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Division II  
State of Washington  
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STATE OF WASHINGTON  
3/20/2025  
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Case #: 1039905

No. 59455-2-II  
COURT OF APPEALS  
DIVISION II OF THE STATE OF WASHINGTON

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TREENA MILLET,

Appellant,

v.

OLYMPIC MEDICAL CENTER AND DR. ALEXA YAGER, DO,

Respondents.

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PETITION FOR REVIEW TO SUPREME COURT

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IDENTIFY OF PETITIONER

The Petitioner is Treena Millet, the Appellant  
below.

COURT OF APPEALS DECISION

Petitioner seeks review of the attached, unpublished decision of the Court of Appeals, filed February 19, 2025.

## ISSUES PRESENTED FOR REVIEW

Issue One: Does RCW 4.28.090 (9) --or any other statute--dictate appropriate service of process upon **Public Hospital Districts**?

Issue Two: In the absence of any statutory guideline for service of process upon a Public Hospital District, should undisputed **actual receipt** of the Summons and Complaint negate the defense of “improper service”?

Issue Three: Does a Defendant waive the defense of “improper service” where before answering, defense counsel files a jury demand and e-service agreement?

Issue Three: Is service upon the CEO of a Public Hospital District's sister organization, which organization's **sole mission** is to fundraise for the Public Hospital District itself, effectively service upon a "managing agent", when the original Summons and Complaint were in fact delivered to the Public Hospital District that very day?



### STATEMENT OF THE CASE

1. “Olympic Medical Center” is the d/b/a of Public Hospital District No. 2 of Clallam County. CP 6.
2. By separate letters dated July 18, 2022, Appellant’s counsel put both Respondents on notice of a claim for damages stemming from treatment by Respondent Yager “beginning on or about July 21, 2019” and continuing thereafter”. CP 13-17. The letter demanded mediation, thereby extending the Statute of Limitations to at least July 21, 2023. Id.
3. By letter dated August 15<sup>th</sup>, 2022, Respondent OMC’s Counsel Scott Biemer acknowledged the claim and asked that Appellant sign medical stipulations so that counsel could complete “independent review”. CP 19. Respondent’s counsel did obtain records over the next several months and shared them with Plaintiff’s counsel.
4. However, no settlement negotiations occurred.

5. On July 9<sup>th</sup>, 2023, Appellant's counsel completed the required Statutory Claim Form found on OMC's web site, mailed it to the address on the form, and emailed a copy of it to Mr. Biemer. Williams Declaration, CP 7 The claim form asserts the "failure to timely identify and treat [a] developing infection/compartment syndrome" and directed Olympic to its own records for documentation. Id. The next morning Mr. Biemer emailed back, acknowledging counsel's email and thanking him "for the heads up". CP 21. Under RCW 4.96.020, the claim form tolled the Statute of Limitations against both defendants another 67 days, until as least September 26<sup>th</sup>, 2023.

6. There being no formal response to the claim, suit was filed September 22<sup>nd</sup>, 2023. CP 7. As did the statutory claim form, the Complaint alleged a failure to "timely identify and treat a developing infection".

Under RCW 4.16.170, counsel had 90 days to effect service upon one of the defendants, i.e., until December 21<sup>st</sup>, 2023.

7. On November 16<sup>th</sup>, 2023, process server Emily Carpenter delivered the Summons and Complaint to Mr. Jeremy Gilcrest who apparently is the Chief Operations Office of “Olympic Medical Center Foundation” (“OMCF”). According to Ms. Carpenter’s declaration,

“Mr. Gilcrest had ample opportunity to review the documents and if he had told me he was not authorized to accept the documents, I would not have left them with him”.

CP 32-35.

8. Respondent acknowledges that “OMCF donates money and volunteer services to OMC to help improve the lives of

patents at OMC. More information about OMCF can be found at <https://www.omcf.org.about>.” CP 50.

10 OMC “received” a copy of the Summons and Complaint “from the Olympic Medical Center Foundation” the same day it was served on Mr. Gilchrist. CP 50. OMC is located at 939 Caroline St. in Port Angeles. Id. OMCF is located at 1015 Georgiana At., about three blocks away. Id.

11. On November 29<sup>th</sup>, 2023, OMC filed its jury demand. CP 81-82.

12. OMC filed its Answer December 7<sup>th</sup>, 2023, about two weeks before the statute of limitations was to expire. CP 72-77.

