

72490-8

72490-8

No. 72490-8-I

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

Yisehak Hirpo, Appellant

v.

Preston Parris, Respondent

BRIEF OF APPELLANT

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2015 FEB 10 AM 8:36

Shakespear N. Feyissa
Attorney for Appellant
1001 4th Ave. Plaza Suite 3200
Seattle, WA 98154
Phone (206) 292-1246
Fax (206) 783-5853

A.	Assignments of Error.....	1
	Assignments of Error	
	No. 1.....	1
	No. 2.....	1
	No. 3.....	1
	No. 4.....	1
	Issues Pertaining to Assignments of Error	
	No. 1.....	2
	No. 2.....	2
	No. 3.....	2
	No. 4.....	2
B.	Statement of the Case.....	3
	Procedural History.....	3
	Statement of Facts.....	5
C.	Summary of Argument.....	8
D.	Argument.....	10
	I. UNDER RCW 46.20.205 (1), ANY PERSON WITH A DRIVER’S LICENSE WHO MOVES FROM AN ADDRESS STATED IN THE DRIVER’S LICENSE, THAT PERSON SHALL WITHIN TEN DAYS THEREAFTER NOTIFY THE DEPARTMENT OF THE ADDRESSCHANGE.....	10
	II. THE SERVICE OF PROCESS EFFECTUATED ON DEFENDANT AT THE 205 NW 65 th St. SEATTLE, WA 98117 MEETS THE LEGAL REQUIRIEMENT AND IS SUFFICIENT SERVICE.....	15

A.	<u>THE PLAINTIFF COMPLIED WITH SERVICE STATUTE AND SERVED DEFENDANT PROPERLY AND TIMELY</u>	16
B.	<u>WASHINGTON COURTS INTERPRET THE PROCESS SERVICE STATUTE LIBERALLY</u> ...	18
III.	THE TRIAL COURT’S DISMISSAL OF THE CASE ON SUMMARY JUDGMENT BASED ON INSUFFICIENT SERVICE IS UNSUPPORTED BY THE FACTS IN THE CASE.....	23
A.	<u>THE DEFENDANT DID NOT HAVE ANOTHER OFFICIAL ADDRESS WHERE HE CAN BE SERVED</u>	31
B.	<u>THE PROFESSIONAL PROCESS SERVER PROPERLY SERVED THE DEFENDANT AT DEFENDANT’S KNOWN, VERIFIED AND CONFIRMED ADDRESS</u>	37
IV.	THE COURT REVERSED ITS OWN RULING AND HELD EVIDENTARY HEARING AFTER DENYING THE SUMMARY INITIALLY JUDGMENT MOTION..	41
V.	CONCLUSION.....	44

TABLE OF AUTHORITIES

A. Table of Cases

Streeter-Dybdahl v. Nguyet Huynh, 157 Wn.App. 408, 412, 236 P.3d 986 (2010) (citing Pascua v. Heil, 126 Wn.App. 520, 527, 108 P.3d 1253 (2005)),.....10

Scanlan v. Townsend, No. 89853-7 (Nov. 6, 2014).....17

Brown-Edwards v. Powell, 144 Wn.App. 109, 111, 182 P.3d 441 (2008) (citing Roth v. Nash, 19 Wn.2d 731, 734-35, 144 P.2d 271 (1943)).....17

Sheldon v. Fettig, 129 Wash.2d 601,,.....18
(919 P.2d 1209 (1996)).

Regulations and Rules

A. Court Rules

CR 4 (g)(2)12

CR 4 (g)(7).....19

B. Other Authorities

RCW 46.20.205 (1).....1, 2,9 &10

RCW 4.28.080 (15).....14

RCWA 4.28.080 (15).....15

A. ASSIGNMENTS OF ERROR

Assignments of Error

1. The trial Court erred when the Court found that the service of process on the Defendant was defective when the Defendant did not change his residential address on his Washington State Driver's License "(DOL)" within the 10 days pursuant to required RCW 46.20.205 (1). RP 15, *at* 17 to 25. (Jan 24, 2014).

2. The trial Court erred when it found that the service of process effectuated on Defendant at the 205 N.W. 65th St. Seattle, WA 98117 failed to meet the legal requirements of sufficient service of process. CP 215-219.

3. The trial Court erred when it granted Defendant's Summary Judgment motion and dismissed Plaintiff's claim with prejudice when Plaintiff received the Summons and Complaint in timely manner, his attorney appeared on his behalf the next Court day and filed an answer, Defendant actively engaged in litigation and discovery, and when Defendant suffered no harm, no prejudice, or no disadvantage stemming from service of process. CP 215-219.

4. The trial Court erred when it granted Defendant's motion to bifurcate the case after initially finding that there is no credibility issue or factual dispute in the case. CP 193-196; CP 198-199.

Issues Pertaining to Assignments of Error

(1) Whether the trial Court erred when the Court found the service of process on Defendant was defective when the Defendant did not change his residential address on his Washington State Driver's License "(DOL") within the 10 days pursuant to requirement of RCW 46.20.205 (1)? (Assignment of Error 1).

(2) Whether the trial Court erred when it found that the service of process effectuated on Defendant at the 205 N.W. 65th St. Seattle, WA 98117 address failed to meet the legal requirement of sufficient service? (Assignment of Error 2)

(3) Whether the trial Court erred when it granted Defendant's Summary Judgment motion and dismissed Plaintiff's claim with prejudice when Plaintiff received the Summons and complaint in timely manner, his counsel appeared on Defendant's behalf the next Court day and answered the complaint, actively engaged in litigation and discovery, and when Respondent suffered no harm, no prejudice, or no disadvantage stemming from service of process? (Assignments of Error 1, 2, and 3).

(4) Whether the trial Court erred when it granted Defendant's motion to bifurcate the case after initially finding that there is no credibility issue or factual dispute in the case? (Assignment of Error 4).

B. Statement of the Case

Procedural History

On August 12, 2013, Plaintiff Yisehak Hirpo “Hirpo” brought a personal injury lawsuit stemming from a motor vehicle collision against the Defendant Preston Parris.

The Plaintiff’s attorney forwarded copy of the lawsuit along with the police report to a Professional, licensed, and experienced process server, Sting Ray Legal Services. CP 144; 148.

On August 18, 2013, (Sunday) Mike Anderson a professional and licensed process server (Pierce County Reg. # 13285) filed a signed and sworn in Affidavit of Service stating the same. CP 144; 148.

On Sunday, August 18, 2013, the Defendant was served, and his attorney filed and served his Notice of Appearance the next Court day, Monday, August 19, 2013. CP 7.

On September 18, 2013, Defendant filed answer to the complaint. CP 10-13. On September 12, 2013, Defendant answered Plaintiff’s First Set of Interrogatories and Request for Production. CP 80-83.

On September 30th, 2013, counsel for Defendant wrote a letter and sent a medical stipulation to be signed by Plaintiff to access Plaintiff’s medical records and bills. On October 23, 2013, Counsel for Defendant

again wrote another letter requesting the signed medical stipulation. CP 84-87.

On November 22, 2013, after the statute of limitation expired, Defendant waited and filed a Summary Judgment motion for failure of Service of process. CP 15-21.

On January 24, 2014, the Court heard oral argument on the motion for Summary Judgment. RP 2-32 (January 24, 2014).

On January 28, 2014, the Court denied Defendant's Motion for Summary Judgment. CP 191.

On February 14, 2014, Defendant filed a motion to bifurcate hearing Re Service of Process. CP 193.

