

ORIGINAL

No. 39682-3-II
COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

IN RE THE MARRIAGE OF:

JEAN L. ROBBINS,

Petitioner/Appellee,

v.

JESSE D. ROBBINS,

Respondent/Appellant

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DIVISION II
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STATE OF WASHINGTON
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APPELLANT'S OPENING BRIEF

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BRIEF OF APPELLANT JESSE D. ROBBINS

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A. **ASSIGNMENTS OF ERROR**

Assignments of Error

1. The Superior Court of the State of Washington, County of Mason, erred in entering its order of July 6, 2009, denying Jesse D. Robbins' Motion to Vacate Prior Order of Child Support (issued on August 15, 2002 by the Superior Court of the State of Washington, County of Yakima, in Yakima County Superior Court Case No. 01-3-01101-1).
2. The Superior Court of the State of Washington, County of Mason, erred in concluding that, *arguendo*, given actual notice to Jesse D. Robbins of the fact of the dissolution of marriage proceedings before the Superior Court of the State of Washington, County of Yakima, formal personal service of process upon Jesse D. Robbins was NOT required in order for the Yakima County superior court to have had *in personam* jurisdiction over Jesse D. Robbins sufficient to issue valid orders of child support against Jesse D. Robbins.
3. The Superior Court of the State of Washington, County of Mason, erred in concluding that, *arguendo*, given an apparent execution by Jesse D. Robbins of the signature line at the joinder provision of the Petition for Dissolution of Marriage, formal personal service of process upon Jesse D. Robbins was not required in order for the Yakima County superior court to have had *in personam* jurisdiction over Jesse D. Robbins sufficient to

issue valid orders of child support against Jesse D. Robbins, notwithstanding the fact that said joinder provision was neither selected nor “checked” by any party to the proceedings.

Issues Pertaining to Assignments of Error

In the Yakima County superior court dissolution of marriage proceedings, did the joinder provisions of the Petition for Dissolution of Marriage as authorized by Washington State Superior Court Rule of Civil Procedure 4.1(a) obviate the need for the Petitioner Jean L. Robbins to have satisfied the United States’ and State of Washington’s constitutional due process requirements of formal personal service of process upon the Respondent Jesse D. Robbins in order for the Yakima County superior court to have had *in personam* jurisdiction over Jesse D. Robbins sufficient to issue valid orders of child support against Jesse D. Robbins? That is, does a properly executed joinder under the Washington State Superior Court Rules of Civil Procedure operate as a waiver of the United States’ and the State of Washington’s constitutional requirements of formal personal service of process for *in personam* jurisdiction?

[Assignments of Error Nos. 1, 2 and 3.]

In the dissolution of marriage proceedings before the Yakima County superior court, in the absence of a properly executed joinder provision in the initial Petition for Dissolution of Marriage filed by the Petitioner, Jean

L. Robbins, where the Respondent Jesse D. Robbins never entered or made an appearance before the Court nor filed any responsive pleadings, and where no formal personal service of process was made upon Jesse D. Robbins, did the Yakima County superior court have *in personam* jurisdiction over the Respondent Jesse D. Robbins sufficient to issue valid orders of child support against Jesse D. Robbins? **[Assignments of Error Nos. 1 and 3.]**

In the dissolution of marriage proceedings before the Yakima County superior court, assuming *arguendo* a properly selected (“checked”) and executed joinder provision in the initial petition for dissolution of marriage, in the absence of any signatures of the Respondent Jesse D. Robbins to any of the final pleadings filed with the Yakima County superior court, where the Respondent Jesse D. Robbins neither entered or made an appearance before the Yakima County superior court nor filed any responsive pleadings, and where no personal service of process was made upon the Respondent Jesse D. Robbins, did the Yakima County superior court have *in personam* jurisdiction over Jesse D. Robbins sufficient to issue valid orders of child support against Jesse D. Robbins? **[Assignments of Error Nos. 1, 2 and 3.]**

In the dissolution of marriage proceedings before the Yakima County superior court, assuming *arguendo* that the Respondent Jesse D. Robbins

did have actual notice of the proceedings, but where there admittedly was no formal personal service of process upon the Respondent Jesse D. Robbins and no properly executed joinder provision, and where the Respondent Jesse D. Robbins neither entered or made an appearance before the Yakima County superior court nor filed any responsive pleadings, did the Yakima County superior court have *in personam* jurisdiction over Jesse D. Robbins sufficient to issue valid orders of child support against him? [**Assignments of Error Nos. 1 and 2.**]

B. Statement of the Case

1. On December 14, 2001, Jean L. Robbins filed with the Superior Court of the State of Washington, County of Yakima, her Petition For Dissolution Of Marriage, Yakima County Case No. 01-3-01104-1. Said Petition purports to bear the signature of the Jesse D. Robbins on page 7 of said Petition, at the joinder provision, although the joinder provision was not selected or “checked” by any party. *See CP, Petition for Dissolution of Marriage (PTDSS), filed December 14, 2001 with the Clerk of the Superior Court of Washington, County of Yakima, Case No. 01-3-01101-1, page 7.*
2. Jesse D. Robbins denies that he signed said Petition, but does not contest the *in rem* jurisdiction of the Superior Court for the County of Washington, County of Yakima over the marriage between Jean L.

