

NO. 66518-9-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

MICHAEL D. KENNEDY and RUSH PROCESS SERVICES, INC.,

Appellants,

v.

WINSTON BONTRAGER,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

Appellant Michael Kennedy filed a false affidavit alleging that he personally served Mr. Bontrager. Judge Joan DuBuque held a hearing, at which Mr. Kennedy testified, and found that service did not occur. Mr. Kennedy may not relitigate this fact and it is determinative of Mr. Bontrager's claim against Mr. Kennedy. Mr. Kennedy's statute of limitations argument fails because the statute of limitations for Mr. Bontrager's claim for false service of process began to run only when Mr. Bontrager became aware that a judgment had been entered against him based upon a false affidavit of service, and not, as Mr. Kennedy argues, when Mr. Bontrager knew about the existence of the underlying lawsuit. There is no evidence Mr. Bontrager knew about the judgment or the false affidavit of service until recently, and as such the trial court's decision on summary judgment should be affirmed.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Should the trial court's decision on summary judgment be affirmed when Mr. Kennedy is collaterally estopped from relitigating a prior judicial determination that Mr. Bontrager was not served with process and there is no evidence that, prior to 2010, Mr. Bontrager knew or should have known that a false affidavit of service had been filed? (Assignment of Error 1)

2. Should the trial court's decision to deny Mr. Kennedy's motion for reconsideration be affirmed when Mr. Kennedy presented the trial court with no new facts or argument that could not have been presented in response to the motion for summary judgment? (Assignment of Error 2)

3. Should the trial court's decision to deny Mr. Kennedy's motion to continue the summary judgment hearing be affirmed when Mr. Kennedy did not articulate the additional evidence to be obtained and how that evidence would be material to the motion, and his delay in failing to timely investigate the facts. (Assignment of Error 3)

III. STATEMENT OF THE CASE

The underlying matter was filed on July 23, 1996 by Diane Mackey.¹ The action named as defendants Samir Attalah and Jane Doe Attalah, husband and wife; Winston Bontrager and his wife at the time, Lynnette Bontrager; and William A. Fisher and Rondi Edwardson, husband and wife. The complaint alleged that Ms. Mackey invested \$311,576.47 and that she had lost her investment. The complaint alleged fraud, violation of the state securities act, breach of consumer protection act, civil conspiracy, breach of contract, and breach of fiduciary duty.

¹ C.P. 74.

Attached to the complaint was a Promissory Note in the amount of \$311,576.47, with the maker of that note being Orting Industrial Joint Venture and Venture Partners, Inc. Ms. Mackey was the holder of the note. Mr. Bontrager signed the note in his corporate capacity as president of Venture Partners, Inc. Mr. Bontrager did not sign the note in his personal capacity, nor did he guaranty the note, and he had no personal liability on the note.

Diane Mackey hired Michael Kennedy of Rush Process Service to service process on Winston Bontrager. On August 2, 1996, Mr. Kennedy filed with the court a document entitled "Affidavit of Service," dated July 31, 1996.² It was signed by Mike Kennedy of Rush Process Service in Portland, Oregon. This document states that a Summons; Complaint; and Order Setting Civil Case Schedule were personally served upon Winston Bontrager by delivering such true copy to him personally and in person at 27021 Ballston Road, Sheridan, Oregon, 97378, at or on 07/30/96 at 10:30 a.m.

Winston Bontrager was not served. His declaration details the fact that he was not served.³ Mr. Bontrager has the best possible explanation

² C.P. 85.

³ C.P. 87.

because on July 30, 1996, the date of the alleged service, Mr. Bontrager was incarcerated at the Federal Correctional Institution, Sheridan ("FCI Sheridan"), located at 27072 Ballston Road, Sheridan, Oregon, 97378.

In 1996, private process servers were not allowed access to FCI Sheridan for purposes of service of process.⁴ Rather, FCI Sheridan had a very specific and rigid procedure for service of papers on its inmates. Specifically, FCI Sheridan required the Yamhill County Sheriff's office to serve legal documents on inmates, including service of process. A party to a civil lawsuit who wanted to serve process on an inmate at FCI Sheridan was required to contact the Yamhill County Sheriff and arrange for the Sheriff to perform that service. In turn, the Sheriff would contact the facility's records office and make arrangements for a deputy to meet with the requested inmate at a specific time, date, and location.⁵

Strangers are prohibited from entering FCI Sheridan. All visitors must be designated by the inmate in advance of any visit, and then are screened and approved or disapproved by FCI Sheridan, and the approved visitors are then listed on an authorized visitors list. Visits with inmates took place on designated dates and times in a designated visitor room.