On February 24, 2014, the Court granted the motion to bifurcate. CP 198.

On July 8, 2014 the Court entered a Finding of Facts and Conclusion of Law and Order Granting Defendant's Motion for Summary Judgment, and dismissed Plaintiff's claims with prejudice. CP 203-209.

On July 21, 2014, Plaintiff filed a Motion for Reconsideration. On August 19, 2014, the Court denied Plaintiff's Motion for Reconsideration. CP 210.

On September 12, 2014, Plaintiff filed Notice of appeal. CP 212.

Statement of Facts

On November 06, 2010, Yisehak Hirpo an immigrant and a native of Ethiopia, was working as a Taxi-cab driver. Hirpo makes a living and supports his family as a cabbie. On stated date, at around 22:05 hours, Hirpo was driving his leased cab with two passengers. He approached the intersection of Whitman Avenue North and cross street North 41st St., in Seattle, WA. At the same time, the Defendant Preston Parris failing to yield for a vehicle with “Right of Way” crashed into Hirpo’s cab. CP 44.

The Police report states that “all persons involved had the same story about the collision.” Parris (the Defendant herein)...stated “IT WAS MY FAULT”. The Defendant was issued a traffic infraction by the police officer who investigated the accident for violating “right of Way”. The police report identified the Defendant’s address as 205 N.W. 65th St, Seattle, WA 98117. CP 44.

At the time of the collision, the Defendant Parris was about 20 years old. The Police report states Preston Parris was the registered owner of the vehicle involved in the crash. Later, after the dispute on service, revealed that the registered and legal owner of the vehicle in question was Robert L. Parris, father of the Defendant Preston Parris. CP 44; 148.

Although Defendant admitted fault and was issued a citation, his insurance company, State Farm, refused to pay Mr. Hirpo for his damages

and make him whole. Hirpo through his attorney repeatedly wrote letters and provided evidence to the insurance company in an effort to resolve the case short of litigation. The Insurance Company was aware, in notice, and was expecting a lawsuit will be forthcoming. CP 57; RP 34 (June 27, 2014).

The Plaintiff's attorney forwarded the copy of the lawsuit along with the police report to a Professional, licensed, and experienced process server, Sting Ray Legal Services. CP 44; 148. On August 18, 2013, (Sunday) Mike Anderson a professional and licensed process server (Pierce County Reg. # 13285) signed a sworn in Affidavit of Service stating that "on August 18th, 2013, @11:39 a.m. at 205 N.W. 65th St. Street Seattle WA, by then and there personally delivering one (1) set (s) of true and correct copies thereof into the hands of and leaving same with Marion Duffy, as co-resident of suitable age & discretion". CP 1; 144; and 148.

The Defendant was served on Sunday, August 18, 2013, and his attorney filed and served his Notice of Appearance the next Court day, Monday, August 19, 2013. CP 7. On September 12, 2013, Defendant answered Plaintiff's First Set of Interrogatories and Request for Production. On September 18, 2013, Defendant filed an answer to the complaint. CP 80-83.

Then, on September 30th, 2013, counsel for Defendant wrote a letter and sent a medical stipulation to be signed by Plaintiff to access Plaintiff's medical records and bills. On October 23, 2013, Defendant's Counsel wrote requesting the signed medical stipulation. CP 84-87.

On November 22, 2014, the statute of limitation expired, Defendant waited until the expiration of the statute, while fully engaged in discovery, to file a Summary Judgment motion for failure of Service of process. CP 15-21. On January 24, 2014, the Court heard oral argument on the motion for Summary Judgment. The Court was presented with declarations, depositions, and live testimony. RP 2-32 (January 24, 2014).

On January 28, 2014, the Court denied Defendant's Motion for Summary Judgment. CP 191. On February 14, 2014, Defendant filed a motion to bifurcate hearing Re Service of Process. CP 193. On February 24, 2014, the Court granted the motion to bifurcate. CP 198.

On June 27, 2014, the hearing was held on the motion, and on July 8, 2014 the Court entered a Finding of Facts and Conclusion of Law and Order Granting Defendant's Motion for Summary Judgment. The Court dismissed Plaintiff's claims with prejudice. CP 203-209. Plaintiff filed a Motion for Reconsideration. The Court denied Plaintiff's Motion for Reconsideration. CP 210.

On September 12, 2014, Plaintiff filed a Notice of appeal. CP 212.

C. Summary of Argument

In a personal injury action, Plaintiff filed a lawsuit against the Defendant on August 12, 2013. The Plaintiff hired a professional process server to serve the Defendant. On August 18, 2013, the process server went to Defendant's address from the police accident report, the address for Defendant's voter registration, the address a skip-search revealed for Defendant, a house owned by Defendant's father, and an address confirmed to be Plaintiff's by a resident therein of suitable age and discretion. CP 144; 148.

Later, the person who accepted service admits to mistaking the Defendant and his father when she accepted service. The Defendant did not change his driver's license address within the 10 days as required by the statute. The trial Court found that the Plaintiff did not search for the Defendant by his recently, Defendant changed his address on his DOL two months after the filing of the lawsuit, obtained new address. RP 15 (June 27, 2014); CP 105.

The Defendant appeared in court the next Court day after service, he was served on Sunday and his attorney filed a Notice of Appearance, the next day, on Monday. In his deposition, Defendant admits of knowing about the lawsuit and taking steps to defend it by contacting his insurance company and his attorney. CP 57. Additionally, the Defendant answered

the complaint, engaged in discovery, and waited until the statute of limitation runs out to file a motion to dismiss based on defective service. CP 7, 10, and 80.

The trial Court erred when it found that the service of process was defective though the Defendant did not change his residential address on his Washington State Driver's License "(DOL)" within the 10 days pursuant to required RCW 46.20.205 (1). The trial Court also erred when it found that the service of process effectuated on Defendant at the 205 N.W. 65th St. Seattle WA 98117 failed to meet the legal requirement of sufficient service. RP 15 (January 24, 2014).

Based on the evidence, fact, and law in this case, the trial Court should not have granted Defendant's Summary Judgment motion and dismissed Plaintiff's claim with prejudice when Plaintiff received the Summons and complaint in timely manner, his counsel appeared on his behalf the next Court day and answered, actively engaged in litigation and discovery, and when Defendant suffered no harm, no prejudice, or no disadvantage stemming from service of process.

Furthermore, the trial Court erred when it granted Defendant's motion to bifurcate the case after initially finding that there is no credibility issue or factual dispute in the case. CP 191, RP 30 (January 24, 2014).

D. Argument

- I. UNDER RCW 46.20.205 (1), ANY PERSON WITH A DRIVER'S LICENSE WHO MOVES FROM AN ADDRESS STATED IN THE DRIVER'S LICENSE, THAT PERSON SHALL WITHIN TEN DAYS THEREAFTER NOTIFY THE DEPARTMENT OF THE ADDRESS CHANGE

RCW 46.20.205 in relevant part States as follows: (1) Whenever any person after applying for or receiving a driver's license or identicard moves from the address named in the application or in the license or identicard issued to him or her, the person **shall within ten days** thereafter notify the department of the address change. (*Emphasis added*).

Because this appeal involves sufficiency of service of process, the standard of review is de novo. See *Streeter-Dybdahl v. Nguyet Huynh*, 157 Wn.App. 408, 412, 236 P.3d 986 (2010) (citing *Pascua v. Heil*, 126 Wn.App. 520, 527, 108 P.3d 1253 (2005)).