Robbins and Jesse D. Robbins. *See CP, Jesse D. Robbins's Brief in Support of Motion and Declaration For Order Vacating Prior Order of Child Support Pursuant to Washington Superior Court Rule of Civil Procedure 60(b)(5) Or, Alternatively, 60(b)(11) (MT), page 1, ¶ 2.2.*

3. Jesse D. Robbins was never personally served with a copy of said Petition or any other pleadings in said dissolution of marriage proceedings, as Jean L. Robbins herself admitted under oath at a hearing before the Superior Court of the State of Washington, County of Mason, on November 7, 2007. *See RP, Report of Proceedings, Hearing on Jean L. Robbins's Motion to Dismiss, November 7, 2007, Richard C. Adamson, Court Commissioner, Mason County Superior Court, Mason County Cause No. 06-3-00136-0.*
4. Jesse D. Robbins was never personally served with a copy of said Petition or any other pleadings in said dissolution of marriage proceedings, as Jean L. Robbins herself indicated on her Findings of Fact and Conclusions of Law. *See CP, Findings of Fact and Conclusions of Law (FNFCL), filed August 15, 2002 with the Clerk of the Superior Court of Washington, County of Yakima, Case No. 01-3-01101-1, page 2.2.*
5. Jesse D. Robbins in fact did NOT join in the Petition, despite the fact of his signature on the Petition (assuming, *arguendo*, that it is his signature on the Petition) as Jean L. Robbins herself indicated on her Findings of

Fact and Conclusions of Law. *See CP, Findings of Fact and Conclusions of Law (FNFCL), filed August 15, 2002 with the Clerk of the Superior Court of Washington, County of Yakima, Case No. 01-3-01101-1, page 2.2.*

6. On December 14, 2001, Jean L. Robbins filed with the Superior Court of the State of Washington, County of Yakima, her Temporary Parenting Plan for the minor children of the marriage, Yakima County Case No. 01-3-01104-1. Said Temporary Parenting Plan purports to bear the signature of the Jesse D. Robbins on page 8 of said Plan. *See CP, Parenting Plan Temporary (PPT), filed December 14, 2001 with the Clerk of the Superior Court of Washington, County of Yakima, Case No. 01-3-01104-1.*
7. Jesse D. Robbins denies that he signed said Plan, but does not contest the jurisdiction of the Superior Court for the County of Washington, County of Yakima's jurisdiction over the subject matter of the children born of the marriage between Jean L. Robbins and Jesse D. Robbins. *See CP, Brief In Support Of Motion And Declaration For Order Vacating Prior Child Support Order Pursuant To Washington Superior Court Rule Of Civil Procedure 60(b)(5), Or, Alternatively, 60(b)(11)(MT), paragraph 2.4, pages 1- 2.*
8. Jesse D. Robbins was never served with a copy of said Plan, as Jean L. Robbins herself admitted under oath at a hearing before the Superior Court

of the State of Washington, County of Mason, on November 7, 2007. *See RP, Report of Proceedings, Hearing on Jean L. Robbins's Motion to Dismiss, November 7, 2007, Richard C. Adamson, Court Commissioner, Mason County Superior Court, Mason County Cause No. 06-3-00136-0.*

9. On December 14, 2001, Jean L. Robbins filed with the Superior Court of the State of Washington, County of Yakima, her Washington State Child Support Schedule worksheets for the minor children of the marriage, Yakima County Case No. 01-3-01104-1. Said worksheets purport to bear the signature of the Jesse D. Robbins on page 6 of said worksheets. *See CP, Washington State Child Support Scheduled Worksheets (CSW) filed December 14, 2001 with the Clerk of the Superior Court for the State of Washington, County of Yakima, Case No. 01-3-01104-1, page 6.*
10. Jesse D. Robbins denies that he signed said worksheets. *See CP, Brief In Support Of Motion And Declaration For Order Vacating Prior Child Support Order Pursuant To Washington Superior Court Rule Of Civil Procedure 60(b)(5), Or, Alternatively, 60(b)(11)(MT), paragraph 2.8, page 2.*
11. Jesse D. Robbins was never served with a copy of said worksheets, as Jean L. Robbins herself admitted under oath at a hearing before the Superior Court of the State of Washington, County of Mason, on November 7, 2007. *See RP, Report of Proceedings, Hearing on Jean L. Robbins's*

Motion to Dismiss, November 7, 2007, Richard C. Adamson, Court Commissioner, Mason County Superior Court, Mason County Cause No. 06-3-00136-0.

12. Jesse D. Robbins was never served with a Summons in this matter, at any time throughout the proceedings, as Jean L. Robbins herself admitted under oath at a hearing before the Superior Court of the State of Washington, County of Mason, on November 7, 2007. *See RP, Report of Proceedings, Hearing on Jean L. Robbins's Motion to Dismiss, November 7, 2007, Richard C. Adamson, Court Commissioner, Mason County Superior Court, Mason County Cause No. 06-3-00136-0.*
13. On August 15, 2002, Jean L. Robbins filed with the Superior Court of the State of Washington, County of Yakima, her Proposed Parenting Plan, Final Order, Yakima County Case No. 01-3-01104-1. Said proposed Parenting Plan, Final Order, was not signed by Jesse D. Robbins as Approved For Entry on page 11 thereof. *See CP, Parenting Plan, Final Order (PP), filed August 15, 2002 with the Clerk of the Superior Court of Washington, County of Yakima, Case No. 01-3-01104-1, page 11.*
14. Jesse D. Robbins never was served with a copy of said proposed Parenting Plan, Final Order as Jean L. Robbins herself admitted under oath at a hearing before the Superior Court of the State of Washington, County of Mason, on November 7, 2007. *See RP, Report of Proceedings, Hearing on*

Jean L. Robbins's Motion to Dismiss, November 7, 2007, Richard C.