⁴ C.P. 115.

⁵ C.P. 124.

Visitors and other members of the public were not allowed to meet with inmates without advance approval by both the inmate and FCI Sheridan. Mr. Kennedy was not an approved visitor for Mr. Bontrager.⁶

Because Mr. Bontrager was not served with the summons and complaint, he did not retain counsel, he did not file an appearance, and he did not answer the complaint. Based upon the false affidavit of service, the plaintiff moved for entry of an order and judgment by default, and a default judgment was entered against Mr. Bontrager on January 7, 1997.⁷

From that date, until March of 2010, neither the plaintiff nor the assignees of the default judgment did anything to enforce it, and Mr. Bontrager had no knowledge of its existence. Then, in April of 2010, the assignee and current holder of the default judgment began taking action to enforce the default judgment.

On December 15, 2004, Centurion Holdings, Inc., a Nevada corporation owned by Thomas Hazelrigg III, obtained an Assignment of Judgment from Diane Mackey (Townsend). In December 2006, Centurion Holdings, Inc. obtained an ex parte order extending the Judgment for ten years. On February 25, 2010, Centurion Holdings, Inc. filed an

⁶ C.P. 115.

⁷ C.P. 129.

Assignment of Judgment assigning the judgment from Centurion Holdings, Inc. to Pacific Funding Group, LLC, a Washington limited liability company.⁸

Beginning in April 2010, Pacific Funding Group undertook substantial actions to collect the judgment including the commencement of supplemental proceedings and a motion to obtain a break and enter order.⁹ Pacific Funding Group went further and commenced a separate lawsuit against Mr. Bontrager and other individuals and entities in an attempt to collect the judgment.¹⁰ Mr. Bontrager retained counsel to defend against these actions and to bring a motion to vacate the judgment.

On June 8, 2010, Mr. Bontrager's attorneys filed a motion to vacate the judgment on the basis that Mr. Bontrager had not been served with process as alleged by Mr. Kennedy. In support of the motion, Mr. Bontrager's attorneys filed declarations by an employee of FCI Sheridan establishing the procedures for service of process on an inmate; by an officer from the local county sheriff's office regarding its

⁸ C.P. 135-36.

⁹ C.P. 136-37.

¹⁰ C.P. 140.

procedures for serving process on an inmate at FCI Sheridan; and by Mr. Bontrager's investigator regarding his interviews with Mr. Kennedy.¹¹

In response, Pacific Funding Group asserted that Mr. Kennedy had served Mr. Bontrager at FCI Sheridan. Mr. Kennedy prepared and filed a declaration in support of Pacific Funding Group asserting that he is the president of Rush Process Service Inc. and had personally served Mr. Bontrager at FCI Sheridan. He described at length how the purported service occurred.¹²

Judge Joan DuBuque held an evidentiary hearing on the motion to vacate. At the hearing, Mr. Kennedy appeared as a witness and testified in person regarding his purported service on Mr. Bontrager. After considering Mr. Kennedy's testimony, Judge DuBuque found by clear and convincing evidence that Mr. Kennedy's testimony was not credible and that he did not serve Mr. Bontrager with process. Mr. Kennedy was present in the courtroom when Judge DuBuque made her ruling and entered the order vacating the default judgment against Mr. Bontrager.¹³

Mr. Bontrager filed this action against Mr. Kennedy and his business, Rush Process Services, Inc. (together referred to as

¹¹ C.P. 137-38.

¹² C.P. 158.

Mr. Kennedy) on August 16, 2010.¹⁴ On November 12, 2010, Mr. Bontrager moved for summary judgment.¹⁵ The court granted the motion and entered judgment against Mr. Kennedy on December 10, 2010.¹⁶

IV. SUMMARY OF ARGUMENT

Mr. Kennedy's statute of limitations defense fails because the statute of limitations in the underlying action did not begin to run until Mr. Bontrager became aware that a judgment had been entered against him based upon a false affidavit of service. Mr. Kennedy is collaterally estopped from relitigating the only material fact in question – namely that he filed a false affidavit of service. Having ruled correctly on the motion for summary judgment, the trial court did not abuse its discretion when it denied Mr. Kennedy's motion for reconsideration. Nor did the trial court abuse its discretion when it denied Mr. Kennedy's motion for a continuance. The decision of the trial court should be affirmed.