In this case, the Defendant admits that he did not change his address on his State issued Driver's License ("DOL") within 10 days as required by law. This fact is undisputed. Defendant made several moves and change of addresses without notifying DOL according to the Finding of Facts Number 7. CP. 204, at 10-18.

The Defendant allegedly left the Seattle address, 205 N.W. 65th St., the address where he was served, in July of 2011, to join the Job Corps in Moses Lake, WA. He did not change his address on his DOL, or U.S. Postal Services. Then, he moved to Medical Lake, WA. Again, he neither

changed his new address with DOL nor did he notify the U.S. Postal Services of his new address, if any. Defendant states that he moved to Eastern, WA at the “end of June, beginning of July”... “2011”. Still, Defendant did not change his address with DOL or with the Post Office. RP 37, at 16 & 17 (June 27, 2014).

Then, on April 13, 2013, almost two years or so after he allegedly moved to Cheney, WA, the Defendant finally changed his address on his DOL. RP 38 at 17-18 (June 27, 2014). Still, Defendant never notified U.S. Postal Services of his new address. He then allegedly moved to Olympia, WA, still he did not change his address on his DOL or U.S. Postal Services. Furthermore, Defendant states and admits that he has no reason for not changing his address. For instance, Defendant does not claim that he did not know the law, he did not have time, or gives any other reason why he elected not to change his address for almost two years.

To illustrate, in his deposition Defendant states as follows as to why he did not change his address on his DOL: CP 55.

Q. (By Mr. Feyissa) Is there a reason why you did not change your address?

A. There's no reason.

Furthermore, on the June 27, 2014 hearing, Defendant testified as Follows: RP 42, at 20-24(June 27, 2014):

- Q. And do you remember telling me in your deposition you just didn't change your address for no reason at all?
- A. yeah, I just didn't change it.
- Q. Okay. Is there a reason why you didn't change it?
- A. No.

Even so, the Court mainly basis it's Finding of Facts and Conclusion of Law incorrectly on the fact that: "Neither plaintiff's attorney nor his process servers checked Washington State Department of Licensing records. If they had, it would have revealed that, his residence was in Cheney, WA per DOL records". CP 204. The Court and Defendant's counsel did not state how long it takes for the DOL's records to be updated and become available for public access and available on search engines. RP 21 at 6-7 (January 24, 2014).

The Court did not heed the fact that Defendant claims to have lived in several places without changing his address with DOL within 10 days as it's required by law. Furthermore, the declaration and testimony of the process server DOL searches are not reliable and are not more accepted than skip-traces and other methods of search employed by the process servers in this case. CP 146; RP 62-65 (June 27, 2014).

Besides, the process server was disadvantaged to do further searches when he was told by the resident, who claims to be confused as to the servee, the Defendant lived there, and summons and complaint was accepted on his behalf. RP 67-68 (June 27, 2014).

Unfairly, Defendant takes full advantage of the fact that the Plaintiff or the process servers did not find him using his driver's license, the address he changed merely about two months before the filing of the lawsuit, address in Cheney. Defendant only lived at the Cheney address for 9 or 10 months only. Then he moved to Olympia, but did not change his address to the Olympia address until the date of the Summary Judgment motion in June 2014. In fact, when asked at his deposition on December 9, 2013, he states the following: CP 59.

- Q. Now, since September of 13, 2013 to present, you live in Olympia, correct?
- A. Yes.
- Q. Why didn't you change that with the Department of Licensing?
- A. I haven't had a chance to the Department of Licensing and get it done?
- Q. It's been how many days now, almost – September, October, November, December, almost three months, correct, and you didn't have time to go to the Department of Licensing?
- A. Yes.

When he was asked whether he changed his address, and then if he did not, why: He simply said “No I did not” change my address and “there's no reason” why he did not change it with the post office. CP 55.

Defendant goes further and states that he “didn't think I needed to” change (my) address with the post office. CP 55. Nonetheless, the Court

dismissed Plaintiff's case mainly and solely based on Plaintiff's failure to find Defendant through his recently changed driver's license. CP 204.

The Defendant did not bother to abide by the law governing change of address and DOL that states "shall within ten days" change his address. Here, Defendant waits months and even years to change his address on DOL, and blames the Plaintiff for not finding him. Defendant did not even change his alleged current address on his DOL, when he claims to live in Olympia at the time of the June 27, 2014. RP 42 (June 27, 2014).

Had the Defendant changed his address immediately after he moved from Seattle, as he is required by law within 10 days, then the process servers would have located him easily and all the issues that led to the dismissal of Plaintiff's complaint would have been avoided.

Defendant's action and failure to adhere to the DOL law is tantamount to concealing himself, and should even, if anything, result in extending the statute of limitation. This Court should reverse the trial court's dismissal and allow this case to go forward for that is what the law, justice, and fairness requires.

The Defendant should not be allowed to take advantage, or be rewarded with dismissal for not changing his address on his DOL. Defendant is in clear violation of the law in regards to changing his

address with DOL, and should not be permitted to benefit for disobedience of State law.

In sum, clearly, the Defendant did not fulfill his legal obligation when he failed to change his address with DOL as required “shall within 10 days”. Regardless, he now appears to blame the Plaintiff, Plaintiff’s attorney, and the professional process servers for not finding or locating him through his DOL address. CP 204.

Unfortunately, the trial Court agreed with Defendant and ignored the glaring fact that Defendant violated the law governing DOL’s change of address. The argument regarding the violation was presented to the Court initially at the January 24, 2014 hearing. RP 15. The Court initially correctly denied the Summary Judgment motion, but later it reversed itself and bifurcated the case.

Consequently, the Court took the harsh and unjust action of dismissing Plaintiff’s complaint with prejudice. Justice and fairness requires reversal of the trial Court’s decision.

II. THE SERVICE OF PROCESS EFFECTUATED ON DEFENDANT AT THE 205 NW 65th St. SEATTLE, WA 98117 MEETS THE LEGAL REQUIREMENT AND IS SUFFICIENT SERVICE

RCW 4.28.080 (15) states regarding service of process, in relevant parts, as follows:

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.

Also, RCWA 4.28.080(15) further states:

Substitute service of process by leaving a copy at Defendant's usual abode is designed for injured parties to reasonable means to serve defendant's in manner reasonably calculated to accomplish service.

In this case, the Defendant Preston Parris is served on Sunday, August 18, 2013. Next day, on Monday, August 19, 2013, Defendant Parris appeared by and through his attorney of record and filed Notice of Appearance. CP 7-9. On September 18, 2013, answered the complaint. CP 10. Then, fully engaged in discovery, requested medical records, responded to discovery, and acted as though the service was not an issue until the statute of limitations expired. Then, upon the expiration of the statute of limitation, Defendant moved for Summary Judgment motion on failure of Service of Process. CP 15.

A. THE PLAINTIFF COMPLIED WITH SERVICE STATUTE AND SERVED DEFENDANT PROPERLY AND TIMELY

The Plaintiff presented to the Court evidence, through the professional and licensed process servers Sting Ray Legal Services, of

proper service in the form of declaration, depositions, and in Court testimonies. All facts and evidence in this case indicate that the Defendant did not have any other official address. Thus, per the search result for Defendant's address, the process server went to the house located at 205 N.W. 65th Street, Seattle WA, and served an individual who confirmed to be a co-resident and was of suitable age and discretion. CP 65, 67, 111. The person served, Mariah Duffy, admits that she was simply confused and thought the process server was talking about of the father of the Defendant, and that's why she accepted service. RP 18 (June 27, 2014).

