

No. 89853-7

SUPREME COURT  
OF THE STATE OF WASHINGTON

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No. 69106-6-I

COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON

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THERESA SCANLAN, Respondent,

v.

KARLIN TOWNSEND and "JOHN DOE" TOWNSEND  
Wife and Husband, Petitioners.

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**PETITION FOR REVIEW**

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Michael E. Abrahamson, WSBA No. 28717  
Jill R. Skinner, WSBA No. 32762  
Attorneys for Petitioner Townsend

Hollenbeck, Lancaster, Miller & Andrews  
15500 SE 30<sup>th</sup> Place, Suite 201  
Bellevue, WA 98007  
Telephone: (425) 644-4440  
Fax: (425) 747-8338  
Email: [mike.abrahamson@farmersinsurance.com](mailto:mike.abrahamson@farmersinsurance.com)  
[jill.skinner@farmersinsurance.com](mailto:jill.skinner@farmersinsurance.com)

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STATE OF WASHINGTON**

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**A. IDENTITY OF PETITIONERS**

Karlin Townsend asks the Supreme Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

**B. COURT OF APPEALS DECISION**

On December 30, 2013, Division One of the Court of Appeals filed an opinion reversing the trial court's dismissal of the instant lawsuit. A copy of the decision is in the Appendix at pages 1 through 12.

**C. ISSUES PRESENTED FOR REVIEW**

In this case a process server retained by the plaintiff gave the summons and complaint to Ms. Townsend's father at his home, which was not Ms. Townsend's usual abode, and with whom Ms. Townsend did not reside. Ms. Townsend's father later gave the documents to Ms. Townsend. The Court of Appeals held that upon receiving the summons and complaint, Ms. Townsend's father became the process server, and thus service was accomplished when Ms. Townsend's father gave her the documents. Did the Court of Appeals err in expanding the definition of "process server" to include any adult who was given the summons and

complaint at a place other than the defendant's usual abode, who did not reside with the defendant, and who may not have knowingly consented to being a process server?

Did the Court of Appeals err in holding that the plaintiff need not comply with the statute for service of process, RCW 4.28.080(15), which requires that the person receiving the documents, if not the defendant herself, be served at the defendant's abode while currently residing there?

#### **D. STATEMENT OF THE CASE**

Theresa Scanlan and Karlin Townsend were involved in a motor vehicle accident on October 28, 2008. CP 1. Ms. Scanlan claims that Ms. Townsend was at fault for the accident and that Ms. Scanlan was injured as a result. CP 1-2. Ms. Scanlan filed a Complaint on October 27, 2011, alleging that Ms. Townsend was negligent. CP 1. Ms. Townsend changed her last name to Emerson in June 2009 (CP 5), but will use the name Townsend in this Petition for clarity.

On December 21, 2011, Ms. Scanlan's process server delivered the summons and complaint to someone named Bill White at 2124 NE 155<sup>th</sup> Street, Vancouver, WA 98686. CP 3. This is the address of Ms. Townsend's parents Charles William

Pyne and Jean Estelle Pyne. CP 11. The process server later stated in an Amended Declaration of Service that the process server may have misunderstood the name of the man to whom she delivered the documents and that the man is, in fact, the father of Ms. Townsend. CP 45-46. Mr. Pyne testified via declaration that he did recall speaking with the process server and specifically recalled telling the process server that his daughter did not reside at his address at 2124 NE 155<sup>th</sup> Street, Vancouver, WA. CP 123.

Indeed, Ms. Townsend did not reside with her parents at 2124 NE 155<sup>th</sup> Street, Vancouver, WA 98686, at the time her father was given the summons and complaint at that address by the process server. CP 11. In fact, Ms. Townsend has not resided with her parents since 1991. CP 11.

Ms. Townsend did retrieve the summons and complaint from her father at some point, although she does not remember exactly when. CP 109.

Because Ms. Scanlan failed to properly serve Ms. Townsend, Ms. Townsend filed a Motion to Dismiss on or about March 14, 2012. CP 4-9. After allowing Ms. Scanlan to conduct further discovery and file two amended responses in addition to her initial response (CP 22-26, 51-62, 85-96), the trial court dismissed

all claims against Ms. Townsend with prejudice. CP 126-127. In its Order Granting Defendant's Motion to Dismiss for Lack of Service, the trial court expressly found that Ms. Townsend's "deposition testimony that her father gave her the summons and complaint is insufficient proof of service. Gerean v. Martin-Joven, 108 Wn. App. 963 (2001)." CP 127.

In oral argument on Ms. Townsend's motion, the trial court noted that there was an apparent discrepancy between two Division Three cases that are central to the issue here: Gerean v. Martin-Joven, 108 Wn. App. 963, 33 P.3d 427 (2001), and Brown-Edwards v. Powell, 144 Wn. App. 109, 182 P.3d 441 (2008). RP 3-18. Ms. Scanlan asked the trial court to adopt the holding in Brown-Edwards, while Ms. Townsend asked the trial court to adopt the holding in Gerean. RP 6, 11-12. The trial court ultimately found that Gerean applied and dismissed all claims against Ms. Townsend due to lack of proper service. CP 127.

Ms. Scanlan appealed the trial court's dismissal. CP 129-132. The Court of Appeals reversed the trial court, finding that "the defendant's father personally delivered a copy of the summons and complaint to the defendant, and there is no dispute the defendant received the pleadings and service was within the

statute of limitations.” A-1. As a result, the Court of Appeals concluded that service was effective. A-1.

The Court of Appeals further noted that “Townsend does not dispute that her father ... was competent to effect service of process....” A-9. This is incorrect. Ms. Townsend does not dispute that her father is over the age of 18, competent, and is not a party to the lawsuit and as such meets the minimal requirements for being a process server. However, in this specific fact pattern, Ms. Townsend argued that Mr. Pyne is not competent to serve process because service upon him was defective in the first instance and cannot be cured by him fortuitously delivering the summons and complaint to his daughter, Ms. Townsend.

#### **E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

The root issue in the instant case is whether Ms. Scanlan properly served Ms. Townsend prior to the running of the statute of limitations. Proper service of the summons and complaint is a prerequisite to the court obtaining personal jurisdiction over a defendant. Streeter-Dybdahl v. Huynh, 157 Wn. App. 408, 412, 236 P.3d 986 (2010). “[P]roper service of process must not only comply with constitutional standards but must also satisfy the

requirements for service established by the legislature.” Farmer v. Davis, 161 Wn. App. 420, 432, 250 P.3d 138 (2011).

According to statute, a defendant is to be served as follows: “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(15). A defendant’s “usual abode” means the place where the defendant is actually living at the time the service is made. Dolan v. Baldrige, 165 Wash. 69, 4 P.2d 871 (1931). The plaintiff bears the initial burden of proof to establish a prima facie case of sufficient service. Streeter-Dybdahl, 157 Wn. App. at 412.

Washington courts follow the language of unambiguous statutes. In interpreting the meaning of a statute, Washington courts are to discern and implement the legislature’s intent. Jackowski v. Borchelt, 174 Wn.2d 720, 278 P.3d 1100 (2012). If the “statutory language is unambiguous and legislative intent is apparent, we will not construe the statute otherwise.” Id. at 729.

RCW 4.28.080(15) is unambiguous and thus should be interpreted as written. The statute does not allow for service upon someone at a place that is not the defendant’s usual abode and who does not reside with the defendant.