¹³ C.P. 166.

¹⁴ C.P. 1.

¹⁵ C.P. 36.

¹⁶ C.P. 343.

V. ARGUMENT

A. Summary Judgment

This Court should affirm the trial court's decision to grant summary judgment in favor of Mr. Bontrager. Mr. Kennedy was collaterally estopped from challenging Judge DuBuque's determination that Mr. Kennedy's affidavit of service was false.

1. Standard of Review

On an appeal from summary judgment, this Court engages in the same inquiry as the trial court, with the standard of review being de novo. *Bainbridge Citizens United v. Washington State Dept. of Natural Resources*, 147 Wn. App. 365, 370, 198 P.3d 1033 (2008). In response to summary judgment, the nonmoving party may not rely on bare allegations but must set forth specific facts establishing that there is an issue for trial. *Baldwin v. Sisters of Providence, Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989). If the nonmoving party fails to establish a dispute about a material fact, summary judgment should be granted. *Hines v. Data Line Sys., Inc.*, 114 Wn.2d 127, 787 P.2d 8 (1990). All assertions of fact must be supported by evidence. *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 359, 753 P.2d 517 (1988). Kennedy asserted a statute of limitations defense on which he bears the burden of proof. *Rivas v.*

Overlake Hosp. Medical Center, 164 Wn.2d 261, 267, 189 P.3d 753 (2008).

2. Statute of Limitations

Mr. Kennedy argues that he presented sufficient evidence in the form of declarations by Mr. Youtz to establish that Mr. Bontrager knew about the existence of the litigation and, therefore Mr. Bontrager should have known about the false affidavit of service. Mr. Kennedy argues that knowledge of the existence of the litigation triggered the running of the statute of limitations in 1996.

Mr. Kennedy is incorrect. Mr. Youtz's declarations do not establish that Mr. Bontrager had knowledge of the existence of a false affidavit of service (or of the default judgment, which had not even been entered at the time). Mr. Kennedy has cited no law for the proposition that a person with knowledge he has been named in a lawsuit, but who has not been served, is under an obligation to investigate whether a false affidavit of process has been filed in the case – an absurd proposition, for which, of course, there is no law! Since Mr. Bontrager had not been served with process – a fact Mr. Kennedy is collaterally estopped from challenging – he was under no obligation to investigate something he knew had not occurred.

(a) Application of the Discovery Rule

Kennedy argues, “[t]here is a genuine issue of material fact in dispute as to when Mr. Bontrager became aware of the *Mackey Proceedings*.” To the contrary, the timing of when Mr. Bontrager became aware of the existence of the lawsuit is entirely **immaterial**. The dispositive issue, which Mr. Kennedy is collaterally estopped from re-litigating, is whether Mr. Kennedy prepared and filed a false affidavit of service and when Mr. Bontrager became aware of that fact.

(b) More Than Knowledge of the Litigation is Required

In response to summary judgment, Mr. Kennedy presented no facts establishing that Mr. Bontrager knew of the false affidavit of service. Mr. Youtz’s declaration is silent on the issue of service of process. Likewise, Mr. Youtz did not serve the motion for a default judgment on Mr. Bontrager, nor did he send Mr. Bontrager a copy of the default judgment once it was obtained. This is confirmed by the court file, as there is no affidavit or declaration of service in the court file evidencing that either occurred.¹⁷

¹⁷ C.P. 224-26, 233-64. Mr. Youtz does not testify that Mr. Bontrager was served with the default motion or judgment, and the docket shows that he was given no such notice.

Mr. Kennedy further argues that Mr. Youtz's declaration created a factual dispute with Mr. Bontrager's prior testimony that he did not know about the existence of the default judgment until recently. To the contrary, Mr. Youtz's statements are perfectly consistent with Mr. Bontrager's testimony. Neither the motion for the default judgment, nor the default judgment, was served on Mr. Bontrager. The absence of Mr. Bontrager's knowledge of the existence of the judgment was further supported by the undisputed fact that Mr. Bontrager's credit reports disclose no such default judgment.

