COA No. 854313

SUPREME COURT
OF THE STATE OF WASHINGTON

DEBRA LAUDONE,
Appellant,

v.

DAVID and SUSAN LEWIS; and the CITY OF SEATTLE,

Respondents.

PETITION FOR REVIEW

SHAW LEGAL SOLUTIONS
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I. IDENTITY OF PETITIONER

The Petitioner is Debra Laudone (Laudone). Petitioner Debra Laudone was the plaintiff in King County Superior Court Cause No. 21-2-16620-9, and the appellant in Division I Case No. 85431-3-I, Debra Laudone, Appellant v. David and Susan Lewis; City of Seattle, Respondents.

II. CITATION TO COURT OF APPEALS DECISION

Petitioner seeks review of the opinion issued in Division I Case No. 85431-3-I, Debra Laudone, Appellant v. David and Susan Lewis; City of Seattle, Respondents, dated April 15, 2024, hereafter "Opinion" and attached as Appendix A.

III. ISSUES PRESENTED FOR REVIEW

a. Did the Court of Appeals' decision below conflict with the holding of this Court regarding the weight test established in Sheldon v. Fettig to determine if service of process took place at defendant's "usual abode"?

b. Did the Court of Appeals decision below conflict with the holding of the Court of Appeals regarding usual abode and clear and convincing evidence established in Northwick v. Long?

c. Did the Court of Appeals' decision below dilute co-resident service under RCW 4.28.080(16) in cases where there the destruction of the long-standing usual abode creates multiple "temporary residences," leaving no clear usual abode?

IV. STATEMENT OF THE CASE

Debra Laudone fell and injured herself on January 1, 2019, while walking on the sidewalk in front of the home of David and Susan Lewis. (CP 2) Ten days later, on June 10, 2019, the City of Seattle wrote to the Lewises to inform them Laudone made a claim for damages on property for which they were responsible. (CP 61) On July 12, 2019, Laudone's attorney also wrote to the Lewises to inform them of Laudone's claim. (CP 63) The attorney's letter was returned as "unclaimed." (CP 65)

On November 30, 2021, the home where David and Susan Lewis had lived for many years caught fire and was effectively destroyed. (CP 40) Defendants subsequently moved in with Ms. Lewis' sister at 5719 Coniston Rd. NE, Seattle, Washington, while looking for a new home. (CP 23 & CP 41) A month later, the Lewises moved in with a friend in Medina for two additional months while continuing to look for a new home. (CP 23) On March 28, 2022, the Lewises moved into an apartment on 8th Avenue in Seattle. (CP 23) The Lewises have referred to both the Conniston Road location and the Medina location as a "temporary residence." (CP 23)

On December 20, 2021, plaintiff filed suit against Defendants Lewis alleging negligence and seeking damages for her injuries. (CP 1-6) On that same date, Laudone conducted an online search for the residence of David and Susan Lewis using a credit agency locate tool, the result of which was the same

address where Laudone had fallen. (CP 68-69, 71-72) On February 1, 2022, Laudone hired a private investigator to locate the Lewises for service of process. (CP 76) On February 9, 2022, a process server was sent to Lewis' last known address, and it was confirmed the home at that address had been condemned due to a fire and no one resided there. (CP 79) The private investigator reported his own online tracing sources and a department of licensing search produced no listed no new address for the Lewises. (CP 75)

The next method of locating the defendants was to conduct a postal trace. (CP 74-75) The postal trace was returned by the post office on February 17, 2022, listing the Lewis' new address as 5719 Coniston Road NE, Seattle, WA, 98105-2123. (CP 80) On March 1, 2022, a process server hired by Laudone attempted to serve David and Susan Lewis at the Coniston Road address. (CP 8)

The declaration of service dated March 2, 2022, memorializes the substitute service of process as follows:

> That on 3/1/2022 at 12:05 PM at the address of 5719 Coniston Rd NE, Seattle, within King County, WA, the undersigned served the following document(s): Summons on Complaint for Damages; Complaint for Damages in the above entitled action upon David and Susan Lewis, by then and there personally delivering 2 true and correct set(s) of the above documents into the hands of and leaving same with Laurine White, Co-Resident to Both, a person of suitable age and discretion, who is a resident therein.
>
> Physical description of person served: Gender: Female | Skin Color: White | Age: 80 | Height: 5' 5" | Weight: Slim | Hair: White

(CP 8) After receiving notice of service of process, Laudone proceeded with litigating her claims against the Lewises, which resulted in a default judgment. (CP 36-39) Laudone subsequently obtained an updated address for the Lewises and mailed them a copy of the judgment and a notice she intended to file for supplemental proceedings to collect on the judgment. (CP 35) Defendants counsel then appeared and filed a motion to quash service and vacate the judgment. (CP 9 – 44)

The motion to quash service and vacate the judgement was premised on CR 60(b)(5). (CP 9 – 20) Defendants Lewis each provided respective declarations that were relatively identical. (CP 22 – 25, 40 – 44) The content of the declarations was essentially that the Lewises 1) did reside at the address where service took place but left shortly before process was served, and that 2) the co-resident Lorraine White who received substitute service was Susan Lewis' mother, but not of suitable discretion on the date process was served. (CP 22 – 25, 40 – 44) On May 11, 2023, the trial court entered its order granting defendants motion with only the following handwritten statement in the order to support its reasoning:

> Evidence does not show that personal or substitute service of process was properly effected.

(CP 132) Plaintiff Laudone then timely filed an appeal of the trial court's order.

In her appeal, Laudone argued that while sparse, all reasonably discoverable information pointed to the Conniston Road address as Lewis' usual abode. (Ap Brief 28) Laudone further argued that Lewis' self-serving declarations did not rise to the level of clear and convincing evidence that their subsequent temporary residence qualified as their usual abode, because they did not identify any evidence which Laudone could have discovered to locate them for service. (Ap Brief 21)

The Court of Appeals affirmed the trial court's order. (OP at 1) The Court made clear in its opinion that the Conniston Road address lacked sufficient connection to the Lewises to be considered their usual abode, but the Court did not identify what advantage the Lewises subsequent temporary residence had over Conniston Road. (OP at 6)

In each of the cases where this Court and other Courts of Appeal have compared two locations to determine which had

the greater claim to the title "usual abode," it has relied on evidence which would have been reasonably discoverable by a diligent plaintiff seeking service: vehicle registrations, voter records, real property records, driver's license records, and yes, postal traces. Here, the court compared the modest of the Conniston Road address to the complete absence of discoverable evidence of the Medina location and went with the latter.

V. AUTHORITY AND ARGUMENT

A. The Court of Appeals Decision Conflicts with the Decision the Supreme Court Issued in Sheldon v. Fettig.

Appellate review of the trial court's ruling regarding a failure of service of process is jurisdictional and therefore *de novo*. Ahten v. Barnes, 158 Wn. App. 343, 350, 242 P.3d 35 (2010). Orders for vacation of a judgment under CR 60(b) are typically not reversed by an appellate court unless there has been a clear abuse of discretion. Morgan v. Burks, 17 Wn. App. 193, 197,

563 P.2d 1260 (1977).

RCW 4.28.080(16) directs plaintiffs to serve process personally, either on the defendants named in the pleadings or a person of adequate age and discretion who shares the same residence. If a defendant challenges service of process, the plaintiff must establish a *prima facie* case that service has been accomplished. Woodruff v. Spence, 76 Wn. App. 207, 209-210, 883 P.2d 936 (1994). A plaintiff can establish her *prima facie* case by providing a declaration which covers all aspects of the statute, from a process server who demonstrates proper service. State ex rel. Coughlin v. Jenkins, 102 Wn. App. 60, 65, 7 P.3d 818 (2000). A proper declaration from a process server is presumptively correct if it follows the correct form. Lee v. W. Processing Co., 35 Wn. App. 466, 469, 667 P.2d 638 (1983). The minimum requirement for a declaration of service is: "…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(16).