13. In response to the Complaint, which alleged failure to timely identify and treat an infection, the Answer pled as affirmative defenses (among others):

Failure to state a claim upon which relief could be granted;

Failure to mitigate damages;

(Unidentified) “empty chair”;

That Appellant did “voluntarily, knowingly and expressly consent to the situation that caused her harm, if any”:

Appellant “failed to state an informed consent Claim against [Respondent]” because Respondent “has no independent duty to obtain informed consent” (The Complaint did not plead an informed consent claim against either Defendant);

Failure to file within the applicable statute of limitations “or” properly serve defendants;

Assumption of risk with “knowledge of willful, wanton and reckless behavior of Defendant.”

CP 72.77.

14. By email dated February 15<sup>th</sup>, 2024—

almost two months after the statute of limitation expired

--- Mr. Biemer requested a copy of the proof of service be sent to him and, after receiving it, promptly brought a Motion to Dismiss claiming insufficient service,

since Olympic Medical Center Foundation is a “separate entity” from Olympic Medical Center. CP 6-7.

15. Paragraph 5 of the Motion to Dismiss specifically **admitted that OMC had actually “received”** the Complaint, on the day it was served upon Mr. Gilchrist. CP 64-69.

16. The motion didn’t say exactly how OMC “received” the Complaint from OMCF. CP 64-69.

17. The trial court granted the Motion on March 22, 2024. This appeal followed on April 8, 2024.

18. The Court of Appeal affirmed by unpublished opinion on February 19, 2025.

## ARGUMENT FOR REVIEW

### **Review Should Be Accepted To Clarify Appropriate Service Upon A Public Hospital District.**

Appellant and Respondent agree that there is no statutory process for service upon a Public Hospital District (“PHD”). The Court of Appeals held to the contrary, deciding that because RCW 70.44.010 refers to PHD’s as “municipal **corporations**”, RCW 4.28.080 (9) therefore applies, to allow service upon:

“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.”

But there are at least three distinct types of “corporations” authorized by the Legislature, other than Public Hospital Districts---“traditional” corporations under RCW 23A, “non-profit” corporations under RCW 24.03A, and “Nonprofit/Miscellaneous” corporations under RCW. 24.06. **Municipal** corporations are completely different from each of those:

A municipal corporation is a body politic established by law as an agency of the state---partly to assist in the civil government of the country, but chiefly to regulate and administer the local and internal affairs of the incorporated city, town, or district. *Columbia Irr. Dist. V. Benton County*, 149 Wn. 234, 235, 270 P.2d 813 (1928). It has neither existence nor power apart from its creator, the legislature, except such rights as may be granted to municipal corporations by the state constitution.

Lauterbach v. Centralia, 49 Wn.2d 550, 554, 304 P.2d 656 (1956).



PHD's are not "companies", and are created by a vote of the people, not by articles of incorporation and issuance of stock. Under Article 7, Section 1 of the State Constitution, the "property" of true "municipal corporations" is specifically exempted from taxation by the State.

More pertinently here, since service of process is the issue, municipal corporations in general and PHD's in particular **aren't required to have "registered agents"**, upon whom service can be efficiently accomplished, as are "traditional" corporations, by RCW 23B.05.010, RCW 24.03A.110, and RCW 24.06.050 respectively.

The original version of RCW 4.28.080 (9) was first enacted in 1893, 62 years before the Legislature authorized Public Hospital Districts in 1945 with the passage of RCW 70.44.010. It seems extremely unlikely

that RCW 4.28.080 (9) was intended to apply to yet-to-exist entities.

Service upon Public Hospital Districts might logically be added to RCW 4.28.080 (3), which speaks to service upon a “school or fire district”, but the statute was never amended to do so.

For now, there simply isn’t any statutorily defined method of serving a Public Hospital District.

Until there is, Appellant respectfully suggests that **actual receipt of the Summons and Complaint** by a Public Hospital District –which Respondent admits to here--should negate any defense of “improper service”.

There are at least 57 Public Hospital Districts in the State, serving many thousands of patients. There is a strong public interest in this Court defining adequate service.

Review should be accepted to hold that the defense of “improper service” is waived where Defense Counsel (1) files a jury demand and circulates an e-service agreement, THEN (2) pleads the defense without investigation, THEN (3) still doesn’t investigate the defense until the statute of limitations expires.