**1. The decision of the Court of Appeals is in conflict with another decision of the Court of Appeals.**

The decision of the Court of Appeals in the instant case is in direct conflict with the decision of the Court of Appeals, Division Three, in Gerean v. Martin-Joven, 108 Wn. App. 963, 971, 33 P.3d 427 (2001). RAP 13.4(b)(2). Ms. Townsend avers that Gerean was correctly decided, and the instant opinion was wrongly decided. The decision of the Court of Appeals in the instant case is also in conflict with other decisions of the Court of Appeals that address the issue of service, such as Gross v. Evert-Rosenberg, 85 Wn. App. 539, 933 P.2d 439 (1997); Lepeska v. Farley, 67 Wn. App. 548, 833 P.2d 437 (1992); and Mid-City Materials, Inc., v. Heater Beaters Custom Fireplaces, 36 Wn. App. 480, 674 P.2d 1271 (1984).

The facts in Gerean are similar to the instant case. In Gerean, the plaintiff had attempted service on the defendant by giving the summons and complaint to the defendant's father at the father's home in Deer Park, Washington. The defendant had previously lived in her father's home in Deer Park but had moved to Walla Walla with her husband approximately one year before the attempted service. Gerean, 108 Wn. App. at 967. The

defendant's father gave the documents to the defendant the day after the documents were left with him. Id.

The Gerean court found that service was insufficient:

The question here is whether service of the summons on Ms. Martin[-]Joven's father at his home in Deer Park is sufficient if the father delivered the papers to her in Walla Walla, where she lives. We agree with the trial court that the service was insufficient.

Id. at 966. The Gerean court held that even the most liberal construction of the statute did not support service:

Even the most liberal construction of the statute cannot bring this service within its terms. Ms. Gerean did not accomplish service either in person or by substitution. The fortuitous delivery of process by the defendant's father did not constitute valid service.

Id. at 972.

Division Three considered the issue again in Brown-Edwards v. Powell, 144 Wn. App. 109, 182 P.3d 441 (2008). Brown-Edwards is the case that Ms. Scanlan asked the Court of Appeals to rely upon.

In Brown-Edwards, the process server gave the summons and complaint to the defendants' neighbor in the mistaken belief that the neighbor was one of the defendants. (The mistake was apparently due to the fact that the neighbor and one of the defendants shared the same first name.) The neighbor then gave

the documents to the defendant. The neighbor later signed an affidavit stating that she was competent to serve the papers. Brown-Edwards, 144 Wn. App. at 111. The Brown-Edwards court found that there was “nothing that would prohibit a person who comes into possession of a summons and complaint by defective service from being a competent process server.” Brown-Edwards, 144 Wn. App. at 111. As a result, the court concluded that service was accomplished. Id. at 112.

Judge Brown dissented in Brown-Edwards, finding that “[w]e should not retreat from the rule we established in Gerean....” Id. at 113. Judge Brown opined that “[t]he service burden should remain on plaintiffs to give formal notice of suit for the purpose of alerting defendants of the necessity of a formal response.” Id. at 113-14. Judge Brown further concluded that “Ms. Brown-Edwards suggests a result far exceeding any case that has recognized substantial compliance with RCW 4.28.080(15).” Id. at 114.

The majority in Brown-Edwards attempted to distinguish Gerean by stating that “[t]he plaintiff in Gerean did not argue that the defendant’s father was competent to effect service....” Brown-Edwards, 144 Wn. App. at 113. The Brown-Edwards court’s assessment of Gerean is incorrect. The plaintiff in Gerean did

indeed argue that the father was competent to effect service, and the court rejected the plaintiff's argument:

She nevertheless contends that Ms. Martin-Joven was personally served. '[W]e served it on the person the statute provides for.' RP at 9. 'If you read the statute, a person of suitable age and discretion gave her the documents.' RP at 15. Her argument depends on selective mixing and matching of the statutes and civil rules—a mix and match with which we disagree.

Gerean, 108 Wn. App. at 970. The Gerean court further discussed plaintiff's argument that the father accomplished service:

Ms. Gerean reasons that a copy of the summons was left at the defendant's place of abode in Walla Walla by her father. The father is a person over 18 years of age, competent, and a non-party. Nothing in CR 4(c) would therefore preclude Mr. Martin from effecting service.

Id. at 970. The plaintiff clearly argued that defendant's father was competent to effect service. The Gerean court unequivocally rejected the plaintiff's argument:

But the rule goes on to require that personal service within the state must comply with RCW 4.28.080. CR 4(d)(2). And RCW 4.28.080 requires that the person receiving the documents, if not the defendant herself, must be served at the defendant's abode while currently residing there.

Id. at 970-71 (emphasis in original).

The Gerean court also rejected the plaintiff's argument that service was effective under a due process analysis:

Ms. Gerean's general observation is correct that constitutional due process is satisfied when the plaintiff employs a method reasonably calculated to inform the defendant of the lawsuit. [Citations omitted.] But this general constitutional observation ignores specific statutory requirements for effective service on an individual defendant in Washington. And Ms. Gerean makes no argument that these statutory requirements are unduly burdensome or unconstitutional.

Id. at 971.

The court in Brown-Edwards did correctly note one difference between that case and Gerean: the neighbor in Brown-Edwards had later signed an affidavit of service, whereas the father in Gerean did not sign an affidavit of service. Brown-Edwards, 144 Wn. App. at 113. Likewise, Ms. Townsend's father did not sign an affidavit of service. Thus, on that issue the instant case is more akin to Gerean than Brown-Edwards.

There are several opinions that hold similarly to the Gerean court and are in conflict with the instant opinion. For example, in Gross v. Evert-Rosenberg, 85 Wn. App. 539, 933 P.2d 439 (1997), the court found that the plaintiff did not accomplish service when she left the summons and complaint at a house owned by the defendant but in which she no longer lived. The court in Gross held that the liberal construction of the substitute service statute

did not extend so far as to allow service upon the defendant's former home even though the defendant's daughter and son-in-law lived in the home. Id. 541-43.

In Lepeska v. Farley, 67 Wn. App. 548, 833 P.2d 437 (1992), the court found that substitute service at the defendant's parents' home was invalid: "Under Washington case law, service on Farley at his parents' home, when he maintained his own separate home, fails to comply with the substitute service statute." Id. at 551. The court was not concerned with whether the defendant's parents gave the papers to the defendant. The court was not persuaded by the fact that the defendant had actual notice of the lawsuit. Id. at 552.

In Mid-City Materials, Inc., v. Heater Beaters Custom Fireplaces, 36 Wn. App. 480, 674 P.2d 1271 (1984), the court held that service on defendants' son at the son's residence was invalid.

The affidavits of service filed by the plaintiff

showed residence service on the parents at their son's residence in Federal Way by service of summons and complaint on their son at that address. The plaintiff conceded later, however, that at all times herein the parents did not reside with their son in Federal Way but resided in Kent. Such attempted service on the parents was, therefore, invalid for any purpose.

Id. at 484. Thus, even though the summons and complaint were given to the defendants' son, service was not accomplished. Again, the court was not concerned with whether the defendants' son gave the papers to the defendants.

Thus, whether the defendant eventually receives the summons and complaint is irrelevant. The court in Gerean explicitly held as such, finding that

[t]he argument that defective substitute service is cured if the summons is fortuitously delivered by a person who is over the age of 18 and not a party to the lawsuit boils down to the argument that actual notice should be sufficient. But the cases in this state are clear: actual notice does not constitute sufficient service.

