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SUPREME COURT
OF THE STATE OF WASHINGTON

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Ruth Jorgensen and Stanley Jorgensen, wife and husband and the marital
community composed thereof, Appellant,

v.

Kelly Kebler and John Doe Kebler, wife and husband and the marital
community composed thereof, Respondent

BRIEF OF APPELLANT

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ORIGINAL

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Karl B. Tegland & Douglas J. Ende, *Washington Practice: Washington Handbook on Civil Procedure* 15A §16.3 at 167 (2004).

I. Introduction

The trial court erred in finding that the Jorgensens did not meet the requirements for service by publication on the Keblers, who had left the state. The court applied too high a standard of proof to the element of R.C.W. 4.28.100 requiring that a plaintiff show that the defendant left the state with the intent to avoid service of process. The standard of proof should not be high, considering that due process may be satisfied and personal jurisdiction established on the same defendant through a substitute method of service under RCW 46.64.040 with no such showing of intent. This Court reviews the summary judgment motion de novo.

The statutory language of R.C.W. 4.28.100 is vague and practically impossible to apply, as it requires a plaintiff to show the subjective intent of a missing defendant. Divisions I, II and III of the Court of Appeals have created different standards for the showing a plaintiff must make, adding to the confusion. The unjust result in this case is that the Jorgensens made a good faith effort to comply with the statute, but the trial court, upon reconsideration, found it insufficient and dismissed the Jorgensens' case with prejudice.

II. Assignment of Error

A. Assignment of Error

1. The trial court erred by granting the Jorgensens' Motion for Summary Judgment based on insufficient service of process heard in open court on March 14, 2008, after a *sua sponte* Motion for Reconsideration of the court's original decision denying the motion.

B. Issues Pertaining to Assignment of Error

1. Under RCW 4.28.100(2), is due process satisfied if a plaintiff's affidavit supporting service by publication presents facts from which it can be inferred that a defendant left the state to avoid service of process? Or must the affidavit present facts that clearly establish the defendant's intent to avoid service of process?
2. If a defendant's intent to avoid service of process may be inferred, what is the standard of proof for a plaintiff making such an inference? Is it the standard set by the Court of Appeals Division 1, Division 2, or Division 3?

3. RCW 4.28.100(2) includes a requirement that the plaintiff declare that it was the defendant's intent to avoid service. But how much weight should be given this requirement, considering that due process may be satisfied and personal jurisdiction established on the same defendant through a substitute method of service under RCW 46.64.040 with no such showing of intent?

III. Statement of the Case

A. Procedural History

The Jorgensens filed a summons and complaint against the Keblers in the Superior Court of Washington in Kitsap County on April 11, 2007.¹ The Keblers filed a Motion for Summary Judgment on November 28, 2007.² The Keblers struck their motion after the Jorgensens' Response was filed. The Keblers brought another Motion for Summary Judgment that was heard on March 14, 2008.³ After hearing arguments from both

¹ CP 1-5

² CP 8-18

³ CP 42-54

parties, the trial judge denied the motion.⁴ However, that same day the judge filed a *sua sponte* Motion for Reconsideration, and requested additional briefing from the parties.⁵ On April 2, 2007, the judge reversed his original decision, and granted Respondent Kebler's Motion for Summary Judgment, finding that service by publication was improper.⁶ This appeal followed.⁷

B. Factual History

This case arises out of a motor vehicle collision that occurred on July 21, 2004 involving Ruth Jorgensen and Kelly Kebler.⁸

The Jorgensens filed a Summons and Complaint for Damages on April 11, 2007.⁹ On that same date, the Jorgensens hired Process Server Ken Palmer to effect service upon Defendants.¹⁰

⁴RP 1-14

⁵CP 85

⁶CP 126-128

⁷CP 129-133

⁸See, CP 1-5

⁹CP 1-5

¹⁰CP 34-35

Mr. Palmer first attempted to serve Ms. Kebler at her last known address: 1302 Poindexter, Bremerton, Washington.¹¹ Mr. Palmer was informed that Ms. Kebler did not live there. The new resident told Mr. Palmer that she did not know the Keblers, nor did she understand why mail for the Keblers was still being delivered to her address after two years of returning it to sender.¹²

Mr. Palmer then did a search of Washington State data bases, which produced a possible new address for the Defendants at 647 NE Conifer Dr., Bremerton.¹³ Mr. Palmer attempted to serve the papers on Ms. Kebler at that address, but discovered that Kelly Kebler no longer lived there. The current resident informed Mr. Palmer that Kelly Kebler may have been the previous occupant that moved to Montana.¹⁴