Acting in a manner inconsistent with asserting the defense of “improper service” can serve to waive it. Lybert v. Grant County, 141 Wn.2d 29, 39, 1 P.3<sup>rd</sup> 1124 (2000). Here, Respondent did so by circulating an e-service agreement and filing a jury demand **before filing its Answer**.

Moreover, as is standard practice, the Respondent’s Answer “shotgunned” a litany of **other** affirmative defenses, the vast majority of which obviously didn’t apply to the facts of this case. This very common practice is tolerated on the theory that virtually all possible defenses must be pled to “preserve” them “pending investigation”. Indeed, the Court of Appeals

characterized the situation as OMC having “filed an Answer preserving the defense of insufficient service”.

Such “shotgun” pleading of affirmative defenses is actually a direct violation of CR 11, which states:

The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstance’. (emphasis added)

If anything, including the allegation as an affirmative defense that the Appellant either failed to file timely “OR” failed to serve properly, along with a plethora of obviously inapplicable “defenses”, is evidence that Respondent **hadn’t** investigated the defense and **wasn’t** taking it seriously.

Adequacy of service of process can be investigated with a phone call or email to one’s client or, as here, to Plaintiff’s counsel. Indeed, this can be done before defense counsel ever

formally appears, let alone files an Answer. By the time of Respondent's "shotgun" pleading of the affirmative defense, counsel had acted inconsistently with pursuing "improper service" as a defense.

**Review should be accepted to hold that service upon Respondent's sister organization, which exists solely to serve the financial interests of Respondent, and which resulted in prompt delivery to and actual receipt by the Respondent is effective service**

Even if RCW4.28.090 (9) applies, this Court has liberally construed the term "managing agent". Spencer v. Franklin Hills Health Spokane LLC, 3Wn.3<sup>rd</sup> 165, 548 P..3d 193 (2024).

Here, though a "separate entity", Olympic Center Foundation exists solely to financially benefit the Respondent.

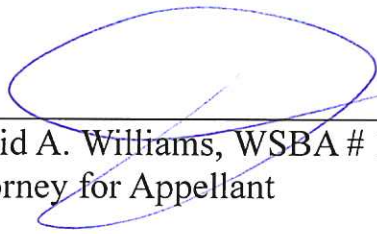
CONCLUSION

Appellant requests review.

Respectfully submitted this 20 day of March, 2025

*I certify that this brief produced using word processing software contains 1893 words in compliance with RAP 18.17, exclusive of the title sheet, table of contents, table of authorities, this certification of compliance, certificate*

*of service, and signature blocks as calculated by the word processing software used to prepare this motion*

By:   
David A. Williams, WSBA # 12010  
Attorney for Appellant

February 19, 2025

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**  
**DIVISION II**

TREENA MILLETT,

Appellant,

v.

OLYMPIC MEDICAL CENTER and DR.  
ALEXA YAGER, D.O.,

Respondents.

No. 59455-2-II

UNPUBLISHED OPINION

VELJACIC, A.C.J. — Treena Millett appeals the trial court’s dismissal of her medical malpractice claim on summary judgment. Millett argues her service of Olympic Medical Center (OMC) was sufficient, and even if it was not, OMC waived the defense of insufficient service. Finding no error, we affirm.

**FACTS**

In 2019, Millett received medical care from Dr. Alexa Yager at OMC. In 2022, Millett’s counsel sent letters to Yager and OMC demanding mediation for negligent treatment that occurred “on or about July 21, 2019 and continuing thereafter.” Clerk’s Papers (CP) at 14-15. The letters were addressed to “939 Caroline Street, Port Angeles, WA 98362.” CP at 14-15. OMC’s counsel acknowledged receipt of the letter and requested authorization to access Millett’s medical records. On July 9, 2023, Millett’s counsel completed the statutory claim form on OMC’s website and mailed it to OMC at 939 Caroline Street, Port Angeles, WA 98362 and e-mailed it to Scott Beimer,



OMC's counsel. Millett's counsel stated, "the [statute of limitations] is arriving and I'm going to send this 'formal' claim to OMC." CP at 21. Beimer responded, "[u]nderstood, thanks for the heads up." CP at 21.

On September 22, 2023, Millett filed a complaint against Yager and OMC, a hospital district. Millett alleged that Yager, who worked for OMC, failed to timely identify and treat an infection.