Gerean, 108 Wn. App. at 972. In Gerean, the fact that the defendant's father gave her the summons and complaint was irrelevant to whether the plaintiff accomplished service. The courts in Gross, Lepeska, and Mid-City Materials likewise did not consider whether the respective defendants eventually obtained the service papers. Rather, the issue is whether the plaintiff complied with the statute.

There is a clear conflict between (a) the instant opinion, which is arguably supported by Brown-Edwards, and (b) Gerean, which is generally supported by the reasoning in the opinions in

Gross, Lepeska, and Mid-City Materials, regarding who may be deemed a process server. As a result, Ms. Townsend requests that the Court accept review of this case and resolve the conflict.

**2. The Petition involves an issue of substantial public interest that should be determined by the Supreme Court.**

The Petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(4). The issue of service of process affects every civil action filed in Washington. As a result, the determination of who may be deemed a process server is of substantial interest to all civil litigants in this state. Because there are conflicting decisions, the Supreme Court should decide the matter so that all civil litigants have a clear understanding of who may be deemed a process server.

Undoubtedly, allowing anyone who does not reside with the defendant to be turned into a process server, whether or not that person consents to being a process server, introduces a great amount of uncertainty into the entire service of process issue. There would often be no accountability and no proof of service. The Legislature surely wanted to avoid this uncertainty, so it drafted the service of process statute to create a clear method to effect service.

The Court of Appeals in the instant case has now broadened the definition of a process server to include any adult who was given the summons and complaint at a place other than the defendant's usual abode, who did not reside with the defendant, and who may not have knowingly consented to being a process server. Not only is this new definition in conflict with most of the other decisions of the Court of Appeals, but also it creates a substantial amount of uncertainty regarding service of process. As a result, the law as to who may be deemed a process server is unclear. Because the issue of service of process affects all civil litigants in Washington, the issue is of substantial public interest. Therefore, the conflict should be resolved by the Supreme Court.

#### **F. CONCLUSION**

This Court should accept review for the reasons indicated in Part E, reverse the Court of Appeals, reinstate the trial court's dismissal of the suit, and hold that Ms. Townsend's father was not a process server and thus service upon Ms. Townsend was not accomplished.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of January,

2014.

Hollenbeck, Lancaster, Miller & Andrews

By   
Michael E. Abrahamson, WSBA No. 28717

Jill R. Skinner, WSBA No. 32762

Attorneys for Petitioner Townsend

15500 SE 30<sup>th</sup> Place, Suite 201

Bellevue, WA 98007

Telephone: (425) 644-4440

Fax: (425) 747-8338

Email: [mike.abrahamson@farmersinsurance.com](mailto:mike.abrahamson@farmersinsurance.com)

[jill.skinner@farmersinsurance.com](mailto:jill.skinner@farmersinsurance.com)

**DECLARATION OF SERVICE**

I declare that I served the foregoing PETITION FOR  
REVIEW on the party below

G. Parker Reich  
Attorney for Theresa Scanlan  
Jacobs & Jacobs  
114 E. Meeker Avenue  
Puyallup, WA 98372

by causing a full, true and correct copy thereof to be  
MAILED in a sealed, postage-paid envelope, addressed as shown  
above, which is the last-known address for the party's office, and  
deposited with the U.S. Postal Service at Bellevue, WA, on the  
date set forth below;

By causing a full, true and correct copy thereof to be  
HAND-DELIVERED BY ABC MESSENGER SERVICE to the  
party, at the address listed above, which is the last-known address  
for the party's office, on the date set forth below;

By causing a full, true and correct copy thereof to be  
FAXED to the party, at the fax number shown above, which is the  
last-known fax number for the party's office, on the date set forth  
below.

I declare under penalty of perjury under the laws of the  
State of Washington that the foregoing is true and correct.

Executed at Bellevue, Washington, on this 27<sup>th</sup> day of  
January, 2014.

  
\_\_\_\_\_  
Jill Skinner

# APPENDIX

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON

2013 DEC 30 AM 9:11

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

Theresa Scanlan,	)	No. 69106-6-I
	)	
Appellant,	)	DIVISION ONE
	)	
v.	)	
	)	PUBLISHED OPINION
Karlin Townsend and "John Doe"	)	
Townsend, wife and husband,	)	
	)	
Respondents.	)	FILED: December 30, 2013

SCHINDLER, J. — Service of process is effective under RCW 4.28.080(15) where a person over the age of 18 personally delivers a copy of the summons and complaint to the defendant. Here, the defendant's father personally delivered a copy of the summons and complaint to the defendant, and there is no dispute the defendant received the pleadings and service was within the statute of limitations. Because service was effective, we reverse dismissal of the lawsuit and remand.

FACTS

Teresa Scanlan and Karlin Townsend were involved in a car accident on October 28, 2008. On October 27, 2011, Scanlan filed a personal injury action against Townsend. Scanlan alleged that as Townsend was turning onto 348th Street in Federal Way, she failed to yield and her Ford Taurus hit the 1999 Nissan Maxima Scanlan was driving.

On November 8, 2011, Scanlan asked ABC Legal Services Inc. to locate the current residential address for Townsend. Through a records search, ABC identified an address in Puyallup, Washington and an address in Vancouver, Washington. The Puyallup address "appear[ed] on an SSN<sup>(1)</sup>/Address trace for the Defendant reported 05/2011" and the United States Postal Service confirmed mail delivery for Townsend at the Puyallup address. Court records showed that Townsend lived at the Vancouver address 2124 NE 155th Street, Vancouver, Washington 98686, "as of 10/04/2010." Clark County tax assessor records listed Townsend's father Charles William Pyne as the owner of real property at the Vancouver address. Washington State Department of Licensing records showed a vehicle registered to Townsend with Pyne listed as the co-owner of the vehicle.

On December 8, an ABC process server attempted to serve a copy of the summons and complaint at the Puyallup address. The resident at the Puyallup address told the process server that he did not know Townsend and she did not live at that address. On December 21, the process server attempt to serve the summons and complaint at the Vancouver address. The declaration of service states that on December 21, the process server delivered two copies of the summons and complaint at "2124 NE 155th Street, Vancouver, Clark County, WA 98686" to a "co-resident, . . . a person of suitable age and discretion who stated they reside at the defendant's/respondent's usual place of abode listed above."<sup>2</sup>

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<sup>1</sup> (Social Security number.)

<sup>2</sup> (Emphasis omitted.)

Three months later, Townsend filed a motion to dismiss the lawsuit for lack of service. Townsend submitted her declaration in support of the motion to dismiss. Townsend states she lived at the Puyallup address from March to October 2011 but beginning in October 2011, she has lived in Auburn. Townsend states her parents live at the Vancouver address and she has not “resided there since 1991” or “used this address as my usual abode for any reason since then.” The declaration states, in pertinent part:

4. . . . I have resided at . . . 6628 - 130<sup>th</sup> St. Ct. E., Puyallup, Washington 98373 from March 2011 to October 2011. These were rental accommodations. I purchased a home at 6317 Thomas Place SE, Auburn, Washington 98092 and have resided there since October 2011.

5. I am aware of an Affidavit of Service in this matter indicating that I was served on December 21, 2011 . . . at 2124 NE 155<sup>th</sup> Street, Vancouver, WA 98686 by leaving the documents with [my father].

