

62919-1

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CASE #62919-1-I  
Superior Case #08-2-26900-1 SEA

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COURT OF APPEALS OF THE STATE OF WASHINGTON

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CALISTA PHAIR

Appellant

v

MARY ALICE HEUSCHEL, et al

Respondent

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BRIEF OF APPELLANT

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2009 JUL 24 AM 10:49

COURT OF APPEALS  
STATE OF WASHINGTON



Calista Phair, pro se  
2828 NE 3<sup>rd</sup> Street #B303  
Renton, WA 98056  
425-277-7837

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**AUTHORITIES.**

CR 55 & 59

CP 4-7

CR 56

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## I INTRODUCTION

I am the Appellant, Calista Phair. I am appealing the Summary judgment decision because it is a miscarriage of justice in which I was deprived of due process and the right to a fair trial. I was not given notice of the hearing in any form or fashion.

## II ISSUES

I received notice in mid-December that my case had been dismissed by Summary Judgment due to the fact that I was not present at a hearing held on December 12, 2008. CP 25-26. This came as a shock and surprise to me since I had never been notified such a hearing was scheduled. **Civil Rule 56** states in part that at least 28 day notice of hearing is required:

“The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed **and served** not later than 28 calendar days before the hearing...”

further supported by the following citations:

An order based on a hearing which fails to provide party(s) adequate notice or opportunity to be heard is null and void. Sheldon v Sheldon, 47 Wn2d. 699,289 P.2d 335.

“Participation in the hearing by those who have a genuine and legitimate interest in the hearing must be allowed”. Office of Communications of the United Church of Christ v. federal Communications Commission, 359 f.2d 994.

To be deprived of such a basic right would indeed constitute a gross and unnecessary miscarriage of justice.

### **III ARGUMENT**

The fact that Linda Walton failed to notify me is grounds for dismissal of the Summary Judgment in that it violates my constitutional right to a fair hearing, as well as deprives me of due process under the law. I filed several motions requesting the defendants to show proof they in fact had sent notice to me, but they failed to do so. Each motion for some reason unknown was denied by Judge Adrea Darvas. CP 15-16 & 23-24.

The judge even went as far as sending a generic copy of a form for the defendants stating Linda Wells had signed it under “penalty of perjury”, CP 17. This would appear inappropriate and biased.

They were also requested by me to name the specific person they falsely claim they personally served, and understandably were unable to do so since no one was at the residence on November 14, 2008, the day they declared such “under penalty of perjury”. CP 4-7. I filed affidavit ‘under penalty of perjury’ likewise that nothing was received from the defendants advising me of a hearing. CP 8-9. Further proof exists that Linda Walton sends all documents by certified mail, return receipt requested, but in this case she has no receipts.

### **IV EVIDENCE RELIED ON**

1. Order granting Summary Judgment CP 25-26

2. Motion to Produce Proof of Service/Vacate Summary Judgment CP 1-3  
and CP 4-7
3. Order Denying Plaintiff's Motion to Produce Proof and Vacate SJ  
CP 15-16
4. Copy of generic Certificate of Service sent by Judge Darvas CP 17
5. Declaration of Calista Phair/Beatrice Clark CP 8-9
6. Notice of Appeal CP 21-22
7. CR 56
8. Citations

#### V CONCLUSION

For all the reasons above I ask the court to vacate the Summary Judgment order and allow me to present my case in its entirety as justice requires. I ask the court to put the burden of proof on the defendants who refute my testimony on their mere words giving their words more credibility based on nothing. Submitting concrete proof of service should not have presented a problem if that had been done. I would have no reason to blow my own case which I worked so hard to defend by not attending a hearing, nor would I have known at the time of the hearing they would not be able to show proof later.

Dated July 23 2009



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Calista Phair, pro se

No. 62919-1-1

SUPERIOR COURT NO. 08-2-26900-1 SEA  
IN THE WASHINGTON STATE COURT OF APPEALS  
DIVISION 1

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CALISTA PHAIR

Appellant,

V

MARY ALICE HEUSCHEL, ET AL

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COPY OF CERTIFICATE OF SERVICE

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Calista Phair  
2828 NE 3<sup>rd</sup> Street B303  
Renton, WA 98056  
425-277-7837

2009 JUL 24 AM 10:49

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON

**CERTIFICATE OF SERVICE**

I the undersigned certify under penalty of perjury according to the laws of the State of Washington that I sent by certified mail a copy of Brief for Appellant to Linda Walton, Perkins Coie, 1201 Third Avenue, Suite 4800, Seattle, WA 98101-3099.

Dated July 23, 2009

Signed:   
Calista Phair, pro se