No bright line rule exists when evaluating substitute service of process; a case-by-case determination is required by the "fact-specific requirements of the statute." Wichert v. Caldwell, 117 Wash.2d 148, 152, 812 P.2d 858 (1991). "The statute governing substitute service of process is to be liberally construed in order to effectuate service and uphold the jurisdiction of the court… This form of service of process is designed to allow injured parties *a reasonable means* to serve defendants in a manner reasonably calculated to accomplish notice." Gross v. Evert-Rosenberg, 85 Wn. App. 539, 933 P.2d 439 (1997) (emphasis added).

The Washington State Supreme Court looked at the concept of "usual abode" in depth in 1996. Sheldon v. Fettig, 129 Wn.2d 601, 919 P.2d 1209 (1996). The court's analysis focused on

what Ms. Fettig represented to the State of Washington about her residence:

> Upon moving back into her parents' home, she changed her address with the post office giving her parents' address as her own and continued having all her mail sent there for at least seven weeks after moving to Chicago. Two weeks after Ms. Fettig went to Chicago, she registered to vote in Washington swearing that she was a Washington resident living at her parents' address. Ms. Fettig's car was registered at the same address. When she moved to Chicago she left her car with her father and gave him power of attorney to sell it. The address on the car insurance was changed to her parents' address and kept valid until the car was sold. When the car was sold, one and a half months prior to service of process, the bill of sale filed with the Department of Licensing listed the Seattle Fettig home as Ms. Fettig's address.

Sheldon, 129 Wn.2d at 604-605. Ms. Fettig also kept her Washington State Driver's License and her Washington State Voter Registration. Further, no evidence was given to indicate where Ms. Fettig was on the date the documents were served. The trial court denied the defendant's motion to rule substitute service on the co-resident brother was improper, finding Ms. Fettig maintained two separate abodes. Id. at 606.

In affirming the decision of the trial court that service was proper, the Supreme Court focused on the underlying purpose of the statute:

> "We focused on the 'spirit and intent of the statute' rather than 'the literal letter of the Law' and stated that the term should be defined so as to uphold the underlying purpose of the statute. We held the dual purpose of the statute is to (1) provide means to serve defendants in a fashion reasonably calculated to accomplish notice and (2) allow injured parties a reasonable means to serve defendants."

Id. at 608. The court quoted favorably a portion of the Court of Appeals' opinion: "The term 'usual place of abode' is used in the statute because it is the place at which the defendant is *most likely* to receive notice of the pendency of a suit." Id. at 610.

Since Fettig, Washington courts have relied on the weight test this Court laid out in that case to scrutinize the evidence presented by a defendant challenging service. The distinction most courts find lies in the comparison of the location where service took place with the location the defendants claim is the "real" usual abode. This is where the Court of Appeals in this

matter lost the plot. The Court went to considerable lengths to disqualify the Conniston Road address and the evidence Laudone provided to support that designation, but its evaluation of the Lewises subsequent temporary residence in Medina never went beyond the concession that they were staying there at the time of service; not "living" there, not making that there home, but temporarily using the space while they looked for a new home. The irony is that the Lewises' description of their temporary residence in Medina matches that of the Court of Appeals' description of the Conniston Road address.

B. The Court of Appeals' decision conflicts with its own decision in Northwick v. Long because it requires defendants residence at the location of service as opposed to such residence being one of many factors, and it fails to identify how plaintiff could have discovered defendants subsequent move from the location where service took place.

It is the burden of the party challenging service to show by "clear and convincing evidence" service was improper. Woodruff v. Spence, 88 Wn. App. 565, 945 P.2d 745 (1997),

citing Miebach v. Colasurdo, 35 Wn. App. 803, 808, 670P.2d 276 (1983). Clear and convincing evidence means "[T]hat the element must be proved by evidence that carries greater weight and is more convincing than a preponderance of evidence. Clear, cogent, and convincing evidence exists when occurrence of the element has been shown by the evidence to be highly probable." WPI 165.05 (2021).