6. This is my parents['] address and I have not resided there since 1991. I have not used this address as my usual abode for any reason since then. I would visit my parents at their address 2-3 times a year. My usual abode at the time of attempted service was my home at 6317 Thomas Place, SE, Auburn, Washington.

In opposition to the motion to dismiss, Scanlan submitted a declaration from an ABC investigator describing the efforts to locate a residential address for Townsend and an amended declaration of service from the process server. The amended declaration states that the man who answered the door at the house in Vancouver identified himself as Townsend’s father, told her that Townsend was staying there, and agreed to “take the documents and make sure [Townsend] got them when she gets back.” The amended declaration of service states, in pertinent part:

**On the 21st day of December, 2011, at approximately 4:40 PM, I arrived at the address of 2124 NE 155TH Street, VANCOUVER, Clark County, WA 98686. I knocked on the front door and a gray-haired white male . . . opened the door. . . . I asked him if Karlin Townsend was there and he replied she was not. I recall saying I had some paperwork for her**

and asking him if she lived there and he respond[ed] that she was staying there. He was very talkative and friendly, and I do believe I recall him also mentioning Karlin came back to live with us. I told him that I had some paperwork for her and this was the address I was given, I then asked if I could leave the documents with him. He replied he would take the documents and make sure she got them when she gets back. When I asked his name, he put out his hand to shake, said he was her father . . . . I shook his hand as I gave him my name, and then left.

On the **21st day of December, 2011, at 4:49 PM**, at the address of **2124 NE 155TH Street, VANCOUVER, Clark County, WA 98686**, this declarant served the above described documents upon **KARLIN TOWNSEND** and **JOHN DOE TOWNSEND** by then and there personally delivering 2 true and correct copy(ies) thereof, by then presenting to and leaving the same with **John Doe, CO-RESIDENT/FATHER, a gray-haired white male . . .**, a person of suitable age and discretion who stated they reside at the defendant's/respondent's usual place of abode listed above.<sup>3</sup>

Scanlan argued that by serving Townsend's father at her usual place of abode, service of process on Townsend was effective. Scanlan asserted the amended declaration of the process server showed that Townsend was living with her parents at the Vancouver address on December 21, 2011. Scanlan argued the court should deny the motion to dismiss. In the alternative, Scanlan requested the court conduct an evidentiary hearing or continue the hearing to allow the parties to engage in discovery. The trial court granted the request to continue the hearing to conduct discovery.

During her deposition, Townsend admitted her father delivered a copy of the summons and complaint to her at the end of December 2011 or in early January.

- Q. . . . Did -- did you get documents from your dad?  
A. They told me that they were there.  
Q. Well, when this all occurred, December of 2011, what were you doing? Were you employed at that point?  
A. I was working.  
Q. Okay. And living where?  
A. In Seattle, up here.  
Q. Were you visiting your parents often during that period of time?

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<sup>3</sup> (Emphasis in original.)

A. No.

Q. Well, this was just four days before Christmas. Had you -- did you spend --

A. I don't always have holidays off. I don't . . . have every holiday off.

Q. Okay. Do you know if you worked Christmas Day 2011?

A. Yeah, I believe I worked. Yes. I'm sorry.

Q. [The declaration of service] goes on to state, He replied he would take the documents and make sure she got them when she get[s] back. Did he give you those documents?

A. Yes, he did.

Q. Okay. And when did he give you the documents . . . ?

A. I don't know.

.....

Q. Okay. So after the first of the year, maybe?

A. Yeah. Yes.

Q. And would you have gone to their house, or would they have come to visit you in Seattle, or what?

A. I can't remember if they came up here. I think I went down there.

Following discovery, Scanlan filed an amended response to the motion to dismiss for lack of service. Scanlan argued the record established Townsend's father agreed to deliver a copy of the summons and complaint to Townsend and that he personally served her before December 30, 2011. In addition to Townsend's deposition testimony, Scanlan pointed to the amended declaration of service that states Townsend's father agreed to "take the documents and make sure [Townsend] got them," and the notice of appearance Townsend filed on December 30, 2011.

In reply, Townsend submitted a declaration from her father. The declaration states that he told the process server that Townsend "did not reside at this address" and lived in the Seattle area. The declaration states, in pertinent part:

1. I am over the age of eighteen, have personal knowledge of and am competent to testify to the following. I am the father of the defendant Karlin Townsend.

2. I do recall speaking with a process server who was attempting to locate Karlin at my address which is 2124 NE155th Street, Vancouver, WA.

3. I recall specifically telling the process server that Karlin was my daughter and that she did not reside at this address. My recollection is that I told the process server that my daughter had her own residence in the Greater Seattle area.

4. I am aware of a declaration from the Process Server that states that I may have indicated that Karlin had "come back to live with us". I never made such a statement. In fact Karlin had recently purchased her own home in Auburn a few months previous to my conversation with the Process Server and, in any event, has not lived at my address in Vancouver, WA for a long time before the subject accident of October 28, 2008.

Townsend argued her father's declaration established service of process was not effective because "[t]here can be no question that the Vancouver, WA address was NOT the usual abode of Defendant Karlin Townsend (now Emerson) at the time of purported service."<sup>4</sup> Townsend also argued that her father's "accidental service" on her did not constitute valid service of process.

At the hearing on the motion to dismiss, Townsend's attorney stipulated that her father delivered a copy of the summons and complaint to Townsend within the 90-day tolling period.<sup>5</sup> Townsend argued service of the summons and complaint by her father was "fortuitous" and did not comply with the statutory proof of service requirements.

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<sup>4</sup> (Emphasis in original.)

<sup>5</sup> THE COURT: Well, in this case, the proof of service --

[TOWNSEND'S ATTORNEY]: Yes.

THE COURT: -- comes from the Defendant herself when she was asked in her deposition, did your father give it to you.

[TOWNSEND'S ATTORNEY]: Correct.

THE COURT: At first in her deposition she said, you know, he told me it was at his home. And that's not good enough. Right? If he went to her home and left it under the doormat, that wouldn't work. But then she was asked did your father give it to you and she said yes. And that's under -- that's a statement under oath. Yes, I was personally served with these documents.

[TOWNSEND'S ATTORNEY]: Yeah. And we're not disputing that.

The trial granted the motion to dismiss the lawsuit for lack of service. The order states, in pertinent part: "Defendant's deposition testimony that her father gave her the summons and complaint is insufficient proof of service."

#### ANALYSIS

Scanlan contends the court erred in granting the motion to dismiss on the grounds of insufficient service of process and proof of service. Scanlan asserts service was effective because the undisputed record establishes Townsend's father personally delivered a copy of the summons and complaint to Townsend and proof of service is established by her admission that she received the summons and complaint within the 90-day tolling period. We agree.

An action may be commenced by filing a complaint and serving the summons and complaint on the defendant within 90 days. RCW 4.16.170; CR 3(a). Proper service of the summons and complaint is a prerequisite to the court obtaining personal jurisdiction over a party. Streeter-Dybdahl v. Huynh, 157 Wn. App. 408, 412, 236 P.3d 986 (2010). "[P]roper service of process must not only comply with constitutional standards but must also satisfy the requirements for service established by the legislature." Farmer v. Davis, 161 Wn. App. 420, 432, 250 P.3d 138 (2011). Whether service of process was proper is a question of law that we review de novo. Streeter-Dybdahl, 157 Wn. App. at 412.