Mr. Palmer ran a check with the Department of Motor Vehicles in the State of Washington, but found no vehicles registered to the

¹¹CP 34-35

¹²*Id.*

¹³*Id.*

¹⁴*Id.*

defendant.¹⁵ Mr. Palmer ran a check with the Department of Licensing and found only an "ID Card" for Kelly Kebler, with no date of issue, no expiration date, and no address on file.¹⁶

Mr. Palmer sent postal tracers to both known previous addresses of Kelly Kebler, and both were returned with "Mail delivered as addressed."¹⁷ Mr. Palmer obtained Kelly Kebler's Social Security Number. He ran a check of Ms. Kebler's name, date of birth and Social Security Number in the national credit data base. The reports returned indicated that Ms. Kebler was now residing somewhere in the State of Montana.¹⁸

Based on the information uncovered by the process server, the Jorgensens subsequently effected service by publication.¹⁹

On November 28, 2007, the Kebler's filed a Motion for Summary Judgment alleging that the Jorgensens failed to comply with R.C.W.

¹⁵CP 34-35

¹⁶*Id.*

¹⁷*Id.*

¹⁸*Id.*

¹⁹CP 6-7

4.28.100 in that the Declaration for Service By Publication was deficient.²⁰

On December 14, 2007, in response to Defendants' Motion for Summary Judgment, counsel for the Jorgensens filed an Amended Declaration for Service by Publication.²¹ The Amended Declaration refers to the Declaration of Due Diligence, Search & Inquiry of process server Ken Palmer, filed on the same date, which details the extensive efforts made to locate the Kebblers as summarized above.²² The Amended Declaration for Service by Publication states that "upon belief, Defendants have concealed themselves within the state and/or have left the state to avoid service of a summons, based on the fact that no forwarding address was submitted to the US Post Office, nor was any forwarding information left at her prior residences, and the evidence discovered by Ken Palmer indicating that Ms. Kebler is now in Montana."²³

²⁰CP 8-18

²¹CP 36-40

²²CP 34-35

²³CP 36-40

After receiving the Jorgensens' Response to the Motion for Summary Judgment, the Declaration of Due Diligence, Search & Inquiry of process server Ken Palmer, and the Amended Declaration for Service by Publication, the Keblers struck their original Motion for Summary Judgment.

The Keblers filed a second Motion for Summary Judgment, again alleging that service of process was improper.²⁴ After considering the briefs of the parties and hearing arguments from both sides, the trial court originally denied the motion.²⁵ However, that same date the trial court filed a *sua sponte* Motion for Reconsideration, and requested additional briefing from the parties.²⁶ Upon reconsideration, the court reversed its decision, and dismissed the case base on improper service of process by publication.²⁷

²⁴CP 42-54

²⁵RP 1-14; CP 84

²⁶CP 84, 85

²⁷CP 126-128

IV. Argument

A. The Evidence Submitted by the Jorgensens Supports the Inference that the Keblers Left the State with the Intent to Avoid Service and Is Sufficient to Support Service By Publication

The affidavit filed by the Jorgensens in support of service by publication meets all of the requirements of R.C.W. 4.28.100, and the trial court erred in finding it insufficient.²⁸ Under the statute the plaintiff or his agent must file an affidavit stating that he believes the defendant is not a resident of the state, or cannot be found therein after a due diligence search.²⁹ The affidavit must state that a copy of the summons and complaint was mailed to the defendant at his place of residence, if known. And finally, the affidavit must state the existence of one of nine conditions, the second of which is at issue here: that the defendant has left the state or concealed himself in the state with the intent to defraud his creditors or to avoid the service of a summons.³⁰

²⁸See, R.C.W. 4.28.100, at Appendix A; CP 34-40

²⁹R.C.W. 4.28.100, at Appendix A

³⁰R.C.W. 4.28.100(2), at Appendix A

Here, there is no question that the Jorgensens exercised due diligence in trying to locate and serve the Keblers, satisfying the first element.³¹ There also is no issue regarding whether the affidavit properly stated that a copy of the summons and complaint was mailed to the defendant's residence, because the defendant's address was not known.³²

Where the trial court erred is on the final element of the statute regarding the defendant's intent, and what is required before the plaintiff may conclude in his affidavit that the defendant had the requisite intent of avoiding service or defrauding creditors.