Washington courts have found defendants' presentations of clear and convincing evidence lacking when no credible evidence of a different usual abode has been included. State ex rel. Coughlin v. Jenkins, 102 Wn. App. 60, 7 P.3d 818 (2000) (Affidavits from mother and ex-wife that defendant did not live at the place where co-resident service took place were not clear and convincing evidence of improper service of process when compared to mail from that address which demonstrated he did live there); Woodruff v. Spence, 88 Wn. App. 565, 945 P .2d 745 (1997) (Defendant failed to establish service was irregular,

even though defendant did establish he was not at the residence on the date of service and denied ever actually receiving the documents served).

Cases where the courts have found clear and convincing evidence of improper service are when defendants present substantial evidence, that would have been available to a reasonably diligent plaintiff. Vukich v. Anderson, 97 Wn. App. 684, 985 P.2d 952 (1999) (Defendant's evidence of other residence included a lease, a tenant's statement, a California bank account, a California home purchase, and mail forwarding); Streeter-Dybdhal v. Nguyet Huynh, 157 Wn. App. 408, 236 P.3d 986 (2010) (Defendant's evidence of other residence included property records showing she purchased a different residence almost eight months before service was attempted at the old address).

Defendants' evidence here failed to rise to the level established

in cases where motions challenging service were successful. The only evidence Defendants Lewis presented was their own self-serving declarations. In those declarations, Defendants Lewis admitted they were residents of the Conniston Road address for a short time after their prior residence was damaged by fire. They also admitted that the subject served was Ms. Lewis' mother. While it is specific regarding the address where the Lewises moved after Conniston Road, they failed to cite any publicly available documentation or information that would tend to show the establishment of a new residence. The Lewises did include a copy of a lease document showing their occupation of a new residence dated three weeks after service of process took place at the Conniston Road address, but they did not provide any reliable evidence they updated that address with the postal service or any other publicly verifiable entity prior to leaving Conniston Road. When the weight test is applied to these two locations, the Conniston Road address is much more the "center of domestic activity" than the Medina

location from the standpoint of anyone conducting public searches for their residence.

In Northwick v. Long, Division I analyzed a matter which is similar to the subject case. Northwick v. Long, 192 Wn. App. 256, 364 P.3d 1067 (2015). The court in that matter compared the paucity of the defendant's proof, a declaration from the co-resident served, with that of the plaintiff. As the plaintiff did in that matter, Laudone relied on a credit reporting agency location report and a postal trace. When weighing both, the court in Northwick found that the declaration presented by defense did not rise to the level of clear and convincing evidence, and found substitute service of process accomplished even though the defendant had moved away to college and was *not residing in the home* at the time of service. Id. at 264 (emphasis added).

The Court of Appeals' heavy reliance in the subject decision,

that the Lewises were not residing at Conniston Road at the time of service, weighs less when you consider there was no reasonably discoverable evidence that they were in Medina at the time of service. As the Northwick decision bears out, actual residence at the location of service is a factor, but does not disqualify another location with more consequential evidence as the proper location for service.

C. There is substantial public interest in providing expanded means for persons to serve process on those who have nothing but temporary residences.

This Court must devise a framework to apply to service of process on those who do not reside in locations long enough to be considered their usual abode. Here, the Lewises were forced out of their usual abode by a devastating fire, but that required multiple temporary residences before they were able to establish a new usual abode. Why can Laudone not rely on the postal trace and other evidence like its proximity to the former abode and the familial connection for service of process, when that was quite literally the only thing connecting the Lewises to

any residence during that "temporary" time?

The Court of Appeals' focus on the actual place of residence at the time of service over the only residence any diligent plaintiff could find is understandable given the lack of direction from the Court following Sheldon v. Fettig. Strangely enough, the Court of Appeals never indicated where the Lewises could have been served. To find the Conniston Road address inadequate, there had to have been one which was adequate for service, and the Medina location was equally temporary. Laudone requests that this Court examine how parties seeking to perform service of process must do so when there is no location which rises to the level of usual abode. Should persons be able to rely on less established evidence when the defendants themselves have not established a new usual abode? Laudone would argue that they should.