Adamson, Court Commissioner, Mason County Superior Court, Mason County Cause No. 06-3-00136-0.

15. On August 15, 2002, Jean L. Robbins filed with the Superior Court of the State of Washington, County of Yakima, her Proposed Order of Child Support, Yakima County Case No. 01-3-01104-1. Said proposed Order of Child Support, was not signed by Jesse D. Robbins as Approved For Entry on page 10 thereof. *See CP, Order of Child Support (ORS) filed August 15, 2002 with the Clerk of the Superior Court of Washington, County of Yakima, Case No. 01-3-01104-1.*
16. Jesse D. Robbins never was served with a copy of said proposed Order of Child Support, as Jean L. Robbins herself admitted under oath at a hearing before the Superior Court of the State of Washington, County of Mason, on November 7, 2007. *See RP, Report of Proceedings, Hearing on Jean L. Robbins's Motion to Dismiss, November 7, 2007, Richard C. Adamson, Court Commissioner, Mason County Superior Court, Mason County Cause No. 06-3-00136-0.*
17. Jean L. Robbins has proffered no evidence of any personal service upon Jesse D. Robbins of any of the filings related to child support in this matter. *See RP, Report of Proceedings, Hearing on Jean L. Robbins's Motion to Dismiss, November 7, 2007, Richard C. Adamson, Court*

Commissioner, Mason County Superior Court, Mason County Cause No. 06-3-00136-0.

18. Jesse D. Robbins never entered an appearance in this matter, nor filed any responsive pleadings. *See CP, Brief In Support Of Motion And Declaration For Order Vacating Prior Child Support Order Pursuant To Washington Superior Court Rule Of Civil Procedure 60(b)(5), Or, Alternatively, 60(b)(11)(MT), paragraph 2.16, page 2.*
19. On August 15, 2002, Jean L. Robbins filed with the Superior Court of the State of Washington, County of Yakima, her Washington State Child Support Schedule Worksheets, Yakima County Case No. 01-3-01104-1. Said worksheets were not signed by Jesse D. Robbins as Father on page 5 thereof. *See CP, Washington State Child Support Schedule Worksheets (CSW), filed August 15, 2002 with the Clerk of the Superior Court of the State of Washington, County of Yakima, Case No. 01-3-01104-1, page 5.*
20. Jesse D. Robbins never was served with a copy of said worksheets, as Jean L. Robbins herself admitted under oath at a hearing before the Superior Court of the State of Washington, County of Mason, on November 7, 2007. *See RP, Report of Proceedings, Hearing on Jean L. Robbins's Motion to Dismiss, November 7, 2007, Richard C. Adamson, Court Commissioner, Mason County Superior Court, Mason County Cause No. 06-3-00136-0.*

21. On August 15, 2002, Jean L. Robbins filed with the Superior Court of the State of Washington, County of Yakima, her drafted Findings of Fact and Conclusions of Law, Yakima County Case No. 01-3-01104-1. Said Findings were not signed by Jesse D. Robbins as Approved For Entry or Notice Of Presentation Waived, on page 11 thereof. *See CP, Findings of Fact And Conclusions of Law (FNFCL) filed August 15, 2002 with the Clerk of the Superior Court of Washington, County of Yakima, Case No. 01-3-01104-1, page 11.*
22. Jesse D. Robbins never was served with a copy of said Findings, as Jean L. Robbins herself admitted under oath at a hearing before the Superior Court of the State of Washington, County of Mason, on November 7, 2007. *See RP, Report of Proceedings, Hearing on Jean L. Robbins's Motion to Dismiss, November 7, 2007, Richard C. Adamson, Court Commissioner, Mason County Superior Court, Mason County Cause No. 06-3-00136-0.*
23. On page 2 of said Findings, at section 2.2, Jean L. Robbins herself indicated that the Jesse D. Robbins had no Notice of the Petition or its related pleadings; specifically, Jean L. Robbins indicated that Jesse D. Robbins neither appeared, responded or joined in the Petition, nor was served in any manner. *See CP, Findings of Fact And Conclusions of Law (FNFCL) filed August 15, 2002 with the Clerk of the Superior Court of*

Washington, County of Yakima, Case No. 01-3-01104-1, page 2, section 2.2.

24. On page 2 of said Findings, at section 2.3, Jean L. Robbins asserted that personal jurisdiction over the Jesse D. Robbins was established by the fact that “[t]he Jesse D. Robbins is presently residing in Washington.” *See CP, Findings of Fact And Conclusions of Law (FNFCL) filed August 15, 2002 with the Clerk of the Superior Court of Washington, County of Yakima, Case No. 01-3-01104-1, page 2, section 2.3.*

25. However, as Jean L. Robbins was well aware, Jesse D. Robbins was actually residing in the State of Montana with his father at the time, and had been for many months. *See CP, Brief In Support Of Motion And Declaration For Order Vacating Prior Child Support Order Pursuant To Washington Superior Court Rule Of Civil Procedure 60(b)(5), Or, Alternatively, 60(b)(11)(MT), paragraph 2.22, page 3.*

26. The Child Support Order at issue here was entered against Jesse D. Robbins *ex parte*. *See RP, Report of Proceedings, Hearing on Jean L. Robbins’s Motion to Dismiss, November 7, 2007, Richard C. Adamson, Court Commissioner, Mason County Superior Court, Mason County Cause No. 06-3-00136-0.*

C. Summary of Argument

“A decision regarding a motion to vacate a final order as void for lack of jurisdiction is reviewed *de novo*.” *Marriage of Wilson*, 117 Wn. App. 40, 45, 68 P.3d 1121 (Wash. 2003).