The Jorgensens' Amended Declaration for Service by Publication did not merely recite the conclusions required by the statute; rather, it listed multiple facts from which they inferred that the Keblers left the state to avoid service.³³ The Jorgensens' affidavit states:

³¹RP 9:20-21 (Counsel for Keblers states that the process server did a sufficient investigation)

³²See, CP 34-35 (Declaration of Due Diligence, Search & Inquiry)

³³ *Contrast, i.e., In re Marriage of Powell*, 84 Wn.App. 432, 927 P.2d 1154 (1996); *Brennan v. Hurt*, 59 Wn.App. 315, 796 P.2d 786 (1990) (the plaintiffs' bare recitations of the statutory factors were insufficient, without any facts stated to support those conclusions).

upon belief, Defendants have concealed themselves within the state and/or have left the state to avoid service of a summons, based on the fact that no forwarding address was submitted to the US Post Office, nor was any forwarding information left at her prior residences, and the evidence discovered by Ken Palmer indicating that Ms. Kebler is now in Montana.³⁴

During oral arguments on the motion, the Keblers' position was that it is not unusual to move and not inform the US Post Office of a forwarding address.³⁵ They also argued that since the Keblers were from Montana, the Jorgensens should have assumed that they returned to Montana for purely innocent reasons³⁶. However, in a motion for summary judgment under CR 56, all facts and the inferences therefrom are to be viewed in a light most favorable to the non-moving party - here the Jorgensens.³⁷ Therefore, viewing the facts in a light most favorable to the

³⁴CP 36-40

³⁵RP 6:11-18

³⁶RP 3:17-24

³⁷CR 56; The burden is on the moving party to establish its right to judgment as a matter of law, and facts and reasonable inferences from the facts are considered in favor of the nonmoving party. *Goad v. Hambridge*, 85 Wn. App. 98, 931 P.2d 200, *review denied*, 132 Wn.2d 1010, 940 P.2d 654 (1997)

Jorgensens, including the fact that the Kebblers left no forwarding addresses at either of their prior residences, nor with the Post Office, and had left the state of Washington for Montana, it was logical to infer that the Kebblers did not want to be found because they were avoiding service of process.

B. The Standard That Should Be Applied Is to Require that the Affidavit Clearly Articulate Facts Which Establish a Reasonable Belief of the Defendant's Intent

The standard that should be applied in weighing the sufficiency of an affidavit supporting service by publication is a hybrid of those set by Division III in *Boes v. Bisiar*,³⁸ and Division II in *Pascua v. Heil*.³⁹ In *Boes*, the court found:

where a particular affidavit “clearly shows” that all statutory conditions are present for service by publication, the affidavit is sufficient. The affidavit must *clearly articulate facts* to meet the required conditions, not *clearly prove intent* to avoid service.⁴⁰

³⁸*Boes v. Bisiar*, 22 Wn.App 569 (2004) review denied, 153 Wash 2d 1025 (2005)

³⁹ 126 Wn.App. 520, 108 P.3d 1253 (2005).

⁴⁰*Boes*, at 577 (emphasis in the original) (citing *Bruff v. Main*, 87 Wn.App. 609, 614 (Div. 1, 1997); *Jones v. Stebbins*, 122 Wn.2d 471 (1999); *Jesseph v. Carroll*, 126 Wash. 661 (1923)).

Division II, in *Pascua v. Heil*, holds that the statute requires evidence that establishes a “reasonable belief” of a defendant’s intent to avoid service or defraud creditors.⁴¹

Division I has a different standard of proof, requiring that a plaintiff present facts “clearly suggesting” a defendant’s intent to avoid service, and holding that such proof of intent is separate from, and in addition to, proof of a diligent search.⁴² In that case, the plaintiff’s affidavit concluded that the defendant had left the state or concealed himself within the state based on the facts that the defendant could not be found in Washington through information on the police report, his lack of a “public recorded persona,” and his history of credit problems, all of which supported a reasonable inference that he was concealing himself in Washington with the intent to defraud creditors or avoid process. However, the Court of Appeals found that the plaintiff’s affidavits contained no facts “clearly suggesting” that the defendant’s change of

⁴¹ *Pascua v. Heil*, 126 Wn.App. 520, 108 P.3d 1253 (2005).