RCW 4.28.080 authorizes service of the summons and complaint “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(15).<sup>6</sup> The plain and unambiguous language of the statute permits service either by delivering a copy of the summons and complaint “to the defendant personally” or by substitute service—leaving a copy with someone of suitable age and discretion then in residence. RCW 4.28.080(15); Weiss v. Glemp, 127 Wn.2d 726, 731, 903 P.2d 455 (1995).

Under CR 4(c), “any person over 18 years of age who is competent to be a witness in the action, other than a party,” may serve process. Brown-Edwards v. Powell, 144 Wn. App. 109, 111, 182 P.3d 441 (2008). “Any person” means any person other than a party to the action. Brown-Edwards, 144 Wn. App. at 111.

Proof of service is established either by written acceptance or by the admission of a defendant of the time, place, and manner of service. CR 4(g)(5), (7). CR 4(g) provides, in pertinent part:

Proof of service shall be as follows:

. . . .  
(5) The written acceptance or admission of the defendant, his agent or attorney;

. . . .  
(7) In case of service otherwise than by publication, the return, acceptance, admission, or affidavit must state the time, place, and manner of service. Failure to make proof of service does not affect the validity of the service.

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<sup>6</sup> We note the legislature amended RCW 4.28.080 in 2011 and 2012; however, the amendments did not affect subsection (15). LAWS OF 2011, ch. 47, § 1; LAWS OF 2012, ch. 211, § 1.

Where the defendant challenges jurisdiction based on insufficient service of process, the plaintiff has the initial burden to establish a prima facie case of sufficient service. Streeter-Dybdahl, 157 Wn. App. at 412. Scanlan contends that as in Brown-Edwards, personal service on Townsend was effective. Scanlan asserts the undisputed record establishes that Townsend's father delivered the summons and complaint to Townsend, that he was qualified to act as a process server under CR 4(c), and that Townsend admitted receiving the pleadings from her father within the 90-day tolling period.

Townsend does not dispute that her father delivered a copy of the summons and the complaint to her, that he was competent to effect service of process, and that she received the pleadings within the 90-day tolling period. Townsend argues that RCW 4.28.080(15) "places a specific and undelegable duty" on Scanlan to personally effect service on her. Townsend also argues Brown-Edwards was wrongly decided and the decision in Gerean v. Martin-Joven, 108 Wn. App. 963, 33 P.3d 427 (2001), controls.

The meaning of a statute is a question of law reviewed de novo. Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9, 43 P.3d 4 (2002). If the statute is unambiguous, we determine legislative intent from the plain language of the statute as written. Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles, 148 Wn.2d 224, 239, 59 P.3d 655 (2002). The plain language of the service statute does not require Scanlan to personally effect service. RCW 4.28.080 states only that "[t]he summons shall be served."<sup>7</sup>

---

<sup>7</sup> (Emphasis added.)

We also conclude that Gerean does not control and Brown-Edwards does not conflict with the decision in Gerean. In Gerean, the defendant Martin-Joven lived with her parents in Spokane while her spouse was stationed overseas in the military. Gerean, 108 Wn. App. at 967. On December 21, 1996, Gerean and Martin-Joven were involved in a car collision. On December 17, 1999, Gerean filed a personal injury lawsuit against Martin-Joven. Gerean, 108 Wn. App. at 967. On January 2, 2000, the process server left a copy of the summons and the complaint with Martin-Joven's father at his house. Gerean, 108 Wn. App. at 967. Martin-Joven and her spouse had moved to Walla Walla the previous year in January 1999. Gerean, 108 Wn. App. at 967. The next day, the father gave Martin-Joven a copy of the summons and complaint while he was in Walla Walla on business. Gerean, 108 Wn. App. at 967. The trial court dismissed the lawsuit for insufficient service of process. Gerean, 108 Wn. App. at 968.

On appeal, Gerean argued that "by setting in motion a series of events that culminated" in Martin-Joven actually receiving the summons and complaint, she complied with the statutory requirements for service. Gerean, 108 Wn. App. at 969. The court affirmed dismissal of the lawsuit. The court rejected the argument that where the father "fortuitously delivered" the pleadings to Martin-Joven, defective substitute service of the summons and complaint is cured by actual notice. Gerean, 108 Wn. App. at 972.

In Brown-Edwards, the process server mistakenly delivered a copy of the summons and complaint to the defendant's neighbor. Brown-Edwards, 144 Wn. App. at 111. The neighbor delivered the pleadings to the defendant and signed an affidavit of service. Brown-Edwards, 144 Wn. App. at 111. Because the neighbor was qualified to

serve process, personally delivered the pleadings to the defendant, and signed an affidavit of service, the court held service of process complied with the requirements of RCW 4.28.080(15). Brown-Edwards, 144 Wn. App. at 112.

The court in Brown-Edwards addressed its previous decision Gerean and held that Gerean “should be limited to its facts and the particular arguments made there.” Brown-Edwards, 144 Wn. App. at 112. In addressing the decision in Gerean, the court points out that as framed by the parties on appeal, the question in that case “was whether the hired process server—and not [the father]—properly served Ms. Martin-Joven,” and not whether the father’s “act of delivering the summons to [his daughter], by itself, satisfied the statutory requirement for personal service.” Brown-Edwards, 144 Wn. App. at 113.

“Ms. Gerean contends that, by setting in motion a series of events that culminated in Ms. Martin-Joven receiving the summons, she complied with the statute.” . . . We concluded that was not enough. . . . And so we did not address whether [the father]’s act of delivering the summons to Ms. Martin-Joven, by itself, satisfied the statutory requirement for personal service.

Brown-Edwards, 144 Wn. App. at 113 (quoting Gerean, 108 Wn. App. at 969).

Further, the court points out that “[t]he plaintiff in Gerean did not argue that the defendant’s father was competent to effect service, nor did he file an affidavit of service.” Brown-Edwards, 144 Wn. App. at 113. The court in Brown-Edwards states, “Ultimately, we concluded in Gerean that service was insufficient because, while the hired process server’s act may have resulted in actual notice, it was not the required ‘service.’” Brown-Edwards, 144 Wn. App. at 113.

Here, there is no dispute that Townsend's father was competent to effect service and that he personally delivered a copy of the summons and complaint to Townsend within the statute of limitations. Townsend's deposition testimony also established proof of service under CR 4(g)(5) and (7). See also Hamill v. Brooks, 32 Wn. App. 150, 151-52, 646 P.2d 151 (1982) ("The time [of service] was established through [the defendant's] deposition and the affidavit of [the plaintiff's] attorney . . . . [The defendant's] admission is the best possible evidence that he received the summons and complaint.").

Because the undisputed record establishes effective service of process, we reverse the order of dismissal and remand.

WE CONCUR:

Becker, J.  
\_\_\_\_\_

Schneider, J.  
\_\_\_\_\_

Gunn, J.  
\_\_\_\_\_

JUDGE'S WORKING COPY  
HEARING DATE: 4/20/12  
TIME: 10 AM  
Judge Hill

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF KING

THERESA SCANLAN,

Plaintiff(s),

vs.

KARLIN TOWNSEND and "JOHN DOE"  
TOWNSEND, wife and husband,

Defendant(s).