The Constitutions of the United States of America and the State of Washington mandate that before a court may issue an order depriving an individual citizen of his property, that court must have jurisdiction over the person of that citizen. An order of child support is an order depriving a citizen of property, and formal service of process is required to obtain personal jurisdiction of the court over the citizen sought to be subjected to such a court-ordered deprivation of property, unless that citizen has waived such service by entering an appearance, or by filing responsive pleadings with the court without reserving the issue of personal jurisdiction.

The Washington State Superior Court Rules of Civil Procedure permit parties in dissolution of marriage proceedings to waive the requirement of formal personal service of process of a summons upon the respondent, upon execution of the joinder provision of the petition for dissolution of marriage. However, the joinder provision must be selected, by the respondent affirmatively “checking” that provision of the petition;

the “signature” of the Respondent on the petition itself is insufficient to waive the constitutional requirement of service of process upon him.

An order of child support is VOID *ab initio* when issued against a respondent WITHOUT either: (1) formal personal service of process upon that respondent; or (2) effective waiver by the respondent of such service.

It is undisputed by Jean L. Robbins that Jesse D. Robbins was never subject to formal service of process in the dissolution of marriage proceedings. Further, Jesse D. Robbins did not waive the constitutional requirement of such formal service of process upon him. It is undisputed that Jesse D. Robbins never entered an appearance in the proceedings; it is undisputed that Jesse D. Robbins never filed any responsive pleadings in the original proceedings, and did so subsequently ONLY while specifically reserving the right to contest the superior court’s personal jurisdiction over him.

Further, assuming, *arguendo* that Jesse D. Robbins did sign at the joinder provision of the petition for dissolution he did not “check the box” selecting joinder; therefore, there was no effective joinder of Jesse D. Robbins in the petition, and therefore no waiver of the requirements for personal jurisdiction.

The child support order issued in the dissolution of marriage proceedings against Jesse D. Robbins was void *ab initio* and must be vacated by this court.

D. Argument

The Constitution of the United States of America mandates that “[n]o person . . . shall be . . . deprived of . . . property, without due process of law” U.S. Const. Amend. V. In addition, the Constitution of the United States prohibits the constituent states of the United States from themselves depriving any person of property without due process of law. U.S. Const. Amend. XIV.

Further, the Constitution of the State of Washington itself mandates that “[n]o person shall be deprived of . . . property, without due process of law.” Const. Art. 1, §3.

“Due process of law” requires not only that a citizen have notice and an opportunity to be heard before a court deprives him of his property, but more basically, that that court have jurisdiction over his person in the first place. *Pennoyer v. Neff*, 95 U.S. 714, 5 Otto 714, 24 L.Ed. 565 (1877).

“First and basic to any litigation is jurisdiction. First and basic to jurisdiction is service of process.” *Marriage of Logg*, 74 Wn. App. 781, 75 P.2d 647 (Wash. Ct. App. 1994), quoting *Painter v. Olney*, 37 Wn. App.

424, 427, 680 P.2d 1066 (Wash. Ct. App. 1984). “In personam jurisdiction requires either service on the defendant personally or by substitute service.” *Sheldon v. Fettig*, 77 Wn. App. 776 (Wash. Ct. App. 1995).

Pursuant to the laws of the State of Washington, “[i]n a proceeding to establish, enforce, or modify a support order, . . . a tribunal of this state may exercise personal jurisdiction over a nonresident individual . . . if: (1) The individual is personally served with summons in this state; (2) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive pleading having the effect of waiving any contest to personal jurisdiction; (3) The individual resided with the child in this state; . . . or (7) There is any other basis consistent with the Constitutions of this state and the United States for the exercise of personal jurisdiction.” RCW §26.21A.100.

“Personal service of summons or other process may be made upon any party outside the state.” RCW §4.28.180. “Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the defendant outside this state, as provided in Revised Code of Washington Section 4.28.180, with the same force and effect as though personally served within this state.” RCW §4.28.185.

With respect to an individual, in order to be found to have been personally served, the summons in the matter must be served by delivering a copy thereof “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.” RCW §4.28.080. The Summons and the Complaint must be served together. Washington State Superior Court Rule of Civil Procedure 4(d)(1). In domestic relations cases, “[n]o summons is necessary . . . if the respondent files a written joinder in the proceeding. Washington State Superior Court Rule of Civil Procedure 4.1(a) (*emphasis added*). However, the court must still have personal jurisdiction over all of the parties.

Under Washington state law, even actual notice of the pendency of an action and the issues involved is insufficient to confer *in personam* jurisdiction over a party: “[n]otice without proper service is not enough to confer jurisdiction.” *Logg*. While “a court may waive service rules *prospectively* on ‘the condition that another method, more reasonably calculated to effectively give notice, is utilized”, the Washington case law, rules and statutes “[do] not permit a *nunc pro tunc* waiver of service requirements.” *Logg* (*emphasis added*).