⁴² *Bruff v. Main*, 87 Wn.App. 609, 614 (Div. 1, 1997).

residence, or any other conduct, was undertaken with the intent required by RCW 4.28.100(2).⁴³

In *Boes*, Division III analyzes and distinguishes the high standard set by Division I, citing commentary from Professor Karl Teglund in the Washington Handbook on Civil Procedure:

The holding in *Bruff* seems relatively restrictive. In future cases, if a defendant has essentially rendered himself or herself invisible and cannot be located even by professional investigators, it will obviously be difficult for the plaintiff to prove the defendant's state of mind subsequent to the event in question. How can the plaintiff prove the defendant's present intentions if the defendant, for all practical purposes, does not exist?⁴⁴

It is clear from these three decisions from Divisions I, II and III that there is not a clear standard for what is required to satisfy the requirement of R.C.W. 4.28.100(2) regarding the defendant's intent. Division 1 says the facts must "clearly suggest" intent to avoid service.⁴⁵ Division 2 says the plaintiff must establish a "reasonable belief" that the

⁴³ *Id.*

⁴⁴ *Boes*, 22 Wn.App at 577, citing 15A Karl B. Teglund & Douglas J. Ende, Washington Practice: Washington Handbook on Civil Procedure §16.3 at 167 (2004).

⁴⁵ *Bruff v. Main*, 87 Wn.App. at 614

defendant intended to avoid service.⁴⁶ Division 3 says the affidavits must “clearly articulate facts” to support the inference of intent.⁴⁷

While R.C.W. 4.28.100 is a jurisdictional statute, and must be strictly complied with,⁴⁸ strict compliance does not necessarily equate to a strict burden of proof of each element. For example, even though the statute requires a due diligence search, Washington courts have long stated that a plaintiff need not exhaust all conceivable means of personal service before service by publication is authorized.⁴⁹ Rather, to comply with R.C.W. 4.28.100, a plaintiff must make an honest and reasonable effort to find the defendant before service by publication is authorized.⁵⁰ The same standard should apply to each requirement of the statute, including the final prong regarding the defendant’s intent. As long as

⁴⁶*Pascua v. Heil*, 126 Wn.App. at 531

⁴⁷*Boes*, 22 Wn.App at 577

⁴⁸*Kent v. Lee*, 52 Wn. App. 576, 579, 762 P.2d 24 (1988).

⁴⁹*See, i.e., Carson v. Northstar Dev. Co.*, 62 Wn. App. 310, 315-316 (1991) (citing *Schmelling v. Hoffman*, 111 Wash. 408, 414 (1920); *Longview Fibre Co. v. Stokes*, 52 Wn. App. 241, 244 (1988)); accord, *Martin v. Meier*, 111 Wn.2d 471, 481-82 (1988) (discussing “due diligence” in the context of RCW 46.64.040).

⁵⁰*Carson*, 62 Wn. App. at 315-316.

facts are clearly articulated that support a reasonable inference that the defendant left the state to avoid service or creditors, this meets the strict compliance standard and should be sufficient. This is the only reasonable interpretation of the statute, as it would be nearly impossible for a plaintiff to prove the intent of a person who has either left the state or is concealing themselves within the state.

The Jorgensens' affidavit meets this standard, as it clearly articulates facts showing that a reasonable due diligence search was conducted, and the facts uncovered during the search support a reasonable inference that the defendants did not want to be found and were attempting to evade service of process.

C. In Comparison With RCW 46.64.040, Under Which Plaintiffs Could Have Established Personal Jurisdiction on the Defendants by Serving the Secretary of State Without Any Showing of Intent to Avoid Service, the Requirement in RCW 4.28.100(2) of Showing Intent Should Not Require the Strong Showing of Proof that the Trial Court and the Courts of Appeals are Mandating to Satisfy Due Process

Both RCW 46.64.040 and RCW 4.28.100(2) provide for substituted service of process when a defendant motorist has left the state

or cannot be found therein.⁵¹ The first allows service on the Secretary of State, and the latter allows service by publication. Under both statutes the plaintiff is required to exercise due diligence in attempting to find and serve the defendant personally. However, under RCW 46.64.040, all that is required subsequently is that notice of the substituted service be mailed return receipt requested to the last known address of the defendant, and the summons must be served on the Secretary of State. There is no requirement that plaintiff make any showing regarding the defendant's intent to avoid service.

This Court has found that the statutory procedure within RCW 46.64.040 satisfies due process and establishes personal jurisdiction.⁵² This is despite the fact that plaintiff's attorney may not in fact know where defendant is residing, and that defendant may never actually receive the notice.⁵³

⁵¹ See, Appendix A and B

⁵² *Martin v. Meier*, 111 Wn.2d 471, 477 (1988).