Then, one must be compelled to inquire the following crucial questions: how could the process server ever suppose to know that Defendant was not living there, when stated he lived there, someone agreed to accept service, and took the Court papers knowingly and voluntarily? How could Ms. Duffy's confusion or mistake can be basis to dismiss Plaintiff's complaint?

Here, the main issue arises in this case not the fact that the Defendant has received the Summons and complaint, appeared and defended himself, but the main argument is he did not live at the 205 N.W. 65th St. address. The trace search, the post office, other government document all showed that Defendant's address to be where service was made. CP 148.

The address where service was made was the address proven to be “...reasonably calculated to accomplish service” per the statute. In fact, the Defendant has received the Summons and Complaint in the fastest time possible and defended the action against him. Again, beyond appearing in the case, Defendant was active in litigation i.e. discovery, requesting, responding to discovery, requesting medical records, and the like. CP 7, 10, and 80.

Yet, after service, Defendant was just waiting to kill time, acting or pretending to litigate, while all along defendant’s counsel was engaged in full gamesmanship to let the case expire. Ethics, justice, and reason do not support the dismissal of Plaintiff’s case when the Plaintiff has done all is expected of him in serving the Defendant.

To sum up, throughout the litigation, the Defendant has not shown any good faith, fairness, or reasonableness. In fact, all the actions by the Defendant were designed to avoid responsibility, getting away with admitted and clear liability on technical ground, and attempt to exploit the law in bad faith.

**B. WASHINGTON COURTS INTERPRET THE
PROCESS SERVICE STATUTE LIBERALLY**

Washington Courts have been repeatedly interpreting the Service statute liberally and reasonably. For instance, in *Scanlan v. Townsend*,

No. 89853-7 (Nov. 6, 2014), the Washington Supreme Court recently affirming this Court's, Court of Appeals Division One's decision, citation 178 Wn. App. 609, 315 P.3d 594 (2013), held that a service by anyone, "second-hand" or indirectly, who is suitable age and discretion is competent to establish proof of service. *Id.*

The Court cites similar and relevant other cases prior to *Scanlan*, for instance, the Court of Appeals has held, in a context similar to the one presented here, "'Any person' means any person." *Brown-Edwards v. Powell*, 144 Wn.App. 109, 111, 182 P.3d 441 (2008) (citing *Roth v. Nash*, 19 Wn.2d 731, 734-35, 144 P.2d 271 (1943)). *Id.*

In *Scanlan*, the Defendant was served by a process server through her father at her old address. The Court held that her father serving his daughter constitutes effective personal service because the father is "a person of suitable age and discretion". In this case, similar to *Scanlan*, the process server went to the address for Defendant on the police report, the address that the skip-trace or other searches reveal, the house owned by the father, and where the Defendant lived previously.

Like *Scanlan*, the professional process server served Mariah Duffy who was a person of suitable age of discretion. She accepted service thinking and believing the process service was looking for and wanting to

serve the father of the Defendant. Then, she gave the Summons and Complaint to Defendant's father.

In this case, the father who is clearly a person of suitable age and discretion notified his son. CP 56. Of course, Ms. Duffy and the father are not a party to the case, but both are persons of suitable age and discretion, and are competent to be witnesses. Furthermore, the fact that both Ms. Duffy and Defendant's father signed an affidavit is a non-issue pursuant to the *Scanlan* Court as long as the lawsuit was delivered prior to the 90-day tolling of statute. *Id.*

Ms. Duffy, at the June 27, 2014 hearing, testified as follows:

A.....I offered then to take the papers because my landlord was coming up within the next week to look at something. I don't remember what it was, the roof or something. So, I offered to take the papers for him **so Preston lived in Olympia**. And he gave me the papers, left, came back within about a minute. Asked me to write down my name so that he would have record of who gave the papers to, which I thought was fine. So I wrote down my name for him and then he left" [*emphasis added*] RP 15 (June 27, 2014).

Therefore, the service through Ms. Duffy then to Preston (she stated under Oath **Preston**, later in other hearings she changes her story) or the father and that finally reached the Defendant is sufficient in accordance with the *Scanlan* Court's holding. Consequently, the Defendant is personally served.

Washington courts have repeatedly held that Defendant may be served in more than one location and may have more than one place of “house of usual abode.” For instance, in *Sheldon v. Fetting*, 129 Wash.2d 601, 919 P.2d 1209 (1996), the Court held that for purposes of the statute, a defendant may have more than one “house of usual abode” and defined “usual abode” as a place where the defendant’s domestic activity is centered and where service left with a family member is reasonably calculated to come to defendant’s attention.”

Here, undisputedly, the Defendant has gotten the Summons and complaint. Arguably, the Defendant herein may allegedly has a different physical address, moved after the accident, but regularly uses the address where he was served for official and government purposes. The resident at the address’ action confirmed that he was certain to get the summons and complaint there. The Police report and his driver’s license, voter registration, and all the searches indicate, in fact, the address is where Defendant is “reasonably calculated” to receive service.

In his deposition Preston Parris, fully admits receiving the Summons and complaints “within a week or so” and taking all the necessary “steps”. CP 57. Defendant further admits service by stating as follows:

Q. So would you say that--**earlier you told me that you took**

Steps after you were aware of this lawsuit. You knew about this lawsuit, correct? You took it step by step?

A. Oh yes,

Q. What are those steps?

A. **I don't recall the steps. I don't remember the steps. I just remember taking steps by calling my insurance and talking to my attorney**

Q. Would you say that you **knew about this lawsuit fairly early when it was given to the lady** who just testified earlier, **Ms. Duffy**? You knew about it **right away**, would you agree with that?

A. You mean did I--I don't understand.

Q. Would you say that you knew about this lawsuit fairly quickly after Ms. Duffy got it?

A. **I got the information, I think within a week or so.**

Q. Within a week. When you got the information, were the papers given to you?

A. No. **When I was served?**

Q. No. When you parents told you about the lawsuit, did they give you the papers?

A. What papers?

Q. It could be your father.

Mr. MANNHEIMER. He's asking **have you ever seen the summons and complaint.**

Q. (By Mr. Feyissa) **The court papers**

Mr. MANNHEIMER. **Did you ever see a summons and complaint?**

A. **Yes.**

Q. (By Mr. Feyissa) **do you know when you saw them**

A. **A month ago.** (*emphasis added*). CP 57.

Above, unambiguously and clearly, Defendant admits receiving the lawsuit even when his attorney improperly interjects and desperately attempts to derail the Defendant. Conversely, like Ms. Duffy, the Defendant Preston Parris later, again under oath, denies ever hearing about

the lawsuit, being served, or anything about the lawsuit until the date of his deposition.

It is difficult to believe when Defendant herein is being truthful. Therefore, the Court, when considering drastic, final and harsh ruling of dismissing the case by Summary Judgment, should have inferred facts and inferences "...in the light most favorable to the non-moving party", in this case, the Plaintiff. The Court failed to do so.

The defendant and the main witness, Ms. Duffy, testified untruthfully under oath. The process server, professional and experienced, testified consistently and truthfully at all stages of the litigation, but the Court inexplicably chose not to give weight to the declaration, deposition, or court testimony of the process servers.

In sum, as clearly indicated above, the Defendant received service of process in timely manner, and suffered no prejudice as a result being served at the address indicated on the police report, the address used for school purposes, and he was registered to vote.

