

No. 69643-2

**COURT OF APPEALS OF THE
STATE OF WASHINGTON**

**DIVISION ONE
(KING COUNTY SUPERIOR COURT CAUSE No. 12-2-20677-5)**

PATRICIA A. GRANT,

Plaintiff-Appellant,

vs.

**CLAUDIO GABRIEL ALPEROVICH, M.D.; ST. FRANCIS
HOSPITAL-FRANCISCAN HEALTH SYSTEM; VALLEY
MEDICAL CENTER; TRIET M. NGUYEN, D.O.; MICHAEL K.
HORI, M.D.; PACIFIC MEDICAL CENTER, INC.; LISA OSWALD,
M.D.; SHOBA KRISHNAMURTHY, M.D.; MICHELLE PULLING,
M.D.; WM. RICHARD LUDWIG; U.S. FAMILY HEALTH PLAN AT
PACIFIC MEDICAL CENTER, INC.; VIRGINIA MASON HEALTH
SYSTEM; RICHARD C. THIRLBY, M.D.,**

Defendants-Respondents.

**BRIEF OF DEFENDANTS-RESPONDENTS
VALLEY MEDICAL CENTER AND TRIET M. NGUYEN, D.O.**

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I. INTRODUCTION

The trial court found that respondents Valley Medical Center (“VMC”) and Dr. Nguyen were never properly served with appellant’s summons and complaint. Ms. Grant does not raise this finding in her brief. Nor does she argue the trial court’s dismissal of her suit against VMC and Dr. Nguyen for lack of personal jurisdiction because they were never properly served. Ms. Grant has therefore failed to raise on appeal, or has waived, any challenge to respondents’ dismissal. Moreover, the trial court properly dismissed Ms. Grant’s complaint against VMC and Dr. Nguyen for lack of personal jurisdiction.

II. STATEMENT OF THE ISSUES

1. Has appellant failed to raise or has she waived any challenge to the dismissal of respondents VMC and Dr. Nguyen for lack of personal jurisdiction?

2. Did the trial court properly dismiss respondents VMC and Dr. Nguyen for lack of personal jurisdiction?

III. STATEMENT OF THE CASE

Ms. Grant filed her lawsuit on June 15, 2012. Appellant’s Notice of Filing Verbatim Report of Proceedings of March 22, 2013 (“3/22/13 RP”) at 4:18-20. Defendants VMC and Dr. Nguyen

entered their appearance without waiving objection to service. 3/22/13 RP at 4:21 – 5:11. Ms. Grant concedes that the only method she used allegedly to serve VMC and Dr. Nguyen was to send the summons and complaint by certified mail. *Id.* at 6:14 – 7:3; 8:12 – 9:3.

Based on the record and Ms. Grant's testimony before the court on March 22, 2013, the trial court made findings that Ms. Grant filed her suit on June 15, 2012, that on June 25, 2012, VMC and Dr. Nguyen appeared "without waiving the objections to lack of service or improper service," that Ms. Grant acknowledged that her form of service had been by certified mail and that thereafter "[n]o further attempt at service ever [had] been made." *Id.* at 12:6-16. On these findings, the court concluded that it was "without jurisdiction" over VMC and Dr. Nguyen and dismissed Ms. Grant's complaint against them. *Id.* at 12:7 – 13:4.

IV. ARGUMENT

A. Standards of Review

The Court reviews under its inherent authority whether an issue has been properly presented on appeal. *See, e.g., Heidgeken v. State Dept. of Natural Resources*, 99 Wn. App. 380, 387 n.3, 993

P.2d 934 (2000). The Court reviews de novo a trial court's dismissal of an action on legal grounds. *Witt v. Port of Olympia*, 126 Wn. App. 752, 757, 109 P.3d 489 (2005).

B. Ms. Grant has failed to present, or has otherwise waived, any challenge to the dismissal of her action against VMC and Dr. Nguyen.

The trial court dismissed Ms. Grant's suit against VMC and Dr. Nguyen for lack of jurisdiction because Ms. Grant failed to properly serve them. See 3/22/13 RP at 12:6 – 13:4. Ms. Grant fails in her appellant brief to assign error to this factual and legal determination¹ and she fails as well to offer any argument in her brief relating to this matter.² See generally Brief of Appellant. An appellate court will only review "a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto." RAP 10.3(g); *State v. Dent*, 123 Wn. 2d 467,

¹ She merely complains that on March 22, 2013, the trial court dismissed her complaint "based on technicalities." Brief of Appellant at 8.

² As to the trial court's hearing and order of March 22, 2013, Ms. Grant does complain generally that she should not have been held to the same standards of practice and pleading as practicing attorneys. Brief of Appellant at 8. As a pro se plaintiff, however, she was as bound as any litigant to follow applicable court rules. See *State v. Sullivan*, 143 Wn. 2d 162, 178, 19 P.3d 1012 (2001). Furthermore, her *ad hominem* attack accusing the trial court of failing to read her materials (Brief of Appellant at 9) is not only unsubstantiated, it is directly refuted by her own submissions in the record. See 3/22/13 RP at 2:17-25 (the court not only assured her that it had read her materials, it also showed her in open court its "demonstrative exhibit" of "Post-It" notes it had placed in her papers as the court had read through them.).