⁵³ *Id.*

As this Court noted in reviewing RCW 46.64.040, what due process requires is “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”⁵⁴

Because due process can be satisfied after substituted service by serving the Secretary of State and merely mailing the notice to a former address where the defendant may no longer reside, it does not follow that due process would require significantly more simply because a plaintiff opts to effect a different means of substitute service - service by publication rather than service on the Secretary of State.

Service by publication also meets the standard of “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Therefore, the requirement under R.C.W. 4.28.100 regarding proof of the defendant’s intent to avoid service is an element above and beyond what due process requires, and should be given little weight in deciding whether personal jurisdiction exists.

⁵⁴ *Martin*, at 477, citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

However, on the contrary, courts are applying a very strict standard of proof to this element, requiring plaintiffs to present facts that clearly establish the intent of the missing defendant.⁵⁵ In the present case, plaintiff's attorney presented facts which he believed supported an inference that the defendant was avoiding service. However, the trial judge found the facts insufficient, and as a result the case was dismissed with prejudice. This seems completely unjust given that plaintiff's efforts would have been sufficient had he simply served the Secretary of State rather than effecting service by publication.

There is no question that RCW 4.28.100(2) requires an affidavit from the plaintiff or his agent that he believes the defendant left the state with the intent to avoid service or defraud creditors. However, in light of the complete absence of this requirement in RCW 46.64.040, which could be applied to the same defendants in any case involving a motor vehicle crash, the standard of proof for this element should be low.

⁵⁵ See, i.e., *Bruff v. Main*, 87 Wn.App. 609 (Div. 1, 1997)

D. Fees and Costs

Pursuant to RAP 18.1, should this Court rule in favor of the Appellant, Appellant requests fees and costs for copies of the clerk's papers; preparation of this brief and any reply brief if filed (pursuant to RAP 14.3(b)); transmittal of the record on review; the filing fee; such other sums as provided by statute.

VI. CONCLUSION

After searching diligently and attempting to serve the Kebblers personally, the Jorgensens uncovered several facts that indicated the defendants did not want to be found, and from which it could be inferred that they left the state to avoid service of process. In good faith, the Jorgensens effected service by publication on the Kebblers, believing that all the statutory conditions were met.

However, the vague language of the service by publication statute, combined with the various standards of proof set by the different divisions of the Court of Appeals, made it very difficult for the plaintiff and the court to know whether sufficient facts existed supporting service by publication. This is exemplified by the fact that the trial court in this case

originally ruled in favor of the Jorgensens, finding their affidavit sufficient, but reversed the decision after a *sua sponte* motion for reconsideration.

The trial court, upon reconsideration, applied too high of a standard of proof to the final element of R.C.W. 4.28.100. Just as with the element requiring a due diligence search, which requires only an “honest and reasonable” effort on the plaintiff’s part, the standard of proof regarding showing the defendant’s intent should be one of reasonableness. This is especially true given that under R.C.W. 46.64.040, an alternate statute providing for substitute service of process, there is no such requirement of showing the out of state defendant’s intent.

The trial court erred in finding the Jorgensens’ affidavit insufficient. Although the Jorgensens could not conclusively prove the missing defendants’ intent, their affidavit clearly articulated facts supporting a reasonable belief that the defendants left the state with the intent to avoid service. The decision of the trial court should be reversed, and the case should be remanded to Superior Court for trial on the remaining issues.

Dated this 30th day of July, 2008.

Respectfully submitted,

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FOR

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Appendix A

Rev. Code Wash. § 4.28.100 (2008)

When the defendant cannot be found within the state, and upon the filing of an affidavit of the plaintiff, his agent, or attorney, with the clerk of the court, stating that he believes that the defendant is not a resident of the state, or cannot be found therein, and that he has deposited a copy of the summons (substantially in the form prescribed in RCW 4.28.110) and complaint in the post office, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons, by the plaintiff or his attorney in any of the following cases:

- (1) When the defendant is a foreign corporation, and has property within the state;
- (2) When the defendant, being a resident of this state, has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with like intent;
- (3) When the defendant is not a resident of the state, but has property therein and the court has jurisdiction of the subject of the action;
- (4) When the action is for (a) establishment or modification of a parenting plan or residential schedule; or (b) dissolution of marriage, legal separation, or declaration of invalidity, in the cases prescribed by law;
- (5) When the action is for nonparental custody under chapter 26.10 RCW and the child is in the physical custody of the petitioner;
- (6) When the subject of the action is real or personal property in this state, and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly, or partly, in excluding the defendant from any interest or lien therein;
- (7) When the action is to foreclose, satisfy, or redeem from a mortgage, or to enforce a lien of any kind on real estate in the county where the action is brought, or satisfy or redeem from the same;
- (8) When the action is against any corporation, whether private or municipal, organized under the laws of the state, and the proper officers on whom to make service do not exist or cannot be found;
- (9) When the action is brought under RCW 4.08.160 and 4.08.170 to determine conflicting claims to property in this state.