III. THE TRIAL COURT'S DISMISSAL OF THE CASE ON SUMMARY JUDGMENT BASED ON SUFFICIENCY OF SERVICE IS UNSUPPORTED BY THE FACTS IN THE CASE

CR 4 (g)(2) states a Plaintiff can establish service of process with an affidavit of service from a process server who is not a sheriff or deputy,

“endorsed upon or attached to the summons”. This affidavit must state the time, place, and manner of service. CR 4 (g)(7). Here, the process server has filed an affidavit of service as required by the Court Rules. CP 65, 67, 111.

In fact, the process server and the owner of Sting Ray Legal Services, have been deposed, filed declarations, and testified in Court as to the validity of service. Yet, the trial Court found that the service was defective and dismissed Plaintiff’s claims. CP 203-209.

In this case, upon filing the lawsuit, Plaintiff’s attorney hired a Professional Process server and gave the summons and complaint along with all the information available to him at that time. The Police report states that the address for the Plaintiff to be the same place he was served. The professional process sever, Michael K. Anderson, who is an independent contractor through Sting Ray Legal, declared the facts of serving the Defendant as follows: CP 144, 148.

Below is the complete and full Declaration of Michael K. Anderson, dated January 9, 2014. CP 149-151; 160-162.

The undersigned declares under penalty of perjury under the laws of the State of Washington that the following is true and correct.

I am a licensed private investigator, WA, License Number 3317, and a professional process server, Pierce County Registry Number 13285. I operate my own private practice Anderson Investigations, LLC since December 2010.

On Saturday, August 17, 2013 as a sub-contractor for Stingray Legal Services I accepted documents which contained Summons and Complaint to be served on PRESTON PARRIS. The address provided to me by Stingray Legal Services, Inc. which they conducted due Diligence skip-trace search on PARRIS. The address provided on the skip-trace report was conclusive with the address provided on the police report which was dated 11/06/2010, and was part of the "Work Product" provided to me by Stingray Legal Services, Inc.

The address that was provided was 205NW 65th Street, Seattle, Washington 98117.

On Saturday, August 17, 2013, at approximately 9:31 p.m. I went to the aforementioned address to attempt service of process of the aforementioned documents on PARRIS. I knocked on the front door several times. There was no answer at the door, the insider of the residence appeared to be very quiet and dark.

On Sunday, August 18, 2013 A white female adult, approximately 5'9, 140 lbs, long brown eyes and in her TWENTIE's (20's) answered the front door. The woman identified herself as Mariah Duffy and stated that she lived at the residence. I asked to speak with PRESTON PARRIS, and she inquired from me who I was and what I wanted with PARRIS. I explained to Duffy that I was a process server and had legal documents to serve him with. Duffy stated, "He is my landlord" I asked Duffy if PRESTON PARRIS did in fact live at the residence (aforementioned address) and she stated. "I don't know about that". When I advised her that PARRIS had listed the aforementioned address on the police report. Duffy stated, "I guess he does then" Duffy volunteered to accept the aforementioned documents on behalf of PRESTON PARRIS. At no time did DUFFY deny to me that PRESTON PARRIS did not reside at the aforementioned address.

After serving the aforementioned documents to Duffy on behalf of PRESTON PARRIS, I returned immediately back to my vehicle and wrote down my service notes and the conversation that occurred between Duffy and me (See Exhibit 1 which the skip-trace report provided to me by Stingray Legal Services, Inc. All the writing presented on the report was personally done by me.)

I. STATEMENT OF FACTS

With respect to questioning of my service of process on the aforementioned date, time and address: and substitute service on Duffy on behalf of PRESTON PARRIS. In compliance with RCW

4.28.080 (15) and after providing a deposition upon oral examination with Attorney's Robert Mannheimer and Shakespear Feyissa. I conducted my own independent skip-trace investigation on PRESTON PARRIS on Thursday, January 9, 2014 at the time of preparing this Declaration. The permissible purpose for me to conduct the skip-trace investigation, was to ascertain what address would be revealed for PARRIS. I conducted TWO (2) separate database searches on PARRIS (See Exhibit 2 and 3; please see CP 169-173). Both Reports revealed that in fact PARRIS was residing at the service address on or about the month, date, and year of service of process. The report (s) also indicates that the aforementioned address is currently being reported to the credit agencies and all public and non-public data brokers that PARRIS is possibility still residing at 205 NW 65th Street, Seattle. Washington 98117.

II. CONCLUSION

Based on the Due Diligence Skip-trace investigation conducted by Stingray Legal Services. The address at the time was still conclusive with the address provided on the police report dated. 11/06/2010 and that currently Thursday, January 9, 2014 the aforementioned address is still currently conclusive. It should be found by fact of evidence that the service of process on Duffy on behalf of PRESTON PARRIS was in compliance with RCW 4.28.080 (15).

Dated this 9th Day Of January, 2014 at Tacoma, Pierce County, WA.

[Signed]

Michael K. Anderson, Process Server
Private Investigator, WA Lic. #3317
Pierce County Process Server #13285

CP 149-151; 160-162.

The person who accepted the service of process, Mariah Duffy, has stated that she may have been confused who was being served between the

father and the son and may have told the process server that the “Defendant” lived there. RP 15 (June 27, 2014).

Ms. Duffy tells a story hard to believe both in her declaration, deposition and later when she testified in Court. She admits receiving the documents. She admits knowing and recognizing the documents were a legal documents. She proudly states that she knows when a person is served because of her father, according to Defendant’s counsel to the Court she is the daughter of the former Montana Attorney General or an attorney official of some kind (not clear why that was relevant). At any rate, Ms. Duffy stated in Court “...**My father works in the courts, so I know when somebody is being served**” [*emphasis added*] RP 20. (June 27, 2014). Still, at times, claims she did not know who she was accepting the summons and complaint for.

Ms. Duffy further admits that she was confused between the father and son-Robert and Preston Parris. She repeatedly states that she assumed that she was accepting documents on behalf of Robert (Rob) Parris instead of the Defendant Preston Parris. Nonetheless, Ms. Duffy gives inconsistent statement at her deposition than her declaration.

CP 132, Declaration of Ms. Duffy number 4:

At that time in August 2013, the person whom I now know was a process server asked me when I answered the door if Preston Parris lived at the 205 N.W. 65th Street, Seattle, Washington. I told him

without any doubt in my mind that Preston Parris did not live at this address. The Process server seemed confused. I then thought the papers might be for my landlord, Robert Parris. The process server said he could leave the papers and left. The process server then came back and asked me to sign a pieces of paper acknowledging that I had been handed the papers which I did. I then told my landlord about the papers” CP 132.

Ms. Duffy later in her deposition and testimony in court admitted that the process server came only once, she originally thought he was talking about Robert Parris, and she volunteered to take the papers. RP 15 (June 27, 2014).

While Ms. Duffy claims that she and three other people live at the address in question as tenants, she admits that Rob Parris (Defendant’s father and the owner of the house) whom she “assumed” to be the Defendant receives mail there occasionally. The father has some belonging in the garage contrary to her declaration. For instance, in her declaration Ms. Duffy states that: “ I told him without a doubt in my mind that Preston Parris did **not** at this address.” CP 131-132.

In her deposition: *Page 11, line 5*: CP 61-64.

Q: “Did you say you didn’t know who Preston Parris is?”

A: “No. I said, I believe – he seemed very confused at my answer because he had that address. And said, “I believe that’s my landlord,” because at the time...so I just assumed that that was his legal name.”

Q: “so you assumed that when he asked you for Preson Parris, you thought he was asking you for your landlord?”

A: “yes”.

Q: “Did he tell you that it was a Court paper?”