No. 11-2-37066-6 KNT

**ORDER GRANTING  
DEFENDANT'S MOTION TO  
DISMISS FOR LACK OF SERVICE**

**(Clerk's Action Required)**

THIS MATTER having come on for hearing before the undersigned Judge of the above-entitled Court on the Motion of the defendant KARLIN TOWNSEND (now KARLIN EMERSON) to dismiss all claims against her with prejudice. The Court, having considered the following:

1. Defendant's Motion to Dismiss for Lack of Service;
2. The Declaration of Michael E. Abrahamson in Support of Defendant's Motion to Dismiss for Lack of Service and its attachments;
3. The Declaration of Karlin Emerson in Support of Defendant's Motion to Dismiss for Lack of Service;
4. The response of plaintiff in opposition to Defendant's Motion to Dismiss for

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS FOR LACK OF SERVICE - 1

HOLLENBECK, LANCASTER, MILLER & ANDREWS  
15500 SE 30<sup>th</sup> Place, Suite 201  
Bellevue, WA 98007  
(425) 644-4440  
FAX (425) 747-8338

Employees of the Farmers Insurance Exchange, a Member of the  
Farmers Insurance Group of Companies.

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Lack of Service and supporting materials;

- 5. The reply of defendant and supporting materials;
- 6. The argument of counsel; and
- 7. The pleadings and filings in this cause;

This Court finds good cause to grant the following relief. *gave her the summons and complaint*  
 Therefore, IT IS HEREBY ORDERED that:

*Defendant's deposition testimony that her father is insufficient proof of Service. Cereas v. Martin-Jovan, 108 Wn. App. 963 (2001).*

- 1. Defendant's Motion to Dismiss for Lack of Service is hereby GRANTED.
- 2. Plaintiff's claims against defendants Karlin Townsend (now Karlin Emerson)

and "John Doe" Townsend are hereby DISMISSED WITH PREJUDICE.

DATED: *July* ~~March~~ 13, 2012

*Hollis Hill*  
 \_\_\_\_\_  
 The Honorable Hollis Hill

Presented by:  
HOLLENBECK, LANCASTER, MILLER & ANDREWS

*M. E. Abrahamson*  
 \_\_\_\_\_  
 Michael E. Abrahamson, WSBA #28717  
 Attorneys for Defendants

Approved as to Form,  
Notice of Presentation Waived:

JACOBS & JACOBS

\_\_\_\_\_  
 Tom Jacobs, WSBA #7433  
 Attorneys for Plaintiff

FILED  
12 JAN -3 PM 4:42  
KING COUNTY  
SUPERIOR COURT CLERK  
KENT, WA

IN THE SUPERIOR COURT, IN AND FOR THE COUNTY OF KING, STATE OF WASHINGTON

TERESA SCANLAN

Plaintiff/Petitioner

Hearing Date:

CAUSE NO: 11 2 37066 6 KNT

vs.

KARLIN TOWNSEND AND JOHN DOE  
TOWNSEND, WIFE AND HUSBAND

Defendant/Respondent

DECLARATION OF SERVICE OF:  
SUMMONS AND COMPLAINT; ORDER SETTING  
CIVIL CASE SCHEDULE

The undersigned hereby declares: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

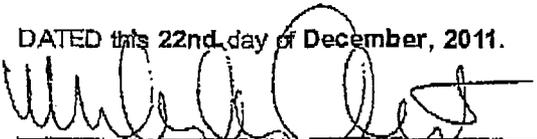
On the 21st day of December, 2011, at 4:49 PM, at the address of 2124 NE 155TH Street, VANCOUVER, Clark County, WA 98686; this declarant served the above described documents upon KARLIN TOWNSEND and JOHN DOE TOWNSEND by then and there personally delivering 2 true and correct copy(ies) thereof, by then presenting to and leaving the same with Bill White, CO-RESIDENT, a gray-haired white male approx. 55-65 years of age, 6'0"-6'6" tall and weighing 180-220 lbs., a person of suitable age and discretion who stated they reside at the defendant's/respondent's usual place of abode listed above.

No information was provided or discovered that indicates that the subjects served are members of the U.S. military.

Service Fee Total: \$84.40

Declarant hereby states under penalty of perjury under the laws of the State of Washington that the statement above is true and correct.

DATED this 22nd day of December, 2011.



Michelle Overton, Reg. #4734975, CLARK, WA



FOR: Jacobs & Jacobs  
REF: Theresa Scanlan v Townsend

ORIGINAL PROOF OF  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF KING

THERESA SCANLAN,

Plaintiff(s),

vs.

KARLIN TOWNSEND and "JOHN DOE"  
TOWNSEND, wife and husband,

Defendant(s).

No. 11-2-37066-6 KNT

**DECLARATION OF KARLIN  
EMERSON IN SUPPORT OF  
DEFENDANT'S MOTION TO  
DISMISS FOR LACK OF  
SERVICE**

I, **Karlin Emerson**, declare and state as follows:

1. I am the defendant in this matter, and I am over the age of 18, competent to testify herein and make this affidavit from personal knowledge. I am currently employed as a Federal Law Enforcement Officer with the Customs and Border Protection working at the Seattle SeaPort.

2. My maiden name was Karlin Pyne. I changed my name to Karlin Townsend when I was married in 1992. I was divorced a couple of years later but did not change my name again until June 2009 around the time my son was born at which time I decided to change my name to Karlin Emerson which is a family name.

CA 10

1           3.       My usual place of abode on October 28, 2008 being the time of the accident  
2 that is the subject of this lawsuit was 1900 S.W. Campus Drive, Federal Way, WA 98023.  
3 This was my usual place of abode from March 2008 to January 2010.

4           4.       After that I have resided at 1311 68<sup>th</sup> Avenue Court E., Puyallup, Washington  
5 98373 from January 2010 to March 2011; then at 6628 – 130<sup>th</sup> St. Ct. E., Puyallup,  
6 Washington 98373 from March 2011 to October 2011. These were rental accommodations.  
7 I purchased a home at 6317 Thomas Place SE, Auburn, Washington 98092 and have resided  
8 there since October 2011.

9           5.       I am aware of an Affidavit of Service in this matter indicating that I was  
10 served on December 21, 2011 at 4:49 p.m. at 2124 NE 155<sup>th</sup> Street, Vancouver, WA 98686  
11 by leaving the documents with a Bill White.  
12

13           6.       This is my parents address and I have not resided there since 1991. I have not  
14 used this address as my usual abode for any reason since then. I would visit my parents at  
15 their address 2-3 times a year. My usual abode at the time of attempted service was my  
16 home at 6317 Thomas Place SE, Auburn, Washington.  
17

18           7.       Further, my parent's correct names are Charles William Pyne and Jean Estelle  
19 Pyne. I do not know a Bill White who resides there which is the name written in the  
20 Affidavit of Service. I assume the process server made a mistake when writing down my  
21 father's last name.  
22

23           8.       I declare under penalty of perjury under the laws of the State of Washington,  
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that the foregoing is true and correct.