On November 16, 2023, process server Emily Carpenter served a copy of the summons and complaint on Jeremy Gilchrist, the chief operation officer at Olympic Medical Center Foundation (OMCF), at "1015 Georgiana St., Port Angeles, WA 98362." CP at 35. OMC is located at 939 Caroline Street in Port Angeles. It is undisputed that OMCF and OMC are separate legal entities.

In her declaration, Carpenter stated she was asked to serve Bruce Skinner. Skinner was the executive director of OMCF. Carpenter's return of service stated Skinner was at 1015 Georgiana Street. Carpenter stated that Gilchrist indicated that Skinner was not present, but that he "would accept service of the documents." CP at 32. According to Carpenter, Gilchrist "had ample opportunity to review the documents and if he had told me that he was not authorized to accept the documents, I would not have left them with him." CP at 32.

Gilchrist stated in his declaration that he told Carpenter he could accept the documents for Skinner but explained that OMCF and OMC were separate entities. Gilchrist also stated he "never told [Carpenter] that [he] could accept service for OMC." CP at 99. Gilchrist's declaration also stated that Skinner was "not authorized to accept service for OMC." CP at 93.

Scott Beimer, counsel for OMC, stated in his declaration that "[o]n November 16, 2023, OMC received a copy of the complaint from [OMCF]." CP at 37.



On November 28, OMC filed a notice of appearance which stated it did not waive any defenses including “[i]nsufficiency of service of process.” CP at 113. The next day, OMC filed a jury demand.

On December 7, OMC filed an answer to Millett’s complaint, asserting affirmative defenses including the “[f]ailure to file within [the] statute of limitations or properly serve defendants.” CP at 75.

On February 15, 2024, OMC requested by e-mail a copy of the declaration of service. Then, on February 23, OMC filed a motion to dismiss under CR 56 for, among other reasons, failure to properly serve OMC. Yager joined in the motion.

The trial court dismissed Millett’s claims against both OMC and Yager on summary judgement.

Millett appeals.

## ANALYSIS

### I. CLAIM AGAINST YAGER

As an initial matter, while Millett appeals from the order that dismissed the medical malpractice claim against both OMC and Yager, Millet only argues that the claim against OMC was dismissed erroneously, writing little about service on Yager.<sup>1</sup>

“We do not address issues that a party neither raises appropriately nor discusses meaningfully with citations to authority.” *Saviano v. Westport Amusements, Inc.*, 144 Wn. App. 72, 84, 180 P.3d 874 (2008); RAP 10.3(a)(4)-(6). Therefore, we do not address the sufficiency of service to Yager, and we address only the service of OMC.

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<sup>1</sup> Millett states in her brief: “Having properly accomplished service over OMC, Millett had a ‘reasonable time’ to accomplish service over [Yager], but was prevented from doing so by dismissal of the case.” Br. of Appellant at 14.

## II. SUFFICIENCY OF SERVICE

Millett argues OMC received due process and failed to show its service of Gilchrist was insufficient when there is no statutory procedure for serving hospital districts. We disagree.

### A. Legal principles

An order granting summary judgment is reviewed de novo. *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 601, 200 P.3d 695 (2009). “[S]ummary judgment is appropriate ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Van Noy v. State Farm Mut. Auto. Ins. Co.*, 142 Wn.2d 784, 790, 16 P.3d 574 (2001) (quoting CR 56(c)). A genuine issue of material fact exists if reasonable minds could disagree on the conclusion of a factual issue. *LaRose v. King County*, 8 Wn. App. 2d 90, 103, 437 P.3d 701 (2019). In determining if there is an issue of material fact, “the court construes all facts and inferences in favor of the nonmoving party.” *Michael*, 165 Wn.2d at 601.

“Serving a summons and complaint commences a civil action and establishes a trial court’s jurisdiction over the action.” *Spencer v. Franklin Hills Health-Spokane, LLC*, 3 Wn.3d 165, 170, 548 P.3d 193 (2024). “The purpose of service is to provide due process, which requires notice and an opportunity to be heard.” *Id.* However, actual notice alone is insufficient to show valid service. *Gerean v. Martin-Joven*, 108 Wn. App. 963, 972, 33 P.3d 427 (2001).