Appendix A

Appendix B

RCW 46.64.040. Nonresident's use of highways -- Resident leaving state -- Secretary of state as attorney-in-fact

The acceptance by a nonresident of the rights and privileges conferred by law in the use of the public highways of this state, as evidenced by his or her operation of a vehicle thereon, or the operation thereon of his or her vehicle with his or her consent, express or implied, shall be deemed equivalent to and construed to be an appointment by such nonresident of the secretary of state of the state of Washington to be his or her true and lawful attorney upon whom may be served all lawful summons and processes against him or her growing out of any accident, collision, or liability in which such nonresident may be involved while operating a vehicle upon the public highways, or while his or her vehicle is being operated thereon with his or her consent, express or implied, and such operation and acceptance shall be a signification of the nonresident's agreement that any summons or process against him or her which is so served shall be of the same legal force and validity as if served on the nonresident personally within the state of Washington.

Likewise each resident of this state who, while operating a motor vehicle on the public highways of this state, is involved in any accident, collision, or liability and thereafter at any time within the following three years cannot, after a due and diligent search, be found in this state appoints the secretary of state of the state of Washington as his or her lawful attorney for service of summons as provided in this section for nonresidents. Service of such summons or process shall be made by leaving two copies thereof with a fee established by the secretary of state by rule with the secretary of state of the state of Washington, or at the secretary of state's office, and such service shall be sufficient and valid personal service upon said resident or nonresident:

PROVIDED, That notice of such service and a copy of the summons or process is forthwith sent by registered mail with return receipt requested, by plaintiff to the defendant at the last known address of the said defendant, and the plaintiff's affidavit of compliance herewith are appended to the process, together with the affidavit of the plaintiff's attorney that the attorney has with due diligence attempted to serve personal process upon the defendant at all addresses known to him or her of defendant and further listing in his or her affidavit the addresses at which he or she attempted to have process served. However, if process is forwarded by registered mail and defendant's endorsed receipt is received and entered as a part of the return of process then the foregoing affidavit of plaintiff's attorney need only show that the defendant received personal delivery by mail:

PROVIDED FURTHER, That personal service outside of this state in accordance with the provisions of law relating to personal service of summons outside of this state shall relieve the plaintiff from mailing a copy of the summons or process by registered mail as hereinbefore provided. The secretary of state shall forthwith send one of such copies by mail, postage prepaid, addressed to the defendant at the defendant's address, if known to the secretary of state. The court in which the action is brought may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action. The fee paid by the plaintiff to the secretary of state shall be taxed as part of his or her costs if he or she prevails in the action. The secretary of state shall keep a record of all such summons and processes, which shall show the day of service.

Appendix B

1
2 Supreme Court No. 81549-6

3 Kitsap County No. 07-2-00878-2

4 SUPREME COURT OF THE STATE
5 OF WASHINGTON

6 RUTH JORGENSEN and
7 STANLEY JORGENSEN, wife and husband,

8 Plaintiffs,

9 vs.

10 KELLY KEBLER and JOHN DOE
11 KEBLER, wife and husband and the
12 marital community composed thereof,

13 Defendants.

CERTIFICATE OF SERVICE

RECEIVED
STATE OF WASHINGTON
SUPREME COURT
2008 JUL 31 A 10:04
DEIRM

14 I, Patti Aycock, do hereby declare pursuant to the laws of the State of Washington and
15 under penalty of perjury that on the 30th day of July, 2008, I sent the Original Brief of
16 Appellant's to The Supreme Court Clerk for filing via overnight mail; and mailed a copy of
17 Brief of Appellant's to:

18 Elizabeth C. Thompson
19 Gierke, Curwen, Dynan & Erie, PS
20 Suite 400, Building D, 2102 North Pearl Street
21 Tacoma, WA 98406-2550

22 DATED this 30th day of July, 2008.

23 LAW OFFICES OF J. MICHAEL KOCH & ASSOCIATES, INC., P.S.

24 *Patti Aycock*

25 Patti Aycock, Legal Secretary .to J.MICHAEL KOCH, WSBA 4249

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