CONCLUSION

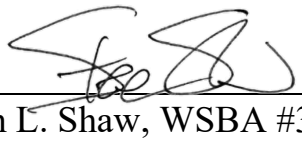
At its core, this matter turns to whether this Court expects plaintiffs to ever be able to rely on substitute service of process. It is accepted that when one moves to a new area, some connection with the new location must be made to establish residency. In the matter before this Court, the Court of Appeals only required the defendants to sleep at a new address or be in transit to a new address. No utility company billing, no voter registration roll, no postal service record, nothing which could be publicly discovered was generated to establish any change to Defendants Lewis' residency status, except where they were physically located.

Ms. Laudone established a *prima facie* case for substitute service of process pursuant to RCW 4.28.080(16). The burden was then upon Defendants Lewis to establish with clear and convincing evidence they lived somewhere other than the Coniston Street address. They chose to rely on self-serving declarations, which provided no publicly accessible method for

locating them during the period for serving process. Ms. Laudone respectfully requests this Court accept review of the decision entered by the Court of Appeals in this matter.

DATED this 14th day of May, 2024.

[Appellant certifies the number of words contained in this petition for review is 3286.]



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CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing document as follows:

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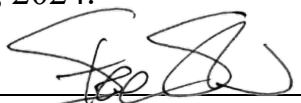
DATED: May 14, 2024.



Steven L. Shaw

APPENDIX A

FILED
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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DEBRA LAUDONE, Appellant, v. DAVID AND SUSAN LEWIS, and the marital community composed thereof, Respondents, and CITY OF SEATTLE, Defendant.[†]	No. 85431-3-I DIVISION ONE UNPUBLISHED OPINION

DÍAZ, J. — Debra Laudone claims she was injured outside the home of David and Susan Lewis. Prior to Laudone filing suit, a fire destroyed the Lewises' home. Rather than personally serving them, Laudone attempted substitute service at a relative's home where the Lewises briefly had stayed and thereby obtained a default judgment. The Lewises then challenged service and the superior court vacated the default judgment under CR 60(b)(5). Laudone now appeals, arguing CR 60 relief was improper, alongside other procedural irregularities. We affirm.

[†] The City of Seattle is not participating in this appeal.

I. BACKGROUND

Laudone alleges she fell in January 2019 on an uneven sidewalk adjacent to the Lewises' home (hereinafter the "West Highland Drive address" or "home"). In November 2021, before Laudone filed suit, a fire destroyed their home. The next month, the Lewises stayed at the home of Susan Lewis' sister (hereinafter the "Coniston Road address") for about three weeks. Sometime that month (December 2021), the Lewises moved to a friend's guesthouse (hereinafter the "Medina" address). By April 2022, the Lewises had moved into their new long-term residence (hereinafter the "Eighth Avenue" address).

On December 20, 2021, Laudone filed a complaint in the superior court against inter alia the Lewises. On February 9, 2022, a process server went to the West Highland Drive address and discovered it was unoccupied and condemned due to the fire. Laudone then obtained a postal trace indicating the Lewises were forwarding mail to the Coniston Road address. On March 1, 2022, a process server attempted substitute service at the Coniston Road address. As will be elaborated on later, the declaration of service states the complaint and summons were delivered to Laurine White, who would later be revealed to be the elderly mother of Susan Lewis. There is no claim that the Lewises were ever personally served. The foregoing facts are undisputed.

On January 13, 2023, the superior court entered a default judgment for $806,836.80 and $2,441.23 in costs. On March 28, 2023, Laudone mailed the default judgment to the Eighth Avenue address. The Lewises claim this letter was their first notice of Laudone's suit. In April 2023, the Lewises moved to vacate the

default judgment and to quash service of process under CR 60(b)(5) for insufficient service. In May 2023, the superior court granted the Lewises' motion. The court explained that the "[e]vidence does not show that personal or substitute service of process was properly effected." Laudone timely appeals.

