the order of default. However, each of the errors relates back to the court's initial error when it defaulted Ms. Druxman for her failure to respond to the Requirements Document.

## **III. STATEMENT OF THE CASE**

As noted above, the facts of this case are undisputed. Appellant Stephanie Druxman entered into a rental agreement with Respondent Snowdon Associates LLC. CP 3. In September 2013, Snowdon issued a three day pay or vacate notice. CP 4. After failing to personally serve Ms. Druxman with the summons and complaint, the landlord, on September

23, 2013, obtained an order for alternative service pursuant to RCW 59.18.055. CP 10. The order as presented by the landlord's counsel authorized service of the summons, complaint, payment or sworn statement of requirement, and order to show cause by posting and mailing copies to Ms. Druxman's residence. *Id.* The Requirements Document indicated a response date of October 3, 2013, the same date Ms. Druxman was required to respond to the summons. CP 1, 5.

Ms. Druxman timely responded to the summons with a notice of appearance on September 25, 2013, but did not respond to the Requirements Document. CP 12-13, 22. On October 7, 2013, the landlord filed a motion and declaration alleging that while Ms. Druxman responded to the summons, she had not responded to the Requirements Document. CP 22. Ms. Druxman did not deposit money into the court registry nor did she file a sworn statement that she did not owe the rent. *Id.* Based on Ms. Druxman's failure to respond to the Requirements Document, the ex parte department of the court entered an order of default granting the landlord's request for the issuance of a writ of restitution. CP 27.

Believing that the default order was improper, Ms. Druxman moved the court to vacate the judgment and a hearing was held on October 10, 2013. CP 34. The court denied Ms. Druxman's motion to vacate, and on October 18, 2013, within ten days of the Commissioner's order as

required by RCW 2.24.050, she filed a Motion for Revision of the Commissioner's order. CP 40. Ms. Druxman's Motion for Revision was denied by order of the trial court on December 4, 2013. CP 85. On December 26, 2013, Ms. Druxman filed a notice of appeal. CP 87.

The facts that give rise to the substantive issue of this appeal are undisputed: that Ms. Druxman was served with the summons, complaint, and the Requirements Document by alternative service as described in RCW 59.18.055; that Ms. Druxman timely responded to the summons and complaint by filing a Notice of Appearance; and that Ms. Druxman did not respond to the Requirements Document. Thereafter, the court defaulted her for failing to respond to the Requirements Document.

#### **IV. ARGUMENT**

##### A. Because this Case Involves Jurisdictional Issues and Issues of Statutory Construction the Court Should Review the Issues De Novo.

Ms. Druxman argues that the trial court did not have personal jurisdiction to require her to make payments into the court registry. "The issue [of] whether a court has jurisdiction is a question of law subject to de novo review." *Crosby v. County of Spokane*, 137 Wn.2d 296, 301, 971 P.2d 32 (1999). Ms. Druxman also argues that the trial court did not correctly interpret provisions of RCW 59.18.055 and RCW 59.18.375. Because these arguments are issues of statutory construction, the standard of

review for these arguments is also de novo: “[t]he construction of a statute is a question of law that [the court] review[s] de novo on appeal.” *Stuckey v. Department of Labor and Industries*, 129 Wn.2d 289, 295, 916 P.2d 399 (1996), citing *Waste Management of Seattle, Inc. v. Utilities & Transp. Comm’n*, 123 Wn.2d 621, 627, 869 P.2d 1034 (1994); *Our Lady of Lourdes Hosp. v. Franklin County*, 120 Wn.2d 439, 443, 842 P.2d 956 (1993). The facts of this case are undisputed. The only issues raised on appeal are issues of law relating to jurisdiction and statutory interpretation of RCW 59.18.055 and RCW 59.18.375. Therefore, this court should review all issues in this case de novo.

B. The Unlawful Detainer Act and the Residential Landlord Tenant Act are in Derogation of Common Law and Must Therefore be Construed Strictly in Favor of the Tenant.

As articulated above, the Unlawful Detainer Act and the Residential Landlord/Tenant Act authorize a summary proceeding that is in contravention to the standard statutory and common law civil procedure. Because these “statutes are in derogation of the common law [they] are strictly construed in favor of the tenant.” *Housing Authority of the City of Seattle v. Silva*, 94 Wn. App. 731, 734, 972 P.2d 952, (Div. I, 1999). Therefore, if the court finds ambiguity with respect to the issues in this case, those ambiguities should be resolved in favor of the tenant.

C. The Trial Court Did Not Have Jurisdiction to Default Ms. Druxman for Her Failure to Pay Money into the Court Registry.

When a defendant/tenant is served pursuant to the alternative means described in RCW 59.18.055, the plaintiff/landlord and the court have jurisdiction with respect to the property allowing the court to issue a writ of restitution that restores possession of the property to the plaintiff/landlord. However, the alternative service statute does not grant a plaintiff or the court personal jurisdiction over the defendant/tenant.

When service on the defendant or defendants is accomplished by this alternative procedure, the court's jurisdiction is limited to restoring possession of the premises to the plaintiff and no money judgment may be entered against the defendant or defendants until such time as jurisdiction over the defendant or defendants is obtained.

RCW 59.18.055. Because the court does not have personal jurisdiction over the defendant, the court does not have jurisdiction to require the defendant to pay money into the court registry as detailed in the Requirements Document. Because the court does not have authority to order compliance with the Requirements Document, it would be illogical for the court to default the defendant for the defendant's failure to comply with the Requirements Document.