A: "No, but I gathered that"
Q: "you gathered that?"
A: "yes"
Q: "why would you take a court paper for anyone other than you?"
A: "I told him Rob lived in Olympia. He seemed exasperated by that. And I said, "If you like me to take the papers, I can". CP 61-64.

Ms. Duffy further states that she was confused and assumed "Robert" was "Preston" the whole time even though the Professional Process server clearly states that he asked her whether Preston Parris lived there. Let's examine Ms. Duffy's response to the inquiry, *Deposition of Duffy Page 12*: CP 62.

Q: "Didn't he ask you if Preston Parris lived that this address?"
A: "He did ask me that when he came to the door"
Q: "And you said, "I guess he lived here" Didn't you say that?"
A: "I said, "he lived here at one point because this used to be his home and now I rent from him".
Q: "You didn't even know who he was asking for, right, until later on?"
A: "I assumed he was asking for Rob Parris, because I did not know Preston Parris existed". CP 62.

Ms. Duffy stated that she gave Defendant's father the Summons and Complaint *on page 12 of her deposition* "then gave it to him when he came a couple of days later". CP 62. Then on page 13, she changed her story and states that "it was with a week" (CP 63) that she gave him the papers. Clearly, she must have given whomever the Summons and

Complaint right away, in the weekend, since Defendant's attorney appeared in the case that Monday. How else attorney for the Defendant could know to appear the next Court day and defend the action? RP 18 (January 24, 2014).

Most importantly, Ms. Duffy states that why she did not decline to take the Court documents:

Q: " isn't that actually a reason not to take them; that you've never been served before so you don't know the importance of those papers? Why didn't you decline? Is there any other reason that you failed to decline?"

A: " When I told him that Preston Parris or whom I assumed was Preston Parris lived in Olympic, he was very rude and angry, and it seemed like it was going to be a big hassle for him to go all the way to Olympia . So I did the neighborly thing and offered to take the papers. If he was not supposed to give the papers to me, I would assume that it's his job to know that, not me, because I've never been served papers before. If he was not allowed to give the papers to me, I would that he would not give the papers to me. But he did give the papers to me, so I assumed it was fine". CP 105.

Here, Ms. Duffy, again, not only contradicts her testimony that she "offered" to take the papers, she assumed it was for her landlord, and so on and so forth, but now blames the professional process server.

Interestingly, the Professional Process server testified that he lived in Tacoma and had he been aware that Preston or his father lived in Olympia, it would have been easier to serve them there. Contrary to Ms. Duffy's testimony of him being "very rude, angry, and...hassle for him to go" to

Olympia, it was a very convenient and closer route for him to go to Olympia. RP 75 (June 27, 2014).

Ms. Duffy is not reliable, and gave inconsistent statements in her deposition and later when she testified. She should not have taken the Court documents and should not have “assumed” and keep on assuming the Summons and Complaint were for her “landlord”. She should have read the complaint, called her landlord and confirm, and should not have signed acknowledging receipt. CP 67.

Again, if someone at the address of the only known address of the Defendant stated that he lived there and agreed to accept service, how else can the process server or the Plaintiff ascertain that person was confused, “assumed”, or mistaken?

A. **THE DEFENDANT DID NOT HAVE ANOTHER OFFICIAL ADDRESS WHERE HE CAN BE SERVED**

It is undisputed that Defendant lived at the 205 N.W. 65th St. until he allegedly went to Job Corps. Still, while he was at the Job Corps, he maintained the 205 N.W. 65th St. as his address. While Defendant admits he does not get a lot of mail or even any mail, his address for all practical purposes including the school application is the 205 N.W. 65th St. location. His voter registration address is the 205 N.E. 65th St. He maintained his

address officially until September 2013 or so the same address where he was served. CP 144-148.

The Defendant's father, who got the Summons and Complaint, does appear to handle all of his son's affairs. To illustrate:

- Q: "what if people want to get hold of you or mail you?"
A: "They would have mailed it to my dad's address, and my dad would have taken care of it for me"
Q: "your dad's address being the 205 N.W 65th Street?" (his attorney objects to form) A: "yes". CP 55.

Furthermore, Defendant altering his above, under oath testimony, and states as follows when further asked: CP 56.

- Q: "how did you find out about this lawsuit?"
A: "my dad"
Q: "do you remember when he told you about the lawsuit?"
A: "I do not"...
Q: "what did you do?"
A: Nothing. He said he was going to take care of it because I had no idea that this was going on until recently". CP 56

The Defendant also stated that he would have done the same thing whether he was personally served, by substitute, or find out about the lawsuit in any other means. Defendant would consult his father and have his father handle it for him. CP 56.

When Defendant was asked getting any mail from the insurance company, he said no. He says he hardly gets any mail regardless. CP 56. He says if someone wants to get hold of him, then they have to use "email" or "phone". He specifically stated, at his deposition, to get hold

of him: “They would have gotten hold of me through phone or e-mail” CP 58. Certainly and needless to say, one cannot be served through the phone or e-mail.

Further, when asked his father may have gotten mail for him, he replied “yes” and he said his father would “take care” of it. He said he did not recall whether or not he was cited for the accident and does not “remember” ever getting a ticket for the accident.

Moreover, his father knew at all times where he is, and how to get hold of him. Although he has changed his driver’s license in April of 2013, he never changed his mailing address with the post office. He would get mail at the address he was served and his “dad would’ve sent to him to where he was “living at.” CP 58.

Despite the confusing and inconsistent declarations, his father only recently bought the Olympia house and moved there. The Olympia house was bought by the father after the lawsuit, after service, and appears to be sometime in September or October of 2013. Defendant’s driver’s license does not reflect his current address either, and he stated that he did not change it for the last four or five months because he had not have a “chance to go to the Department of licensing”. CP 59, 144, 148; RP 42 (June 27, 2014).

In sum, it shows that Defendant maintained his address at the 205 N.W 65th address and has been getting all mails and documents from there. His father handles his affairs. Even if the fact that the lawsuit is given to his father's tenant, there is no evidence Defendant suffered any disadvantage as a result. In fact, he managed to hire a lawyer to appear on his behalf the next Court day, as stated above, took necessary "steps" to notify his insurance and hire an attorney.

Again, the Plaintiff's search for Defendant comes up over and over again at the 205 N.W. 65th St. Seattle, WA. To illustrate, the extensive search conducted for the Defendant is outlined by the declaration of the owner of process service company Sting Ray Legal Services, Inc., Greg Schermerhorn, as follows:

See CP 144-148

I, GREG SCHERMERHORN, under penalty of perjury under the laws of the State of Washington, hereby declare as follows:

1. My name is GREG SCHERMERHORN, I am over the age of eighteen and competent to testify to the matters asserted in the declaration, which is based on personal knowledge. My process server registration number is King County # 0508350.
2. I am GREG SCHERMERHORN, the owner of Sting Ray Legal Services, Inc. My business address is: 17720 151st Ave. SE, Suite # C, Renton, WA 98058.
3. On or about August 17, 2013, we were retained by the Law Offices of Shakespear Feyissa to facilitate service of process on defendant Preston Parris (hereinafter referred to as "subject") Sting Ray Legal Services, Inc. is a legal support service vendor for Shakespear Feyissa. My Independent Contractor (IC), the person who served the subject via abode service is Michael Anderson,

owner of Anderson Investigations, LLC (Registration # 13285-Pierce County, WA) He was serving the following documents: Summons and Complaint and Military Service Notice.