II. ANALYSIS

A. Sufficiency of Substitute Service

A "court may relieve a party . . . from a final judgment, order, or proceeding" if "[t]he judgment is void." CR 60(b)(5). "A default judgment against a party is void if the court did not have personal jurisdiction over that party." Delex Inc. v. Sukhoi Civil Aircraft Co., 193 Wn. App. 464, 468, 372 P.3d 797 (2016). "A court does not have personal jurisdiction over a party if service of the summons and complaint was improper." Id. "CR 60(b)(5) mandates the court vacate a void judgment upon motion of a party, irrespective of the lapse of time." Persinger v. Persinger, 188 Wn. App. 606, 609, 355 P.3d 291 (2015).

"Generally an appellate court reviews decisions to grant or deny motions to vacate under an abuse of discretion standard." Soratsavong v. Haskell, 133 Wn. App. 77, 84, 134 P.3d 1172 (2006). However, "'[b]ecause courts have a mandatory, nondiscretionary duty to vacate void judgments, a trial court's decision to grant or deny a CR 60(b) motion to vacate a default judgment for want of jurisdiction is reviewed de novo.'" Ahten v. Barnes, 158 Wn. App. 343, 350, 242 P.3d 35 (2010). We also review de novo whether a judgment is void. Castellon v. Rodriguez, 4 Wn. App. 2d 8, 14, 418 P.3d 804 (2018).

"Service of process must comply with constitutional, statutory, and court rule requirements." Walker v. Orkin, LLC, 10 Wn. App. 2d 565, 568, 448 P.3d 815 (2019). "The plaintiff bears the initial burden to prove a prima facie case of sufficient service." Scanlan v. Townsend, 181 Wn.2d 838, 847 336 P.3d 1155 (2014). Then, "[t]he party challenging the service of process must demonstrate by clear and convincing evidence[1] that the service was improper." Id.

The present appeal only concerns statutory service requirements, specifically those for substitute service contained within RCW 4.28.080.

> Service made in the modes provided in this section is personal service. The summons shall 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(16) (emphasis added). The term "usual abode" means "a *center of one's domestic activity* such that service left with a family member is reasonably calculated to come to one's attention within the statutory period for a defendant to appear." Matter of Dependency of G.M.W., 24 Wn. App. 2d 96, 119, 519 P.3d 272 (2022) (emphasis added). Further, the served address must have been a center of the party's domestic activity at the "critical time" of service. Blankenship v. Kaldor, 114 Wn. App. 312, 316, 57 P.3d 295 (2002).

Our Supreme Court has held "usual abode" should be "liberally construed to effectuate service and uphold jurisdiction of the court." Sheldon v. Fettig, 129

[1] "Clear, cogent, and convincing evidence is a quantum of proof that is less than 'beyond a reasonable doubt,' but more than a mere 'preponderance.'" Tiger Oil Corp v. Taking County, 158 Wn. App. 553, 562, 242 P.3d 936 (2010). Specifically, "[i]t is the quantum of evidence sufficient to convince the fact finder that the fact in issue is 'highly probable.'" Id.

Wn.2d 601, 609, 919 P.2d 1209 (1996) (citing RCW 1.12.010 & CR 1).[2] However, our Supreme Court has also stated that the facts in Sheldon represent the "outer boundaries" of this liberal construction principle. Salts v. Estes, 133 Wn.2d 160, 166, 943 P.2d 275 (1997).

The court in Sheldon considered two candidates for the defendant's "house of usual abode," one in Chicago and the other at her family's home in Seattle. Sheldon, 129 Wn.2d at 606, 612. The defendant primarily lived in Chicago where she was studying to become a flight attendant. Id. at 605. However, the court determined that she still "used the [Seattle] family home for so many of the indicia of one's center of domestic activity" that "it [was] fair to conclude it is a center of her domestic activity." Id. at 610 (including that "[s]he told the government to find her there if necessary for voting purposes, on her car registration, on the car's bill of sale, and on her speeding ticket. She told her car insurer that that was her address. She returned home frequently when not in flight and was even there when Ms. Sheldon's attorney called."). Thus, the court held that substitute service was proper at either location as "a defendant may maintain more than one house of usual abode if each is a center of domestic activity." Id. at 612.