At most, Mr. Youtz's declaration raises a question whether Mr. Bontrager had knowledge of the existence of the underlying litigation and that he was named as a party. However, knowledge of the existence of the litigation is not knowledge of the existence of an affidavit falsely alleging service. Neither Mr. Bontrager nor any other person has a duty to participate in litigation in which he has not been served or to investigate the existence of an event that he knows did not occur.

3. Kennedy is Estopped From Asserting Mr. Bontrager Was Actually Served

Throughout the briefing, Mr. Kennedy argues that Mr. Youtz's declaration creates an issue of fact whether Mr. Bontrager was served. There is and can be no such issue of fact here, because as a matter of law,

Mr. Kennedy is collaterally estopped from relitigating that issue by reason of Judge Joan DuBuque's finding, by clear and convincing evidence, that Mr. Kennedy did not serve Mr. Bontrager.

Collateral estoppel prevents the re-litigation in a later proceeding of issues decided in prior litigation, even though the later proceeding involves a different claim or defenses. 14A Karl B. Tegland, *Washington Practice: Civil Procedure* § 35:32 at 548 (2d ed. 2009). The elements of collateral estoppel are: "(1) the issue decided in the prior adjudication was identical with the one presented in the action in question; (2) the prior adjudication ended in a final judgment on the merits; (3) the party against whom the plea of collateral estoppel is asserted was a party or in privity with a party to the prior litigation; and (4) application of the doctrine does not work an injustice." *Hackler v. Hackler*, 37 Wn. App. 791, 794, 683 P.2d 241 (1984).

(a) Identical Issue

In the matter of *Mackey v. Bontrager, et al.*, Judge Joan DuBuque found by clear and convincing evidence that Mr. Kennedy did not serve Mr. Bontrager. This is the central fact on which liability turns in this matter, because since Mr. Bontrager was not served with process, he had no duty to appear or defend, and he was under no legal duty to investigate whether a process server had filed a false affidavit of service. Mr.

Kennedy cannot use the Youtz declaration to collaterally attack a finding that Mr. Bontrager was not served.

Mr. Kennedy argues that the claim (or in this instance, the defense) at issue here is whether the statute of limitations has run, and that the statute of limitations defense was not decided in the prior proceeding. However, the fact or issue that is the predicate for Mr. Kennedy's statute of limitations defense previously was decided adversely to Mr. Kennedy, and as noted above, collateral estoppel applies regardless of whether a claim or defense in the subsequent proceeding is different from that in the prior proceeding.

(b) Privity and Justice

Mr. Kennedy argues that he was not a party or in privity with a party in the prior litigation. He asserts, without citation to authority or explanation, the exception to the privity requirement relied on by Mr. Bontrager should not apply. Mr. Kennedy is mistaken.

Washington has long recognized an exception to the privity requirement for witnesses who have an interest in the outcome of the prior litigation. "One who was a witness in an action, fully acquainted with its character and object and interested in its results, is estopped by the judgment as fully as if he had been a party." *Hackler*, 37 Wn. App. at 795 (citing *Bacon v. Gardner*, 38 Wash.2d 299, 229 P.2d 523 (1951)).

In *Hackler*, a couple sold their house to their son and his wife. Several months later, the son and his wife reconveyed their interest to the couple by quit claim deed, which was not recorded, and continued to pay the taxes and mortgage on the property. A few years later, the son and wife divorced. In the dissolution proceedings, the father testified about the conveyance to his son and his wife but did not mention the reconveyance. The house was awarded to the son's wife. A few years later, the couple recorded the quit claim deed and brought an action against their son's former wife contending the home was theirs. In holding that collateral estoppel applied, the court reasoned that because the father had been a witness for his son, knowing that his son and wife claimed title to the house, the father was aware of the trial's object and did not attempt to intervene, therefore, the couple is bound by the result.

The circumstances of this case are on point. Mr. Bontrager filed a motion to vacate the judgment, asserting that he had not been served. The dispositive issue in the prior proceeding was whether Mr. Kennedy served Mr. Bontrager. Pacific Funding opposed the motion to vacate to retain the benefit of the judgment it had acquired from Mackey. In support of Pacific Funding's opposition, Pacific Funding offered Mr. Kennedy as its principal witness. Pacific Funding provided the court with a declaration

by Mr. Kennedy, and at the hearing on Mr. Bontrager's motion, Pacific Funding also presented the court with live testimony by Mr. Kennedy.