Finally, “[a] voluntary appearance of a defendant does not preclude his right to challenge lack of jurisdiction over his person, insufficiency of

process, or insufficiency of service of process pursuant to rule 12(b).

Washington State Superior Court Rule of Civil Procedure 4(d)(5).

It is undisputed that Jesse D. Robbins here was a resident of, and domiciled in, the State of Montana when the Child Support Order at issue here was filed and entered on August 15, 2002. *(See CP, Jesse D. Robbins's Motion and Declaration For Order Vacating Prior Order of Child Support Pursuant to Washington State Superior Court Rule of Civil Procedure 60(b)(5) or, Alternatively, 60(b)(11), filed October 2008 with the Superior Court of Washington, County of Mason Case No. 06-3-00136-0 ["Jesse D. Robbins's Motion"] at page 2, paragraph 4; see also CP, Jesse D. Robbins's Brief in Support of Motion and Declaration For Order Vacating Prior Order of Child Support Pursuant to Washington State Superior Court Rule of Civil Procedure 60(b)(5) or, Alternatively, 60(b)(11) filed October 2008 with the Superior Court of Washington, County of Mason Case No. 06-3-00136-0 ["Jesse D. Robbins's Brief"], at page 3, paragraph 2.22.)* It is undisputed that Jesse D. Robbins had not been a resident of or domiciled in the State of Washington for several months as of that date. *(See CP, Brief at page 3, paragraph 2.22.)*

By Jean L. Robbins's own admission in her Findings of Fact and Conclusions of Law filed with the Yakima County Superior Court and adopted by that court in the absence of any responsive pleadings by Jesse

D. Robbins, AND by her own admissions under oath at a hearing before the Superior Court of the State of Washington, County of Mason in this matter, there was NO service of process on Jesse D. Robbins in this matter, whether within the State of Washington or without. (*See CP, Findings of Fact and Conclusions of Law (FNFCL) filed August 15, 2002 with the Clerk of the Superior Court of Washington, County of Yakima, Case No. 01-3-00136-0 [“Findings”] at page2, paragraph 2.2; see also RP, Report of Proceedings, Hearing on Jean L. Robbins’s Motion to Dismiss, November 7, 2007, Richard C. Adamson, Court Commissioner, Mason County Superior Court, Mason County Cause No. 06-3-00136-0 (“Proceedings”), page 6, lines 5-11.*)

There is NO Child Support Order, proposed or final, that bears Jesse D. Robbins’s signature. (*See CP, Jean L. Robbins’s Order of Child Support (ORS) filed August 15, 2002 with the Clerk of the Superior Court of Washington, County of Yakima, Case No. 01-3-01104-1 [“Support Order”], at page 10 of 11.*)

Where a party to an action is not a resident of the State of Washington, in order for a court of the State of Washington to be able to assert *in personam* jurisdiction over him in an action for an order of child support, there must first be (1) some action on his part resulting in sufficient minimum contacts with the State of Washington to give that

court the right to attempt to assert *in personam* jurisdiction over him in the first place; AND second (2) there must be personal service of process upon him in some manner and at some location. *See* RCW §§26.21.075, 4.28.080, 4.28.185; Washington State Superior Court Rule of Civil Procedure 4; *Logg* and *Sheldon*.

With respect to the first requirement, the State of Washington has determined, by statute, that sufficient minimum contacts are found if the personal service required by the second requirement is accomplished within the State of Washington against the non-resident party sought to be charged. *See*, RCW §26.21.075(1).

If the non-resident party sought to be charged is not personally served within the State of Washington, then the first requirement may be met by, *inter alia*, that party voluntarily submitting to the jurisdiction of the Washington state court by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction. *See*, RCW §26.21.075(2). Jesse D. Robbins in this matter did NONE of those things. (*See discussion and citations below*).

Jesse D. Robbins never consented to the jurisdiction of the superior courts of the State of Washington in this matter. (*See CP, Jesse D. Robbins's Motion; see also CP, Jesse D. Robbins's Brief at page 2,*

paragraph 2.16.) Jesse D. Robbins never entered a general appearance in this matter. (*See CP, Jesse D. Robbins's Brief at paragraph 2.16.*) His purported signature to the joinder provision of Jean L. Robbins's initial Petition for Dissolution of Marriage and related pleadings filed on December 14, 2001 must have been made by someone other than he, as it is not his signature. (*See CP, Jesse D. Robbins's Brief, at paragraph 2.2.*) However, assuming, *arguendo*, that it was Jesse D. Robbins's signature, such a joinder would have been sufficient only for purposes of the dissolution of the marriage between the parties, not for an order of child support against him.