As a rule, courts may only hear and determine a cause when the court has jurisdiction over both the parties and the subject matter. *St. John Medical Center v. State ex rel. Dept. of Social and Health Services*, 110

Wn. App. 51, 59, 38 P.3d 383 (Div. 2, 2002). Here, Snowdon asked the court to make a ruling regarding Ms. Druxman's failure to respond to a Requirements Document, when the court did not have personal jurisdiction over her. RCW 59.18.055 authorizes the court to determine whether a plaintiff/landlord has a right to possession of real property. It does not give the court jurisdiction to make any determination regarding the defendant/tenant. It is beyond the jurisdictional powers of the court to make the determination detailed in RCW 59.18.375 when the court is unable to exercise personal jurisdiction over the defendant.

Because it was beyond the court's jurisdictional powers to make the determination detailed in RCW 59.18.375 without first obtaining personal jurisdiction over the defendant, Ms. Druxman asks that this court quash the writ of restitution, vacate the default judgment that was issued based on Snowdon's faulty method of service, and remand this case to the trial court for further proceedings.

D. RCW 59.18.055 does not Authorize Service of the Requirements Document, it only Authorizes Service of the Summons and Complaint.

There is no ambiguity with respect to RCW 59.18.055, the statute that permits service of the summons and complaint by mail. Rather, the statutory language is clear that only service of the **summons** and **complaint** is permitted by this alternative procedure:

Upon filing of an affidavit from the person or persons attempting service describing those attempts, and the filing of an affidavit from the plaintiff, plaintiff's agent, or plaintiff's attorney stating the belief that the defendant cannot be found, the court may enter an order authorizing service of the summons as follows:

(a) The summons and complaint shall be posted in a conspicuous place on the premises unlawfully held, not less than nine days from the return date stated in the summons; and

(b) Copies of the summons and complaint shall be deposited in the mail, postage prepaid, by both regular mail and certified mail directed to the defendant's or defendants' last known address not less than nine days from the return date stated in the summons.

RCW 59.18.055. Nothing in the above quoted language permits service of documents other than the summons and complaint. This provision permitting an alternative method of service is in derogation of both standard civil procedures and of the more truncated procedures of the unlawful detainer process. Therefore, and for the same reasons as cited above, the alternative service provision specifically should be interpreted narrowly and construed in favor of the tenant.

Here, Snowdon served the Requirements Document by the means described in RCW 59.18.055, even though RCW 59.18.055 does not authorize service of the Requirements Document. A plain reading of RCW 59.18.055 only authorizes service of the summons and complaint. Because

the default judgment in this case was based on Snowdon's attempt to serve Ms. Druxman with the Requirements Document by alternative means, she asks that this court vacate the default judgment, quash the writ of restitution, and remand this case to the trial court for further proceedings.

E. The Requirements Document Must be Delivered to the Tenant.

The statute authorizing a landlord to require a tenant to deposit money into the court registry, RCW 59.18.375, includes two provisions concerning the issue of how the Requirements Document must be served. Subsection 7 refers to a requirement that the plaintiff must "deliver" the Requirements Document to the defendant:

If the plaintiff intends to use the procedures in this section, the plaintiff must first file the summons and complaint with the superior court of the appropriate county and deliver notice to the defendant of the payment requirements or sworn statement requirements of this section.

RCW 59.18.375(7). Civil Rule 5 defines "delivery" as follows:

handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

CR 5(b)(1). In other words, the civil rules define "delivery" to mean personal service. This interpretation of RCW 59.18.375 is bolstered by subsection 8 which states that "[t]he notice authorized in this section may

be served pursuant to applicable civil rules . . . .” RCW 59.18.375(8). As noted above, the applicable civil rule defines delivery to mean personal service.

It is noteworthy that RCW 59.18.375, which was amended as recently as 2008, does not reference the alternative service statute RCW 59.18.055, but rather refers only to the “applicable civil rules.” The applicable civil rule, Civil Rule 4, requires that a lawsuit be initiated by personal service unless the defendant is not a resident of the state or cannot be found in the state, in which case the lawsuit can be initiated by publication and mailing of the summons. CR 4(d) *referencing* RCW 4.28.100. Pursuant to Civil Rule 4(d)(4), when serving a defendant by mail, the plaintiff must allow the defendant 90 days to respond.

Here, Snowdon did not serve Ms. Druxman the Requirements Document by delivering the document or in the manner required by the applicable civil rules. Rather Snowdon served Ms. Druxman by the alternate means detailed in RCW 59.18.055 in derogation of the standard civil rules. Therefore, this court should grant Ms. Druxman’s request to overturn the trial court’s rulings in this case.

## V. CONCLUSION

For the reasons articulated above, Ms. Druxman asks this court to quash the writ of restitution, vacate the default judgment that was issued

based on Snowdon's faulty method of service, and remand this case to the trial court for further proceedings.

DATE: April 7, 2014.

  
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I certify that today I caused a copy of this Brief of Appellant to be served on the following people in the manner indicated below:

Raymond Walters 9728 Greenwood Ave N. Ste A Seattle, WA 98103-3054 rjwalters634@gmail.com <i>Attorney for Snowdon Association, LLC</i>	<input type="checkbox"/> U.S. mail, first-class postage prepaid <input type="checkbox"/> Hand delivery <input type="checkbox"/> By legal messenger <input checked="" type="checkbox"/> By email, per prior consent
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DATE: April 7, 2014.

  
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