As such, Judge DuBuque had the opportunity to read and hear Mr. Kennedy's side of the story, and to assess his credibility. She specifically found that his version of the events was not credible and found that he did not serve Mr. Bontrager.

Prior to the hearing, Mr. Kennedy knew the central issue in the case was his conduct, and that the court would make a factual determination of whether he served Mr. Bontrager. Mr. Kennedy was certainly interested in the outcome. Indeed, anyone in Mr. Kennedy's position could foresee that the result of a decision that he had not served process on Mr. Bontrager, and that he filed a false affidavit with the court under penalty of perjury, would present Mr. Kennedy with significant adverse consequences.¹⁸ He could have asked the court to intervene, and did not. In the words of the *Hackler* court, he had a direct interest in the outcome, knew the object of the proceeding, and chose not to seek leave to intervene.

¹⁸ Indeed, it did have adverse consequences, as Pacific Funding subsequently sued Mr. Kennedy (as did Mr. Bontrager). See *Pacific Funding Group, LLC v. Kennedy*, King County Superior Court Case No. 10-2-35452-2 SEA (this Court may take judicial notice of this filing under ER 201).

Further, Mr. Kennedy was present when the court made its ruling and entered the order vacating the judgment. He could have asked to intervene to appeal the order. He did not. Under these circumstances, there is no injustice in binding Mr. Kennedy with the factual determination made by Judge DuBuque. Mr. Kennedy had his day in court, and he was found not credible. It is just, and an efficient use of judicial resources, to refuse him a second bite at the apple.

Mr. Kennedy argues it would be unjust to preclude him from asserting a statute of limitations defense. Again, he misses the point. While he may invoke it as a defense, it fails because the factual predicate (that Mr. Bontrager should have known he was served) was decided adversely to Mr. Kennedy. It is not unjust to prevent him from re-litigating an issue already decided against him.

B. Denial of Motion for Reconsideration Was Not an Abuse of Discretion

The Court of Appeals reviews a trial court's decision to grant or deny a motion for reconsideration or new trial for abuse of discretion. *Conrad ex rel. Conrad v. Alderwood Manor*, 119 Wn. App. 275, 290, 78 P.3d 177 (2003). “A trial court abuses its discretion if a decision is manifestly unreasonable, or based upon untenable grounds or reasons.” *Id.*

Mr. Kennedy argues that his opposition to Mr. Bontrager's motion for summary judgment raised a material issue of fact, which Mr. Kennedy reiterated to the trial court in his motion for reconsideration. Making the same argument twice is not a basis to grant a motion for reconsideration. As explained above, the trial court's grant of summary judgment in Mr. Bontrager's favor was proper; therefore, the court did not abuse its discretion by denying Mr. Kennedy's motion for reconsideration.

C. Denial of Motion to Continue the Summary Judgment Hearing Was Not an Abuse of Discretion

Mr. Kennedy argues that he should have been allowed more time to conduct discovery before the court heard Mr. Bontrager's motion for summary judgment. He is incorrect. Mr. Kennedy failed to offer any explanation to the court of what specific new facts he was seeking, why they were material, and why he could not have conducted the discovery earlier. Therefore, the trial court properly denied his motion for a continuance.

1. Standard of review

An appellate court reviews a trial court's decision on a request to continue a summary judgment hearing for abuse of discretion. *Building Industry Ass'n of Washington v. McCarthy*, 152 Wn. App. 720, 742 – 3, 218 P.3d 196 (2009).

2. Denying the Motion Was Not an Abuse of Discretion

A court should deny a motion for a CR 56(f) continuance when “(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact.” *Manteufel v. Safeco Ins. Co. of America*, 117 Wn. App. 168, 175, 68 P.3d 1093 (2003). Denial of the continuance can be predicated on just one of these grounds. *Gross v. Sunding*, 139 Wn. App. 54, 68, 161 P.3d 380 (2007).

(a) Further Discovery Would Not Have Raised a Factual Dispute

Mr. Kennedy argues that the court should have allowed him additional time to file a motion to compel Mr. Bontrager’s answers to interrogatories, depose Mr. Bontrager and to complete the interview with Mr. Youtz all in the hopes of establishing that Mr. Bontrager knew of the existence of the litigation in 1996.