Jesse D. Robbins never signed any Child Support Order, proposed or final, in this matter, nor was he ever personally served with one. *See, CP, Id.; see also CP, Support Order at page 10 of 11.* Jesse D. Robbins further never filed any responsive pleadings in this matter, nor any pleadings at all until he became apprised of the existence of said Prior Child Support Order by the attempted registration of said Order with the District Court for the County of El Paso, State of Colorado, by the El Paso County Child Support Enforcement Unit on July 26, 2005. (*See CP, Jesse D. Robbins's Motion, and CP, Jesse D. Robbins's Brief at page 3, paragraph 2.24 et seq.*)

Upon becoming apprised of the Order, Jesse D. Robbins retained the undersigned Colorado counsel who, in addition to opposing the registration of the Order with the Fourth Judicial District Court of the State of Colorado (the Colorado state district court for the counties of El Paso and Teller, Colorado) on August 1, 2005, also later filed a Summons and Petition For Modification of said Order with the Superior Court for the State of Washington, County of Yakima, on October 20, 2005, specifically reserving in said Petition For Modification Jesse D. Robbins's right to contest the jurisdiction of that Court over his person in that matter. (*See CP, Jesse D. Robbins's Brief at page 3, paragraphs 2.24 et seq.*)

If the non-resident party sought to be charged is not personally served within the State of Washington, then the first requirement for obtaining *in personam* jurisdiction over him may also be met by, *inter alia*, that party effectively establishing sufficient minimum contacts with the state of Washington by residing with the child in the state. *See*, RCW §26.21.075 (3). In that event, the State of Washington has determined, by statute, that sufficient minimum contacts with the State of Washington are present such as to warrant an assertion of personal jurisdiction over the party who has so resided in the State.

Jesse D. Robbins here admits that he did at one time reside in the State of Washington with the children for whom support was sought by

the Child Support Order. However, the second requirement for obtaining *in personam* jurisdiction, that of personal service of process over the party sought to be charged, must still be met. And in this case, by Jean L. Robbins's own admission, it was not. (*See RP, Proceedings, page 6, lines 5-11.*)

Likewise, even if this Court were to find that Jesse D. Robbins still had been a resident of the State of Washington at the time the Child Support Order was filed and entered against him, that fact would not cure the defect of lack of service of process upon him. "In personam jurisdiction *requires* either service on the defendant personally or by substitute service." *Sheldon v. Fettig*. "Substitute service is effected 'by leaving a copy of the summons at the house of his usual abode with some person of suitable age and discretion then resident therein'." *Id.*

Not only did Jean L. Robbins herself indicate, in the Findings of Fact and Conclusions of Law drafted by her and filed by her with the Yakima County court on August 15, 2002, that there had been no service of process upon the Jesse D. Robbins, whether personally or otherwise, she affirmatively stated, under oath, before the Superior Court of Washington for the County of Mason that Jesse D. Robbins was never formally served, and she has further proffered not one piece of evidence establishing any grounds for believing any such service was effected upon

the person of Jesse D. Robbins. (*See CP, Findings at page 2, paragraph 2.2; see also RP, Proceedings at page 6, lines 5-11.*)

Jean L. Robbins was well aware of Jesse D. Robbins's actual place of domicile, residence and abode in the State of Montana, as Jesse D. Robbins was residing there with his father, whose address was well known to Jean L. Robbins. (*See CP, Jesse D. Robbins's Brief at page 3, paragraph 2.22.*) Yet Jean L. Robbins apparently made no attempt to have Jesse D. Robbins served in this matter at any time, or to even forward a copy of the documents to him via U.S. Postal Service. (*See RP, Proceedings at page 6, lines 5-11.*)

The *Logg* case cited herein by counsel for Jesse D. Robbins is almost perfectly on point with the fact situation at issue here. In *Logg*, the wife sought a dissolution of her marriage with the husband. She provided copies of all legal documents she had in her possession to her husband. However, she was never able to serve him personally with any documents in the proceedings, as he moved frequently. A judgment was entered by default against him, and child support was ordered. The husband made no support payments over the years. The Office of Support Enforcement sought to enforce the child support order against him. The husband then sought to have the order of child support vacated against him for lack of jurisdiction over his person. *See, Logg.*

The Washington Court of Appeals found in that case that the court that had issued the order of child support had not had any jurisdiction over the person of the husband, as there had been no service of process upon him, and that therefore the order of child support was void and invalid. And in that case the husband had in fact never claimed that he was not a resident of the State of Washington at all times at issue therein, and had admittedly actually received copies of the pleadings in the matter. *See, Logg*. The Court of Appeals found that, even if *in rem* jurisdiction existed, the husband was not subject to *in personam* jurisdiction and therefore could not be bound by a monetary judgment where there was no personal service of process.

Further, assuming, *arguendo*, that Jesse D. Robbins did sign at the joinder provision of the Petition for Decree of Dissolution of Marriage filed by Jean L. Robbins on December 14, 2001, the fact of such signature, standing alone, would not be legally or constitutionally sufficient to have conferred *in personam* jurisdiction of the Superior Court of Washington for the County of Yakima over Jesse D. Robbins, without formal personal service of process upon him.

Division III of the Washington Court of Appeals has had occasion to rule on the issue of what constitutes effective joinder, and whether a respondent's signature on a petition for dissolution, without personal

service of process being made upon that respondent, is legally or constitutionally sufficient to confer *in personam* jurisdiction over that respondent such as would permit entry of an order of child support against him.

In the case of *Marriage of Snyman*, the respondent in fact had been personally served with the petition for dissolution of marriage, but not the summons. He further had signed an acceptance of the service of that petition, but, as is the case here, the box on the petition to elect the joinder provision was not checked. Division 3 of the Washington Court of Appeals, citing the *Logg* case discussed above, specifically ruled that even though the respondent had signed an acceptance of service in the case, and had participated to some small degree in the dissolution proceedings, the fact that the joinder provision was not “checked” combined with the lack of service of process of the summons upon him resulted in defective service and a consequent lack of jurisdiction over his person. As a result, the resulting orders, findings and conclusions, and decree issued by the superior court were all ruled void. *Marriage of Snyman*, 123 Wn. App. 1010 (Wash. App. Div. 3 2004).