By contrast, this court considered a case where a defendant had moved and leased her home in Federal Way to her daughter before the plaintiff attempted service. Gross v. Evert-Rosenberg, 85 Wn. App. 539, 541, 933 P.2d 439 (1997). This court held that "[a]lthough the tenants in the old home were related to [the

[2] The court in Sheldon examined RCW 4.28.080(15), which was the predecessor to RCW 4.28.080(16). Sheldon, 129 Wn.2d at 609; LAWS OF 2015 ch. 15 § 2. The language in both provisions is identical.

defendant], they had a completely different center of domestic activity." Id. at 543. We added that, "[u]nlike the facts in Sheldon, . . . [the defendant] moved to a new home, retaining ownership of the Federal Way house but actually residing in another abode." Id. As such, service at the Federal Way address was improper. Id.

Here, the Lewises each submitted declarations, which were unrebutted, stating they had moved from the Coniston Road address in December 2021, months before the substitute service in March 2022. Importantly, the owner of the Medina guesthouse signed their own declaration confirming the Lewises had moved to the guesthouse in December 2021. Indeed, Laudone grants on appeal that she was "in total agreement that respondents were living at the Medina residence at the time of service. That aspect of their declarations is clear and unrebutted, and conceded." Together, this is sufficient evidence that the residence at the Coniston Road address was not the center of the Lewises' domestic activity at the "critical time." Blankenship, 114 Wn. App. at 316.

Even so, Laudone argues the Lewises failed to rebut her evidence by clear and convincing evidence because of two countervailing pieces of evidence. The first piece of evidence she offers is the declaration of the process server, which states

> on 3/1/2022 at 12:05 PM at the address of [Coniston Road], Seattle, within King County, WA, the undersigned duly served the following document(s): Summons and Complaint for Damages: Complaint for Damages in the above titled action upon David and Susan Lewis, by then and there personally delivering 2 true and correct set(s) of the above documents into the hands of and leaving the same with Laurine White, *Co-Resident* to Both a person of suitable age and discretion, who is a resident therein.

The second piece of evidence Laudone offers is the postal trace result, listing the Coniston Road location as the Lewises' mailing address.[3]

Taking the second first, we have held that a postal trace alone is not determinative of the sufficiency of service, as Laudone suggests. In fact, "the use of a particular address for a limited purpose is not a critical factor in determining a center of domestic activity." Streeter-Dybdahl v. Nguyet Huynh, 157 Wn. App. 408, 414, 236 P.3d 986 (2010) (where the only evidence of defendant's residence was that the address in question was registered with the Department of Licensing). This court also noted a defendant's "mail is easily forwarded" as an "illustration[] highlight[ing] the ambiguous nature" of evidence where "other reasonable explanations are readily apparent." Vukich v. Anderson, 97 Wn. App. 684, 690-91, 985 P.2d 952 (1999). In other words, a postal trace alone, as here, may be ambiguous evidence of a party's usual abode.

Laudone's reliance on the declaration of the process server is also unavailing. Laudone asserts that the declaration shows that White "identified herself as a co-resident of defendants." That is slightly but importantly inaccurate. In fact, the declaration of service fails to indicate White affirmatively asserted she was a "co-resident" of the Lewises. Instead, the statement that White and the Lewises are "co-resident[s]" was presented in a conclusory manner, with no explanation as to the origin of that assertion.

[3] Laudone also urges us to consider her due diligence in finding the Lewises' new address. However, as previously stated by this court, "the crux of the issue is the 'usual mailing address,' not due diligence." Goettemoeller v. Twist, 161 Wn. App. 103, 110, 253 P.3d 405 (2011).

Ultimately, the present appeal is also more similar to Gross than Sheldon. First, the Lewises' attachment to the Coniston Road address lacked the numerous indicia of domestic activity seen in Sheldon. 129 Wn.2d at 610 (including voting registration, car registration, insurance, and frequent ongoing visits at the time of service). Instead, the Lewises' only connections to the Coniston Road address was a short emergency stay with their relatives, and the simple fact that the Lewises temporarily forwarded their mail there, but for a duration of time unidentified in the record.