“Personal service must be accomplished according to statutory procedure.” *Spencer*, 3 Wn.3d at 170; CR 4(d)(2); RCW 4.28.080. RCW 4.28.080 enumerates various methods for serving different entities. “[T]he service statute is to be liberally construed ‘in order to effectuate the purpose of the statute while adhering to its spirit and intent.’” *Spencer*, 3 Wn.3d at 171 (quoting *Sheldon v. Fettig*, 129 Wn.2d 601, 607, 919 P.2d 1209 (1996)).

Millett and OMC both assert that RCW 4.28.080 provides no method for serving hospital districts specifically. However, while it is true that RCW 4.28.080 provides no specific method for serving hospital districts, RCW 70.44.010, provides that public hospital districts are “municipal corporations.” Therefore, RCW 4.28.080(9) is controlling here.

RCW 4.28.080(9) provides the proper method of service in an action against a company or corporation other than those listed in RCW 4.28.080(1)-(8). It specifies that to serve these corporations, a copy of the summons must be delivered to

the president or other head of the . . . 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.

RCW 4.28.080(9).

#### B. Analysis

Even when viewing all facts and inferences in the light most favorable to Millett, she fails to show that Carpenter leaving a copy of the summons and complaint with Gilchrist at OMCF was sufficient to satisfy personal service of OMC. The evidence is undisputed that OMCF is a separate entity from OMC, located at a different address. Therefore, Gilchrist was not a suitable individual listed in RCW 4.28.080(9) to receive service on behalf of OMC.

Millett argues that service was sufficient because OMC actually received the complaint on the same day that it was served on Gilchrist. But actual notice is insufficient to show valid service; the defendant must receive actual service. *Gerean*, 108 Wn. App. at 972.

Because actual notice alone without more is insufficient to satisfy the requirements of personal service, Millett has not shown a genuine issue of material fact, and OMC was entitled to judgment as a matter of law. The trial court did not err in entering summary judgment in favor of OMC.

## II. WAIVER OF DEFENSE OF INSUFFICIENT SERVICE

Millett also argues that even if service was improper, OMC waived the defense of insufficient service. We disagree.

### A. Legal principles

Waiver of the defense of insufficient service is “‘designed to prevent a defendant from ambushing a plaintiff during litigation either through delay in asserting a defense or misdirecting the plaintiff away from a defense for tactical advantage.’” *Harvey v. Obermeit*, 163 Wn. App. 311, 323, 261 P.3d 671 (2011) (quoting *King v. Snohomish County*, 146 Wn.2d 420, 424, 47 P.3d 563 (2002)). The defense is waived if it is not asserted in either “a responsive pleading or . . . motion under CR 12(b)(5).” *French v. Gabriel*, 116 Wn.2d 584, 588, 806 P.2d 1234 (1991). The defense is also waived if (1) “assertion of the defense is inconsistent with the defendant’s previous behavior” or (2) “if the defendant’s counsel has been dilatory in asserting the defense.” *Lybbert v. Grant County*, 141 Wn.2d 29, 39, 1 P.3d 1124 (2000).

For example, in *Lybbert*, the defendant, over the course of nine months, engaged in discovery, filed a notice of association with counsel from an outside law firm, and discussed potential mediation with the plaintiffs. *Id.* at 32. Then, after the statute of limitations ran, the defendant filed an answer asserting for the first time the defense of insufficient service and moved to have the case dismissed. *Id.* at 33, 42. Based on these actions, our Supreme Court held that the defendant had waived the defense of insufficient service. *Id.* at 45.

### B. Analysis


Here, unlike *Lybbert*, OMC was not dilatory in asserting the defense and did not act inconsistent with its prior behavior. OMC filed an answer preserving the defense of insufficient service less than one month after Carpenter served Gilchrist. Also, OMC did not engage in

discovery that would have misled Millett. Then, on February 23, approximately two and a half months later, OMC filed a motion to dismiss. Because OMC filed its answer two weeks before the statute of limitations ran, Millett could have corrected this error by serving OMC. Therefore, there is no evidence OMC intended to ambush Millett with the defense, and OMC did not waive the defense of insufficient service.

### CONCLUSION


We affirm the trial court's dismissal of Millett's claim on summary judgement.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
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Veljatic, A.C.J.

We concur

  
\_\_\_\_\_  
Maxa, J.

  
\_\_\_\_\_  
Price, J.

# LAW OFFICE OF DAVID WILLIAMS

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## Transmittal Information

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