By contrast, in this case Jesse D. Robbins was never served with any pleadings, as Jean L. Robbins herself stated under oath to the Superior Court of Washington for the County of Mason, and as she indicated in her

pleadings as discussed in detail above. (See *RP, Proceedings at page 6, lines 5-11; see also CP, Findings at paragraph 2.2.*) Further by way of contrast, in this case Jesse D. Robbins never participated to any extent in any of the proceedings. (See *CP, Jesse D. Robbins's Brief at pages 2-3.*) Jesse D. Robbins did not elect joinder (in fact, neither party “checked” the joinder provision box). (See *CP, Petition for Dissolution of Marriage (PTDSS) filed December 14, 2001 with the Clerk of the Superior Court of Washington, County of Yakima [“Petition”] at page 7*) ; Jesse D. Robbins was never personally served (see *RP, Proceedings at page 6, lines 5-11*); AND Jesse D. Robbins did not participate in the proceedings (See *CP, Brief at pages 2 and 3*). The original order of child support was therefore VOID *ab initio*, and must be VACATED for lack of *in personam* jurisdiction over Jesse D. Robbins.

On July 6, 2009, the Superior Court of the State of Washington for the County of Mason issued its Memorandum Opinion denying Jesse D. Robbins's Motion to Vacate the Prior Order of Child Support as void *ab initio* for lack of personal jurisdiction of the Superior Court of Washington for the County of Yakima over him. In doing so, the superior court based its decision on the following findings of fact and conclusions of law.

1. The signature appearing to be Jesse D. Robbins' signature at the joinder provision of the Petition for Dissolution of Marriage filed by Jean L.

Robbins on December 14, 2001 was, in fact, Jesse D. Robbins's signature, and Jesse D. Robbins therefore did sign the Petition at the joinder provision.

2. Jesse D. Robbins knew about and had actual notice of the dissolution proceedings from an early date.
3. The final orders issued by the Superior Court of Washington for the County of Yakima on August 15, 2002 (which nowhere bore anything purporting to be Jesse D. Robbins' signature) were identical to those originally filed by Jean L. Robbins with her Petition for Dissolution of Marriage, and that therefore Jesse D. Robbins had notice of the contents of those orders.

(See CP, emorandum Decision dated July 6, 2009, Mason County Case No. 06-3-00136-0 ["Decision"].) Based upon the foregoing, the Superior Court of Washington for the County of Mason found that the Child Support Order issued by the Superior Court of Washington for the County of Yakima was valid, and would not be vacated.

The Superior Court of Washington for the County of Mason did not in its memorandum opinion address the following facts and legal issues.

1. The fact that the joinder provision of the petition for dissolution of marriage was not "checked" by any party, much less Jesse D. Robbins.

2. The legal issue of whether under Washington state law, absent a “checking” of the joinder provision box by either Jean L. Robbins or Jesse D. Robbins, the “signature” of Jesse D. Robbins on the signature line of that provision was sufficient to effect a joinder of Jesse D. Robbins in the petition.
3. The legal issue of whether an effective joinder in the petition for dissolution then worked to effect a waiver of the requirement of formal personal service of process upon Jesse D. Robbins before the Yakima County superior court could assert personal jurisdiction over Jesse D. Robbins to issue orders of child support against him.
4. The fact that, as Jean L. Robbins admitted under oath and stated several times in her pleadings, there was never any formal service of process upon Jesse D. Robbins in the dissolution proceeding before the Yakima County superior court.
5. The legal issue of whether, absent formal personal service of process or an effective waiver of such service, but assuming an effective joinder, the Yakima County superior court had personal jurisdiction over Jesse D. Robbins such that it might issue valid and binding orders of child support against Jesse D. Robbins.
6. The legal issue of whether absent formal service of process, an effective waiver of such service, or an effective joinder in the petition by Jesse D.

Robbins, the Yakima County superior court had personal jurisdiction over Jesse D. Robbins such that it might issue valid and binding orders of child support against Jesse D. Robbins. *(See CP, Decision.)*

It is indisputable that the joinder provision was not “checked” by either Jean L. Robbins or Jesse D. Robbins on Jean L. Robbins’s filed Petition for Dissolution of Marriage. *(See CP, Petition at page 7.)*

It is indisputable that there was never any formal personal service of process made upon Jesse D. Robbins. *(See RP, Proceedings at page 6, lines 5-11.)*

It is indisputable that Jesse D. Robbins never entered an appearance in the dissolution proceedings before the Yakima County superior court. *(See CP, Brief at pages 2-3.)*

It is indisputable that Jesse D. Robbins never physically appeared in the Yakima County superior court during the dissolution proceedings. *(See CP, Brief at pages 2-3.)*

It is indisputable that Jesse D. Robbins never filed any responsive pleadings in the dissolution proceedings before the Yakima County superior court, or afterwards, without first specifically, and at all times, reserving the right to contest the Yakima County superior court’s personal jurisdiction over him. *(See CP, Brief at pages 2-3.)*

Under the laws of the State of Washington, formal service of process upon Jesse D. Robbins in the dissolution proceedings was required before the Yakima County superior court could issue valid and binding orders of support against Jesse D. Robbins, absent an effective waiver of such service by Jesse D. Robbins.