Second, the Lewises have a weaker connection to the Coniston Road address than the connections which were found to be insufficient in Gross. 85 Wn. App. at 541. There, the defendant at least owned the property where service was attempted, which it leased it to relatives. Id. There is nothing in the record suggesting Lewises had any ownership interest in the Coniston Road address. And, even if they had once owned the Coniston Road property, we have held that, where a defendant "no longer had an ownership interest in that house at that time, [that] demonstrate[es] even less of a connection to the residence than in Gross." Streeter-Dybdahl, 157 Wn. App. at 414.[4]

[4] The present case is also distinguishable from Northwick v. Long, 192 Wn. App. 256, 364 P.3d 1067 (2015). There, the defendant's father submitted a declaration claiming the defendant did not live at the serviced address. Id. at 264. However, this evidence was undermined by the process server's deposition testimony stating the father had explicitly confirmed twice the defendant lived at the serviced address. Id. In the present appeal, there is no such deposition or other testimony directly contradicting the Lewises' declarations. As already discussed, the postal trace alone was ambiguous and the declaration of service does not indicate White affirmatively asserted she was a "co-resident" of the Lewises.

From the above, the Lewises' evidence and "statements are internally consistent and directly refute [Laudone's] evidence. In other words it is clear and convincing." Vukich, 97 Wn. App. at 690. As such, we hold the superior court properly vacated the default judgment.[5]

B. Evidentiary Hearing and Findings

Laudone next argues the superior court abused its discretion by not holding a hearing or permitting oral argument on the motion to vacate. Indeed, "[a] court may abuse its discretion by failing to hold an evidentiary hearing when affidavits present an issue of fact whose resolution requires a determination of witness credibility." Woodruff v. Spence, 76 Wn. App. 207, 210, 883 P.2d 936 (1994).

Laudone, however, never requested a hearing and we have previously held that a party that "made no request to present live testimony . . . waived his argument that the fact dispute regarding service could not be resolved on conflicting affidavits." Leen v. Demopolis, 62 Wn. App. 473, 478-79, 815 P.2d 269 (1991). Although so challenged by the Lewises, Laudone offered no counter argument in reply.

Even if Laudone had requested a hearing, her invocation of Woodruff and Northwick is unpersuasive. As indicated by the permissive language of both cases, the decision to hold oral argument was squarely within the court's discretion. Woodruff, 76 Wn. App. at 210 ("The court, in its discretion, may direct

[5] The parties also briefly discuss whether White was a person of suitable age and discretion then resident at the Coniston Road address despite her age and health. As we conclude that address was not the Lewises' place of usual abode, we need not address this argument.

that an issue raised by motion be heard on oral testimony if that is necessary for a just determination."); Northwick v. Long, 192 Wn. App. 256, 267, 364 P.3d 1067 (2015) (same). Additionally, the court rule governing procedures for vacating judgments merely requires a party file a motion supported by an affidavit with no mention of oral argument. CR 60(e)(1).

Laudone also fails to explain, given all the undisputed facts in the Lewises' favor, why it was necessary for the court to weigh in-court testimony, witness credibility, or other competing evidence per Woodruff, 76 Wn. App. at 210. Indeed, White had passed by the time the court heard the motion to vacate and, with her, the only possibly contested factual question as to what she may have told the process server. And finally, Laudone's claim that the court's decision was made with a "total lack of reliable evidence" is simply inconsistent with the earlier discussed record, declarations, and Laudone's own concessions.[6]

As such, we hold that the court did not abuse its discretion by its decision not to hold a hearing or oral argument on the motion to vacate.

[6] Laudone also argues that the court erred by not issuing written findings. We need not reach this argument as "[w]hen the findings and conclusions are missing or are defective, the proper remedy is to remand for entry of adequate ones *unless the appellate court is persuaded that sufficient basis for review is present in the record*." Columbia State Bank v. Invicta Law Grp. PLLC, 199 Wn. App. 306, 323, 402 P.3d 330 (2017) (emphasis added). Here, we are so persuaded.

III. CONCLUSION

For the reasons above, we affirm the superior court's order vacating the default judgment.

Díaz, J.

WE CONCUR:

Chung, J.

Dwyer, J.

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