4. After conducting a due and diligent search of the following public records, we have concluded that the subject, Preston Parris is concealing his whereabouts within the state of Washington. Upon information and belief, the subject is concealing his true location, and knowingly, willingly, and purposely evading service of process. Furthermore, it is strongly believed that he is having his friends, tenants, and/or relatives cover for him.
5. My client provided us with only an accident report that indicates the service address for the subject is: 205 NW 65th Street, Seattle, WA 98117. He instructed us to attempt service at the address listed above. The defendant was cited at the time of the accident for failure to yield right of way. (See Exhibit 1; CP 1).
6. Accurint/IRB Person Search/Skip Trace indicates that the address enumerated above is the most current for the subject. (See Exhibit 2; CP 169-170) This search was conducted before we served the defendant, and as recently as 01/08/2013. Both of these reports list the service address of 205 NW 65th Street, Seattle, WA 98117 as most current for the subject. Service of Process was effectuated on 8/18/2013 at 11:39 am. at the address of: 205 NW 65th Street, Seattle, WA.
7. King County Assessor reveals that the house listed above is owned by the subject's father, Robert Parris and Jane O'Sullivan. It also indicates their current mailing address for property tax payments is the same as the service address of: 205 NW 65th Street, Seattle, WA 98117. (See Exhibit 3; CP 171-173)
8. DOL-IVIPS indicates the vehicle involved in the accident, the subject of this lawsuit is a Red, 1991 Ford Bronco, with license plate number 0825BL. This vehicle was, at the time of the accident, registered to the subject's father, Robert Parris. (See Exhibit 4; CP 174-178).
9. DOL-IVIPS indicates no current vehicles registered to the subject in the state of Washington.
10. The defendant (subject) claims that he is currently residing at 5530 40th Avenue SW, Olympia, WA. However, extensive skip tracing from three (3) different databases shows no association of the subject with this address in Olympia, WA. (See Exhibit 5; CP 179-181).

11. Accurint/IRB Phones Search lists four (4) different phone numbers currently listed under the subject, Preston Parris. Each and every one of these phone numbers are linked to the service address of 205 NW 65th Street, Seattle, WA 98117 (See Exhibit 6; CP 182).
12. This case was originally filed in the King County Superior Court on August 12, 2013.
13. Washington State Department of Licensing shows no other licenses or other credentials, either professional or vocational, obtained or held by the subject.
14. Accurint/IRB Asset Search reveals no assets associated with the subject. Furthermore, there are no Bankruptcy or foreclosure records associated with the subject.
15. Washington Voter Registration Database indicates the subject last voted in 2008 using the service address of: 205 NW 65th Street, Seattle, WA 98117 (See Exhibit 7; CP 183)
16. Washington State Department of Revenue database lists no businesses associated with the subject.
17. Two U.S Postal traces yielded NO new forwarding information pertaining to the subject from both the service address in Seattle, and the address in Cheney (Exhibit 8; CP 184-185).
18. Accurint/IRB E-mail Search reveals yet another address for the subject at 1006 E. Tara Lee Ave, Medical Lake, WA 99022. There is no mention of this address in the declarations by either the father, Robert Parris or the subject, Preston Parris (See Exhibit 9; CP 186).
19. A due and diligent public records search of other commercially available data sources was also uneventful, which further support my conclusion that the subject, Preston Parris does appear to have been living at least part time at the service address at the time of service. Furthermore, much more likely, and upon information and belief, he is and was concealing his location, and possibly living in several locations in order to evade service of process within the state of Washington.
20. Conclusion-All reasonable diligence was exercised before, during, and after this service of process assignment. We have utilized several databases to determine if the defendant was living somewhere other than where we served him. We found no such address. The subject's argument is flawed with inconsistencies and falsehoods. First, he stated on the accident report that he was the registered owner of Ford Bronco. We later learned from IVIPS disclosure unit that the vehicle was purchased and sold by Robert

Parris. Secondly, Preston Parris also claims he lived at 2336 University Lane, Apt. # 35, Cheney, WA. However, when we conducted a postal trace, that report indicates that the subject lived in Apt. # 33, at the same address, and submitted no change of address form to the post office. Third, at no time did the recipient, Mariah Duffy ever state that the defendant did NOT live at the service address of: 205 NW 65th Street, WA 98117. Furthermore, at no time did the recipient, Mariah Duffy ever disclose or even suggest that the subject was residing in another City or state. Ms. Duffy freely admitted that the subject lived at: 205 NW 65th Street, Seattle, WA 98117 and under her free will, took the service documents directed to defendant Preston Parris into her hands. If the recipient, Mariah Duffy had stated in no uncertain terms that the subject did not reside there, we would not have served the papers on her. This is according to the information obtained in my recent interviews with the server Mr. Michael Anderson.

21. I am willing to come to court to testify as to the matters stated in this declaration.

I DECLARE UNDER PENALTY OF PERJURY ACCORDING TO THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING STATEMENT ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION AND BELIEF.

Dated in Renton, Washington, this 9th day of January 2014.

[signed]

GREG SCHERMERHORN

CP 144-148

B. THE PROFESSIONAL PROCESS SERVER PROPERLY SERVED THE DEFENDANT AT DEFENDANT'S KNOWN, VERIFIED AND CONFIRMED ADDRESS

Mr. Michael E. Anderson is 50 years old. He is a professional Process server and has been for several years. Prior to becoming a process server, he was a personal investigator. As a Process server, he was given by the company, Sting Ray Legal Services, a skip trace (to find out the

address of the Defendant), the address, the police report and all other information available. All information given to Mr. Anderson indicated that the Defendant, Preston Parris, lived at the 205 N.W. 65th St Address. CP 149-151.

Mr. Anderson takes notes of all his services and incidents involving them. On his notes that were written the same day of the service in question herein, August 18, 2013, he testified at his deposition as follows: Deposition of Mike Anderson **Page 14, lines 10- 19**, CP 111.

Q: “Okay. And what do your notes tell you?”

A: “My notes tells me that a resident questioned me about what I wanted – Def. stands for Defendant. That’s my abbreviation I use for Defendant, for – wanted Defendant for. Stated he is her landlord. That’s what she stated to me. When asked if he lived there, meaning I asked if Preston Parris lived there, she wanted to know why. When I confirmed -- oh, excuse me. When I confronted her that he listed this as his address, she stated, I don’t know about that. She said, I guess he does, then, and took documents.” CP 111.

Mr. Anderson was further questioned by Defendant’s Counsel for the Defendant. **On Page 16 of the Deposition.** CP 48.

Q: “All right. And did you do anything else to wither confirm or deny that Preston Parris was a resident at the address?”

A: “I did ask her and she--you know, like I have in my notes there, she kept on asking me why I wanted him. And told her that I had legal documents for her, which is not documented in it, but generally tell them that I have legal documents for her, and that’s when she goes, oh, I guess he does live here. And she says, I’ll take the papers on his behalf.”

- Q: “But she didn’t affirm that he actually lived there; correct? She didn’t say positively, he does live here?”
- A: “She told me that, I guess he lives here, is her exact words”. CP 48.

Additionally, Mr. Anderson was asked a key question in regards to Ms. Duffy and his interaction with her. CP 49.

- Q: “So her deposition was taken by Mr. Feyissa on September -- December 9th, 2013, Ms. Duffy’s deposition. She said, I told the truth that I told the processor that Preston Parris did not live at that address”
- A: “If she would have told me that, I would have not have served the papers.” CP 49.

When Mr. Anderson examined by Plaintiff’s counsel about his interaction with Ms. Duffy, he stated the following: **Deposition**, CP 51.