Under the laws of the State of Washington, in the absence of a “checking” of the joinder provision “box” on the petition for dissolution of marriage, no joinder of Jesse D. Robbins in that petition was effected.

Because there was no formal personal service of process upon Jesse D. Robbins (or waiver of such service) in the dissolution of marriage proceedings before the Yakima County superior court, and because the joinder provision of the dissolution petition was not “checked”, the Yakima County superior court had no personal jurisdiction over Jesse D. Robbins, and any orders issued by the Yakima County superior court against Jesse D. Robbins depriving him or her of property (such as orders of child support) were void ab initio.

Conclusion

WHEREFORE, based upon the foregoing facts, cited law, and legal arguments, Jesse D. Robbins respectfully requests this Court:

(1) rule that because the joinder provision in the petition for dissolution of marriage filed by Jean L. Robbins with the Yakima County

superior court was not “checked” no joinder of Jesse D. Robbins in that petition was effected, even though Jesse D. Robbins’ signature appears on that petition at that provision;

(2) rule that even an effective joinder by Jesse D. Robbins in that petition for dissolution of marriage did not effect and would not have effected a waiver of the constitutional requirement of formal service of process upon Jesse D. Robbins before the Yakima County superior court might issue orders of child support against him or otherwise deprive him of his property;

(3) rule that, because there was neither formal personal service of process upon Jesse D. Robbins in the dissolution of marriage proceedings before the Yakima County superior court, nor a waiver of such service or any “checking” of the joinder provision on the petition for dissolution by Jesse D. Robbins, the Yakima County superior court had no personal jurisdiction over Jesse D. Robbins, and any orders depriving Jesse D. Robbins of property (including but not necessarily limited the orders of child support) were void *ab initio*;

(4) reverse the decision of the Superior Court of the State of Washington for the County of Mason denying Jesse D. Robbins’s Motion to Vacate Prior Order of Child Support; and

(5) vacate or order said superior court to vacate said prior order of
child support.

February 6, 2010

Respectfully submitted,

To Be Submitted Separately

Forrest L. Wagner, Attorney for Jesse D.

Robbins/Jesse D. Robbins

State of Washington Bar No. 16580

Lisa Welch Stevens

Lisa Welch Stevens, Attorney for Jesse D.

Robbins/Jesse D. Robbins

State of Colorado Attorney Registration No.

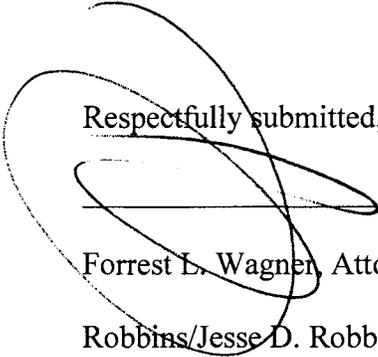
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Appearing Pro Hac Vice

(5) vacate or order said superior court to vacate said prior order of child support.

February 6, 2010

Respectfully submitted,



Forrest L. Wagner, Attorney for Jesse D.

Robbins/Jesse D. Robbins

State of Washington Bar No. 16580

Lisa Welch Stevens, Attorney for Jesse D.

Robbins/Jesse D. Robbins

State of Colorado Attorney Registration No.

028936

Appearing Pro Hac Vice

APPENDIX TO APPELLANT'S OPENING BRIEF

1. **U. S. Constitution, Amendment XIV:** “[N]or shall any State deprive any person of life, liberty, or property, without due process of law; . . .”
2. ***Pennoyer v. Neff*:** “. . . ‘due process of law would require appearance or personal service before the defendant could be personally bound by any judgment rendered’ .”
3. **RCW §26.21A.100:** (1) In a proceeding to establish or enforce a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:
 - (a) The individual is personally served with a citation, summons, or notice within this state;
 - (b) The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
 - (c) The individual resided with the child in this state;
 - (d) The individual resided in this state and provided prenatal expenses or support for the child;
 - (e) The child resides in this state as a result of the acts or directives of the individual;
 - (f) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
 - (g) The individual asserted parentage in the putative father registry maintained in this state by the state registrar of vital statistics; or
 - (h) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.
4. **Washington State Superior Court Rule of Civil Procedure 4(d)(1):** “The summons and complaint shall be served together.”

5. Washington State Superior Court Rule of Civil Procedure

4(d)(5): A voluntary appearance of a defendant does not preclude his right to challenge lack of jurisdiction over his person, insufficiency of process, or insufficiency of service of process pursuant to rule 12(b).”

PROOF OF SERVICE

As a competent adult nonparty person, on February 6, 2010, I served a complete and true copy of the original of this document to:

Jean L. Robbins (Jean L. Robbins/Appellee)

Appearing Pro Se

1145 Sydney Avenue

P.O. Box 1973

Port Orchard, WA 98366

FILED
COURT OF APPEALS
DIVISION I
10 FEB - 8 AM 8-11
STATE OF WASHINGTON
BY

Via:

Deposit with Federal Express, delivery charges prepaid, for delivery to the address shown, on February 6, 2010.

I declare under penalty of perjury under Washington law that the foregoing is true and correct. Executed this 6th day of February, 2010.



Lisa Welch Stevens