For example, Mr. Kennedy argues in Mr. Bontrager’s interrogatory answer that he can not recall the names of the cases where he had been deposed and that his most recent deposition in 2002 was inadequate. Mr. Kennedy went on to argue that he should have been allowed to compel a better answer or depose Mr. Bontrager in the hopes

Mr. Bontrager's memory would improve under direct questioning. All of this effort would have been in the hope that once prior depositions were identified, the transcripts might still be available. And if available, Mr. Kennedy wished to review the transcripts to see if Mr. Bontrager was asked to identify prior litigation; all in the hope that there may be evidence that he knew of the *existence* of the underlying litigation.

As argued above, these additional facts are not material to Mr. Kennedy's statute of limitations defense. The relevant question is when Mr. Bontrager learned of the existence of the false affidavit of service, not of the lawsuit. Mr. Youtz stated in his deposition that he did not serve Mr. Bontrager with the motion for a default nor did he send Mr. Bontrager a copy of the default judgment. Further, Mr. Kennedy was precluded from arguing or attacking the fact that he did not serve Mr. Bontrager.

Given that the additional evidence Mr. Kennedy sought was not relevant, the court did not abuse its discretion by denying the motion for a continuance.

(b) Kennedy Offered No Good Reason For Having Delayed

In addition to identifying relevant facts which may be discovered, Mr. Kennedy was also required to offer a good reason why he delayed in

investigating those facts earlier. Mr. Kennedy did not offer any explanation to the trial court and he fails to do so now.

Mr. Kennedy argues that he needed additional time to address the alleged insufficiencies of Mr. Bontrager's answers to interrogatories and bring a motion to compel interrogatories. However, there was no indication that Mr. Bontrager failed to fully and completely answer Mr. Kennedy's discovery requests based upon his personal knowledge and the information available to him.

More importantly, Mr. Kennedy did not explain why he did not bring a motion to compel if he thought such a motion would be productive. Kennedy was served with the interrogatory answers on November 10, 2010. If Mr. Kennedy's counsel believed the answers were deficient, he could have filed a motion to compel but did not do so and did not explain to the trial court why he did not. As Mr. Bontrager's counsel explained to the trial court, Mr. Kennedy's counsel had not even requested a discovery conference under CR 26(i) which is a prerequisite to a motion to compel. Nor did Mr. Kennedy ask to take Mr. Bontrager's deposition. Thus, Mr. Kennedy has no good reason for the delay in obtaining this evidence.

In regard to the interview of Mr. Youtz or other witnesses, Mr. Kennedy did not explain why he had failed to interview them earlier.

The case was filed August 16, 2010. The motion for summary judgment was not filed until November 12, 2010, three months later. No facts were presented that any witness who may have had relevant knowledge was not earlier available for interview or deposition. Mr. Kennedy simply failed to explain or justify why he was not prepared to present his defense. In absence of any justification for the delay in conducting an investigation, the trial court did not abuse its discretion when it denied Mr. Kennedy's motion for a continuance.

D. Award of Costs and Expenses

Pursuant to RAP 18.1, Mr. Bontrager requests an award of costs and expenses on appeal as the prevailing party pursuant to, and the full extent allowed by, RAP 14.1.

VI. CONCLUSION

At best, Mr. Kennedy presented to the trial court facts from which it could be inferred that Mr. Bontrager knew about the existence of the litigation but not about the existence of the false affidavit of service. Since knowledge of the existence of the litigation is not relevant to a cause of action for false service of process, there was no dispute about a fact that is material and summary judgment was proper. Having ruled correctly on the motion for summary judgment, the trial court did not abuse its discretion when it denied Mr. Kennedy's motion for reconsideration. Nor

did the trial court abuse its discretion when it denied Mr. Kennedy's motion for a continuance. The decision of the trial court should be affirmed.

RESPECTFULLY SUBMITTED this 25th day of May, 2011.

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CERTIFICATE OF SERVICE

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

That on May 25, 2011, I deposited in the mails of the United States of America, postage prepaid, an envelope containing a true and correct copy of Brief of Respondent addressed to:

Hafez Darae
Jordan Schrader Ramis PC
Two Centerpointe Drive, Suite 600
Lake Oswego, OR 97035

DATED this 25th day of May, 2011, at Seattle, Washington.



Bonnie Rakes