482-483, 869 P.2d 392 (1994). Also, if an issue is not argued in appellant's brief, appellant "waives any challenge to the alleged issue." *Yakima County v. Eastern Washington Growth Management Hearings Bd.*, 146 Wn. App. 679, 698, 192 P.3d 12 (2008).

C. The trial court's unchallenged finding that VMC and Dr. Nguyen were not properly served is a verity on appeal and dictated the court's proper conclusion that it was without personal jurisdiction over these two defendants.

A superior court does not have jurisdiction over any defendant until the plaintiff satisfies the service requirements for the summons and complaint. *Painter v. Olney*, 37 Wn. App. 424, 427, 680 P.2d 1066 (1984) ("First and basic to jurisdiction is service of process."). Proper service of a summons and complaint is a jurisdictional prerequisite and whether the service of process was proper is a question of law. See *Goettemoeller v. Twist*, 161 Wn. App. 103, 107, 253 P.3d 405 (2011). To invoke jurisdiction, service of process must comply with statutory requirements. *Thayer v. Edmonds*, 8 Wn. App. 36, 40, 503 P.2d 1110 (1972).

For this case, the applicable requirements were set forth in Washington Superior Court Civil Rule 4 (CR 4) and RCW 4.28.080:

CR 4(d)(2) states in pertinent part that personal in-state service "shall be provided under RCW 4.28.080." CR 4(d)(2).

RCW 4.28.080 requires *personal service* to both corporate entities and to individuals:

Service made in the modes provided in this section shall be taken and held to be personal service. The summons shall be served by delivering a copy thereof, as follows:

(9) If against a company or corporation other than those designated in subsections (1) through (8) of this section, to the president or other head of the company or corporation, the registered agent, secretary, cashier or managing agent thereof or to the secretary, stenographer or office assistant of the president or other head of the company or corporation, registered agent, secretary, cashier or managing agent.

.....

(15) In all other cases, to the defendant personally, or by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein.

RCW 4.28.080; *see also Witt*, 126 Wn. App. at 757-758 (service must be made on the person designated in the statute).

Ms. Grant conceded, and the trial court found, that she had not complied with the service statutes, that she had instead improperly sought to serve VMC and Dr. Nguyen through certified mail.³ See

³ Assuming the medical center or Dr. Nguyen did informally obtain Grant's summons and complaint and did thereby gain notice of the action, actual notice alone does not establish valid service. *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn. 2d 107, 177, 744 P.2d 1032 (1987) ("mere receipt of process and actual notice alone do not establish valid service of process"). Furthermore,

3/22/13 RP at 4:18 - 12:16. This finding is unchallenged and therefore established on appeal. See *Nearing v. Golden State Foods Corp.*, 114 Wn. 2d 817, 818, 792 P.2d 500 (1990) (an unchallenged finding is a verity on appeal). Having failed to properly serve VMC and Dr. Nguyen, Ms. Grant precluded the court from acquiring personal jurisdiction. See *Painter*, 37 Wn. App. at 427.

D. The trial court properly dismissed Ms. Grant's action against VMC and Dr. Nguyen.

A court has jurisdiction to determine whether it has jurisdiction. *Griffith v. City of Bellevue*, 130 Wn. 2d 189, 196, 922 P.2d 83, 87 (1996). Having determined that it did not, the trial court had inherent authority on its own motion to dismiss the action. See *Green v. Nichols*, 40 Wn. 2d 661, 663, 245 P.2d 468 (1952) ("We can and should dismiss an appeal on our own motion when the lack of jurisdiction is apparent." – citation omitted); see also *In re Marriage of Morrison*, 26 Wn. App. 571, 575, 613 P.2d 557 (1980) (a trial court may properly dismiss an action for lack of jurisdiction).

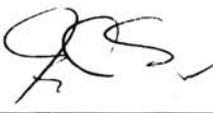
VMC and Dr. Nguyen's limited voluntary appearance did not waive service. See CR 4(d)(5).

V. CONCLUSION

Ms. Grant has shown ability to learn and understand the rules and procedures imposed on civil litigants – she conceded that hers was a conscious *financial* decision not to serve VMC and Dr. Nguyen properly and she knew the *legal* consequences of that decision. 3/22/13 RP at 8:14 – 9:6. It is not surprising, given that knowledge, that she has not raised or argued the service issue in her brief. The trial court properly dismissed her action against VMC and Dr. Nguyen, but this Court need only consider Ms. Grant's surrender of the issue to now dismiss her appeal.

Dated this 16th day of September, 2013.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 16th day of September, 2013, I caused a true and correct copy of the foregoing document, BRIEF OF DEFENDANTS-RESPONDENTS VALLEY MEDICAL CENTER AND TRIET M. NGUYEN, D.O., to be delivered in the manner indicated below to the following counsel of record:

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