Date: 02/23/2012

Karlin Emerson

Karlin Emerson

1 **DECLARATION OF SERVICE**

2  
3 I declare that I served the foregoing **DECLARATION OF KARLIN EMERSON** on the  
4 attorneys below

5 Tom Jacobs  
6 Jacobs & Jacobs  
7 114 E Meeker Avenue  
8 Puyallup, WA 98371  
9 Attorney for Plaintiff, THERESA SCANLAN  
10 Phone: (253) 845-0577  
11 Fax: (253) 845-9060

12  by causing a full, true and correct copy thereof to be MAILED in a sealed, postage-  
13 paid envelope, addressed as shown above, which is the last-known address for the  
14 party's office, and deposited with the U.S. Postal Service at Bellevue, WA, on the  
15 date set forth below;

16  By causing a full, true and correct copy thereof to be HAND-DELIVERED BY ABC  
17 MESSENGER SERVICE to the party, at the address listed above, which is the last-  
18 known address for the party's office, on the date set forth below;

19  By causing a full, true and correct copy thereof to be FAXED to the party, at the fax  
20 number shown above, which is the last-known fax number for the party's office, on  
21 the date set forth below.

22 I declare under penalty of perjury under the laws of the State of Washington that the  
23 foregoing is true and correct.

24 Executed at Bellevue WA on this 14 day of March, 2012.

25   
26 \_\_\_\_\_  
Kirstyn Kono, Legal Assistant to  
Michael E. Abrahamson

IN THE SUPERIOR COURT, IN AND FOR THE COUNTY OF KING, STATE OF WASHINGTON

<p><b>THERESA SCANLAN</b></p> <p style="text-align: center;">Plaintiff/Petitioner</p>	<p>Hearing Date:</p> <p>CAUSE NO: 11 2 37066 6 KNT</p>
<p>vs.</p> <p><b>KARLIN TOWNSEND AND JOHN DOE TOWNSEND, WIFE AND HUSBAND</b></p> <p style="text-align: center;">Defendant/Respondent</p>	<p>AMENDED NARRATIVE DECLARATION OF SERVICE OF:  <b>SUMMONS AND COMPLAINT; ORDER SETTING CIVIL CASE SCHEDULE</b></p>

The undersigned hereby declares: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

On the 21st day of December, 2011, at approximately 4:40 PM, I arrived at the address of 2124 NE 155TH Street, VANCOUVER, Clark County, WA 98686. I knocked on the front door and a gray-haired white male approx. 55-65 years of age, 6'0"-6'6" tall and weighing 180-220 lbs, opened the door. I do not recall the entire conversation but I do remember that I asked him if Karlin Townsend was there and he replied she was not. I recall saying I had some paperwork for her and asking him if she lived there and he respond that she was staying there. He was very talkative and friendly, and I do believe I recall him also mentioning Karlin came back to live with us. I told him that I had some paperwork for her and this was the address I was given, I then asked if I could leave the documents with him. He replied he would take the documents and make sure she got them when she gets back. When I asked his name, he put out his hand to shake, said he was her father, and to the best of my knowledge I thought he said his name was Bill White. I shook his hand as I gave him my name, and then left.

*"staying there"*

On the 21st day of December, 2011, at 4:49 PM, at the address of 2124 NE 155TH Street, VANCOUVER, Clark County, WA 98686, this declarant served the above described documents upon **KARLIN TOWNSEND** and **JOHN DOE TOWNSEND** by then and there personally delivering 2 true and correct copy(ies) thereof, by then presenting to and leaving the same with **John Doe, CO-RESIDENT/FATHER**, a gray-haired white male approx. 55-65 years of age, 6'0"-6'6" tall and weighing 180-220 lbs., a person of suitable age and discretion who stated they reside at the defendant's/respondent's usual place of abode listed above.

No Information was provided or discovered that indicates that the subjects served are members of the U.S. military.

Service Fee Total: \$84.40

Declarant hereby states under penalty of perjury under the laws of the State of Washington that the statement above is true and correct.

DATED this 20th day of March, 2012.



Michelle Overton, Reg. # 4734975, CLARK, WA

FOR: Jacobs & Jacobs  
REF: Theresa Scanlan v Townsend

AMENDED PROOF OF  
SERVICE

Tracking #: 8916710 SEA FIL



1 **A. Or so, maybe less.**  
 2 Q. Has he gained weight in the last year?  
 3 **A. He has gained and lost, yes.**  
 4 Q. Okay.  
 5 **A. He has actually lost weight.**  
 6 Q. This -- these papers were left there, according to this  
 7 declaration, on the 21st of December of 2011 at 4:40 p.m.  
 8 And this person says that she told him, your dad, that he  
 9 had some paperwork for you, and asked if she lived there.  
 10 And he responded that she -- that you were staying there.  
 11 Do you know why your dad would say that?  
 12 **A. I am sure he did not say that. But I go there for**  
 13 **holidays once in a while.**  
 14 Q. When -- when you say, "Go there for holidays," does  
 15 that mean you would spend a few days at Christmas or  
 16 something like that?  
 17 **A. Yeah, a couple of days if I have the holidays off.**  
 18 Q. Are you close with your parents? Do you talk to your  
 19 mom and your dad a lot and so forth?  
 20 **A. Once or twice a week.**  
 21 Q. Okay. That is a good thing to be close to your  
 22 parents. Is your dad pretty talkative and friendly to most  
 23 people?  
 24 **A. He's friendly.**  
 25 Q. This says, and I quote, He was very talkative and

1 **A. They told me that they were there.**  
 2 Q. Well, when this all occurred, December of 2011, what  
 3 were you doing? Were you employed at that point?  
 4 **A. I was working.**  
 5 Q. Okay. And living where?  
 6 **A. In Seattle, up here.**  
 7 Q. Were you visiting your parents often during that period  
 8 of time?  
 9 **A. No.**  
 10 Q. Well, this was just four days before Christmas. Had  
 11 you -- did you spend --  
 12 **A. I don't always have holidays off. I don't ever -- I**  
 13 **don't have every holiday off.**  
 14 Q. Okay. Do you know if you worked Christmas Day 2011?  
 15 **A. Yeah, I believe I worked. Yes. I'm sorry.**  
 16 Q. This goes on to state, He replied he would take the  
 17 documents and make sure she got them when she get back. Did  
 18 he give you those documents?  
 19 **A. Yes, he did.**  
 20 Q. Okay. And when did he give you the documents in  
 21 relation to this conversation that apparently happened on  
 22 the 21st of December of 2011?  
 23 **A. I don't know.**  
 24 Q. Was it a few days? Was it weeks?  
 25 **A. It was probably at least a couple of weeks because I**

1 friendly. And I do believe I recall him also mentioning  
 2 Karlin came back to live with us.  
 3 Do you know why he would say that?  
 4 **A. He wouldn't say that, and he didn't say that.**  
 5 Q. Have you talked to him about this declaration?  
 6 **A. Yes.**  
 7 Q. When was that that you talked to him?  
 8 **A. Oh, I don't know. A few months ago.**  
 9 Q. When it came up?  
 10 **A. Yes.**  
 11 Q. Just talked to him once about it?  
 12 **A. A couple times, I think.**  
 13 Q. Did you go on over this kind of line by line with him?  
 14 **A. No. We did have a conversation that -- I heard that**  
 15 **that was said, and I told him that. And he said -- and I**  
 16 **already knew of course he would not say that, because I was**  
 17 **not living there. And so he would not say to somebody that**  
 18 **I was living there.**  
 19 Q. Well, this goes on to quote, He was very talkative and  
 20 friend -- no, I'm sorry. I told him that I had some  
 21 paperwork for her, you, and this was the address I was  
 22 given. I then asked if I could leave the documents with  
 23 him. He replied he would take the documents and make sure  
 24 she got them when she gets back. Did -- did you get  
 25 documents from your dad?