- Q: “ Okay, The question I have for you is at any point in your conversation with Ms. Duffy did she ever tell you that Preston Parris or Robert Parris lived in Olympia?”
- A: “No, She did not.”
- Q: “Did she at any point suggested that if you left the papers there, that they’re not going to get it?”
- A: “She did not. She, on the other hand, voluntarily accepted the documents”
- Q: “Did she know what those documents are for or what were?” A: “I told her they were legal documents.” CP 51.

As the examination continues on **Deposition**, CP 51:

- Q: “you did, specifically told her that they were legal documents; correct?”
- A: “Correct. I always do, in all my service I do”.
- Q: “Okay. And she still took it and she did not tell you that they did not live there; correct?”
- A: “Correct. If she would have said that they – if Preston Parris, in fact, did not live there, I would have not left the documents. That would not have been good.”

- Q: "Okay, are you certain that you asked for Preston Parris, not Robert Parris?"
- A: "I am"
- Q: "you did not even know the existence of Robert Parris until this motion -- until this service is challenged; correct?"
- A: "That's correct"
- Q: "Okay. And on the trace or on the police report anywhere else, did you find other address for Preston Parris other than this address?"
- A: "I did not"
- Q: "Okay. You live in Tacoma; correct?"
- A: "That is Correct"
- Q: "Did you have any conversation with the -- with Ms. Duffy whether or not going to Olympia is a challenge for you?"
- A: "No, I don't recall any type of conversation like that"
- Q: "did you show any sign of frustration or any sign of -- any sign of being challenged to go to Olympia to make a service?"
- A: "No, I -- why, I don't even know why I would have gone to Olympia, because I didn't know anything about an Olympia address at the time"
- Q: "Okay. And then if, for argument's sake, she told you that Olympia, you live in Tacoma, so it would have been convenient for you actually to serve someone in Olympia; correct"
- A: "Correct. I go to Olympia all the time". CP 51.

Mr. Anderson was asked the following question as conclusion:

Deposition, CP 51,

- Q: "As a professional process server and experienced process server, do you have certain -- if you had any doubt that they did not live there and if she gave you any indication that they will not get those legal documents?"
- A: "No, I have a very high work ethic. If there's any suspicion on my part whether the person does or does not live there based on the conversation, I generally will not leave the documents". CP 51.

IV. THE COURT REVERSED ITS OWN RULING AND HELD EVIDENTIARY HEARING AFTER INITIALLY DENYING DEFENDANT'S SUMMARY JUDGMENT MOTION

After holding a hearing on Defendant's Summary Judgment Motion on January 24, 2014, the Court denied Defendant's Summary Judgment motion on January 30, 2014, stating: CP 191.

"The Court, having considered Defendant's Motion for Summary Judgment; Plaintiff's response and exhibits, and the files and records herein, having heard argument of counsel, finds that there are disputed facts in this case regarding service of process genuine issues of material fact that preclude Summary Judgment" CP 191.

Moreover, the Court, in the same hearing on January 24, 2014, on record stated and reasoned as follows whether to bifurcate or hold evidentiary hearing. Clearly, the Court was initially against holding any further hearings on the matter.

RP 30 (January 24, 2014)

THE COURT: "Going back again to evidentiary issue, I've actually ordered evidentiary hearing in other cases. I am not sure this is one of them because I am not sure that, it is actually, I am not sure you really dispute, I am not sure there is a credibility issue regarding the witnesses or parties.

MR. MANNHEIMER: Right. I mean, the issue is what it is. The process server did what he did and he had what he had, and we can speculate about what his thought process should have been, but I'm not even sure it's that relevant in terms of what his thought process is or what speculation we could place as to whether he would have thought something different if he had different information. I'm not sure that's a relevant inquiry.

So it's a long way of say I'm not sure that--what an evidentiary hearing would get us. So the is whether there's sufficient-- whether

there's sufficient facts here to create questions of fact on whether--well, backing up. I'm not sure it's a credibility issue. The issue that I'm kind of struggling with a little bit is in terms of reasonableness... RP 30 (January 24, 2014).

Interestingly, as it can be seen above, the Defendant's counsel fully agrees that credibility of witnesses or parties is a non-issue by saying "Right". RP 30 (January 24, 2014). Again, most importantly, the Defendant did not ask for motion for reconsideration on the denied Summary Judgment Motion and no appeal filed. Yet, the Defendant piggybacks on its denied motion and files a motion to bifurcate on February 14, 2014. CP 193-196. On February 24, 2014, the Court granted the motion notwithstanding the Court's prior rulings, and reasoning above. CP 198-199.

Undisputedly, the Court has found that the issues in this case is not a credibility issue. The major facts were unchanged and stayed consistent throughout this case. Again, more hearings will not change the major facts except giving, as it has done, the Defendant opportunity to completely change his previous sworn in testimony. CP 193, 198.

Certainly, between the hearing of January 24, 2014 and the hearing of June 27, 2014, nothing changed in terms of the basic facts in the case. No facts are different or no new evidence came forward. Unfortunately,

some testimonies were flagrantly altered on the part of the Defendant and his witnesses to fit the Defendant's narrative on this issue.

Although there were some irrelevant and non-issue declarations submitted by alleged co-residents of Ms. Duffy, the declarations were similar and simply deny the uncontested fact that the Defendant does not live at the service address. CP 136-138.

The trial Court had depositions and declarations at its disposal, of all the witnesses and parties, in this case. Simply put, the June 27, 2014 hearing revealed no new facts, other than giving Defendant's witnesses give inconsistent testimonies. Yet, after the hearing, the Court held a different result and dismissed the Plaintiff's case. CP 193. It appears the Defendant asked the same relief he was denied on January 24, 2014, in a new motion, in different way to achieve the desired results.

As a matter of public policy, the service of process statute is not designed for Defendant's to get away and avoid their responsibility. The statute is not designed for Defendant to take advantage of technical and minor events to escape their legal obligation. Or, as in this case, for attorneys to "lie and wait", until the statute of limitation runs; while all along participating in all aspect of litigation.

The service of process statute is designed to protect parties who are unaware or properly got notice of legal action against them, those who

never received notice or knew about a lawsuit, and risk of Default Judgment. The purpose of the statute then is not for persons like Defendant whose main objective is to avoid responsibility.

Undoubtedly, the Defendant herein is trying to take unfair advantage of the law after timely and properly receiving the lawsuit. Defendant suffered no prejudice for he appeared the very next day after service to defend the action against him, engaged in discovery aggressively, and failed to change his address in timely manner, as required by law.

V. CONCLUSION

For the reasons set out above, Plaintiff respectfully requests that the Court of Appeals finds that trial Court erred when it granted Defendant's motion for Summary Judgment and dismissed Plaintiff's claims. The Court of Appeals should reverse and remand the case to the trial Court to resume litigation on Plaintiff's claim for damages.

RESPECTFULLY SUBMITTED this 10th day of February 2015.


Shakespear N. Feyissa, WSBA # 33747
Attorney for Appellant.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **BRIEF OF**

APPELLANT on:

**MR. ROBERT A. MANNHEIMER
ROBERT A. MANNHEIMER, P.S.
9500 Roosevelt Way, N.E., Suite 303
Seattle, WA 98115**

ATTORNEY FOR RESPONDENT

by causing full, true, and correct copies thereof to be served by personal service, hand delivery, on February 10, 2015, to Mr. Robert A. Mannheimer at his last-known office address listed above.


Shakespear N. Feyissa