1 **don't go down there that often.**  
 2 Q. Are you saying that during that whole Christmas/New  
 3 Year's period of time in 2011, that you didn't go visit your  
 4 parents at all?  
 5 **A. I was working.**  
 6 Q. The whole time?  
 7 **A. Yes.**  
 8 Q. Did you celebrate Christmas with them at any point?  
 9 **A. Must have been after that.**  
 10 Q. Okay. So after the first of the year, maybe?  
 11 **A. Yeah. Yes.**  
 12 Q. And would you have gone to their house, or would they  
 13 have come to visit you in Seattle, or what?  
 14 **A. I can't remember if they came up here. I think I went**  
 15 **down there.**  
 16 Q. Uh-huh. Okay. Is that typically how it works when you  
 17 visit your parents, you drive down to Vancouver and see  
 18 them?  
 19 **A. No, it's not typical. They come up here a lot too.**  
 20 Q. Oh, okay. Well, they have a grandchild now, right?  
 21 **A. Yeah.**  
 22 Q. Okay, that is their motivation.  
 23 Now, for all these times when you moved, did you  
 24 update the Washington State Department of Licensing with a  
 25 new address?

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF KING

THERESA SCANLAN,

Plaintiff,

vs.

KARLIN TOWNSEND and "JOHN DOE"  
TOWNSEND, wife and husband,

Defendants.

No. 11-2-37066-6 KNT

**DECLARATION OF CHARLES  
WILLIAM (Bill) PYNE**

I, Charles William Pyne, declare and state as follows:

1. I am over the age of eighteen, have personal knowledge of and am competent to testify to the following. I am the father of the defendant Karlin Townsend.
2. I do recall speaking with a process server who was attempting to locate Karlin at my address which is 2124 NE 155<sup>th</sup> Street, Vancouver, WA.
3. I recall specifically telling the process server that Karlin was my daughter and that she did not reside at this address. My recollection is that I told the process server that my daughter had her own residence in the Greater Seattle area.

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**DECLARATION OF SERVICE**

I declare that I served the foregoing **DECLARATION OF CHARLES WILLIAM (Bill) PYNE** on the attorneys below

Tom Jacobs  
Jacobs & Jacobs  
114 E Meeker Avenue  
Puyallup, WA 98371  
Attorney for Plaintiff, THERESA SCANLAN  
Phone: (253) 845-0577  
Fax: (253) 845-9060

by causing a full, true and correct copy thereof to be MAILED in a sealed, postage-paid envelope, addressed as shown above, which is the last-known address for the party's office, and deposited with the U.S. Postal Service at Bellevue, WA, on the date set forth below;

By causing a full, true and correct copy thereof to be HAND-DELIVERED BY ABC MESSENGER SERVICE to the party, at the address listed above, which is the last-known address for the party's office, on the date set forth below;

By causing a full, true and correct copy thereof to be FAXED to the party, at the fax number shown above, which is the last-known fax number for the party's office, on the date set forth below.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Belleme WA on this 26<sup>th</sup> day of July, 2012.

Linda Nevish, Paralegal to

MICHAEL E. ABRAHAMSON  
WSBA # 28717  
Of Attorneys for Defendants

**RCW 4.28.080****Summons, how served.**

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

(1) If the action is against any county in this state, to the county auditor or, during normal office hours, to the deputy auditor, or in the case of a charter county, summons may be served upon the agent, if any, designated by the legislative authority.

(2) If against any town or incorporated city in the state, to the mayor, city manager, or, during normal office hours, to the mayor's or city manager's designated agent or the city clerk thereof.

(3) If against a school or fire district, to the superintendent or commissioner thereof or by leaving the same in his or her office with an assistant superintendent, deputy commissioner, or business manager during normal business hours.

(4) If against a railroad corporation, to any station, freight, ticket or other agent thereof within this state.

(5) If against a corporation owning or operating sleeping cars, or hotel cars, to any person having charge of any of its cars or any agent found within the state.

(6) If against a domestic insurance company, to any agent authorized by such company to solicit insurance within this state.

(7)(a) If against an authorized foreign or alien insurance company, as provided in RCW 48.05.200.

(b) If against an unauthorized insurer, as provided in RCW 48.05.215 and 48.15.150.

(c) If against a reciprocal insurer, as provided in RCW 48.10.170.

(d) If against a nonresident surplus line broker, as provided in RCW 48.15.073.

(e) If against a nonresident insurance producer or title insurance agent, as provided in RCW 48.17.173.

(f) If against a nonresident adjuster, as provided in RCW 48.17.380.

(g) If against a fraternal benefit society, as provided in RCW 48.36A.350.

(h) If against a nonresident reinsurance intermediary, as provided in RCW 48.94.010.

(i) If against a nonresident life settlement provider, as provided in RCW 48.102.011.

(j) If against a nonresident life settlement broker, as provided in RCW 48.102.021.

(k) If against a service contract provider, as provided in RCW 48.110.030.

(l) If against a protection product guarantee provider, as provided in RCW 48.110.055.

(m) If against a discount plan organization, as provided in RCW 48.155.020.

(8) If against a company or corporation doing any express business, to any agent authorized by said

company or corporation to receive and deliver express matters and collect pay therefor within this state.

(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.

(10) If against a foreign corporation or nonresident joint stock company, partnership or association doing business within this state, to any agent, cashier or secretary thereof.

(11) If against a minor under the age of fourteen years, to such minor personally, and also to his or her father, mother, guardian, or if there be none within this state, then to any person having the care or control of such minor, or with whom he or she resides, or in whose service he or she is employed, if such there be.

(12) If against any person for whom a guardian has been appointed for any cause, then to such guardian.

(13) If against a foreign or alien steamship company or steamship charterer, to any agent authorized by such company or charterer to solicit cargo or passengers for transportation to or from ports in the state of Washington.

(14) If against a self-insurance program regulated by chapter 48.62 RCW, as provided in chapter 48.62 RCW.

(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.

(16) In lieu of service under subsection (15) of this section, where the person cannot with reasonable diligence be served as described, the summons may be served as provided in this subsection, and shall be deemed complete on the tenth day after the required mailing: By leaving a copy at his or her usual mailing address with a person of suitable age and discretion who is a resident, proprietor, or agent thereof, and by thereafter mailing a copy by first-class mail, postage prepaid, to the person to be served at his or her usual mailing address. For the purposes of this subsection, "usual mailing address" does not include a United States postal service post office box or the person's place of employment.

[2012 c 211 § 1; 2011 c 47 § 1; 1997 c 380 § 1; 1996 c 223 § 1; 1991 sp.s. c 30 § 28; 1987 c 361 § 1; 1977 ex.s. c 120 § 1; 1967 c 11 § 1; 1957 c 202 § 1; 1893 c 127 § 7; RRS § 226, part. FORMER PART OF SECTION: 1897 c 97 § 1 now codified in RCW 4.28.081.]

### Notes:

**Rules of court:** Service of process -- CR 4(d), (e).

**Effective date, implementation, application -- Severability -- 1991 sp.s. c 30:** See RCW 48.62.900 and 48.62.901.

**Severability -- 1977 ex.s. c 120:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 120 § 3.]

Service of process on

foreign corporation: RCW 23B.15.100 and 23B.15.310.

foreign savings and loan association: RCW 33.32.050.

nonadmitted foreign corporation: RCW 23B.18.040.  
nonresident motor vehicle operator: RCW 46.64.040.