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No. 90429-4

SUPREME COURT  
OF THE STATE OF WASHINGTON

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PATRICIA A. GRANT,

Petitioner,

v.

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

Respondents.

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DR. MICHELE PULLING'S  
ANSWER TO PETITION FOR REVIEW

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 ORIGINAL

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**A. Introduction.**

The Court of Appeals affirmed the dismissal of petitioner Patricia Grant's claim for medical malpractice against respondent Michele Pulling because she failed to serve Dr. Pulling with a summons and complaint. (Op. at 8: "Grant does not dispute, here or below, that she failed to personally serve the three defendants whose claims were dismissed on this ground.") The Court of Appeals correctly held under established law that personal service is a necessary requirement of personal jurisdiction. Its decision raises no issue for review. RAP 13.4(b).

**B. Court of Appeals Decision.**

The Court of Appeals issued its unpublished decision on April 28, 2014. The Court of Appeals denied a timely motion for reconsideration on May 29, 2014.

**C. Issue Presented For Review.**

Did the Court of Appeals correctly affirm dismissal of a complaint for lack of personal jurisdiction where it is undisputed that the defendant was never personally served?

**D. Statement of the Case.**

**1. Ms. Grant sued Dr. Pulling along with a host of health care providers, but never served Dr. Pulling with a Summons and Complaint.**

In 2009, Dr. Michele Pulling was a resident physician participating in the University of Washington School of Medicine's Gastroenterology Fellowship program. (CP 76) On June 15, 2012, Ms. Grant filed a summons and complaint in King County Superior Court alleging damages arising from health care against a dozen health care providers, insurers, and institutions, including Dr. Pulling. (CP 1-60) Ms. Grant filed an amended complaint on July 16, 2012. (CP 67-74)

Ms. Grant's amended complaint alleged that Dr. Pulling met with Ms. Grant at Pacific Medical Center for medical treatment on one occasion in 2009, during which Dr. Pulling, "[i]n agreement with Defendant Oswald, [and] Defendants [sic] Krishnamurthy ... purposely misrepresented a prescription for Nortriptyline (a Tricyclic antidepressant) as a smooth throat muscle relaxant medication." (CP 69) Ms. Grant alleged that Dr. Pulling's actions tortiously "extended Plaintiff's suffering, upon which Plaintiff's medical insurances [sic] were billed;" and that Dr. Pulling and Dr. Krishnamurthy "intentionally and knowingly discriminated against

[Ms. Grant], based on [Ms. Grant's] disability[,] while defrauding the federal government by billing for the fraudulent services." (CP 69-70)

Dr. Pulling was never served with either the original or amended summons or complaint. (*Compare* CP 76-77 with CP 87-91) Ms. Grant filed a certificate of service of her amended complaint stating only that she sent notification of the amended complaint via certified mail in care of "Gina Marble, Risk Mgt, Pacific Medical Center, 1200 12<sup>th</sup> Avenue S. Qtr 6/7, Seattle, WA 98144." (CP 73)

**2. The Court of Appeals affirmed the trial court's order of dismissal for lack of personal jurisdiction.**

Dr. Pulling appeared through counsel, reserving her objections to the exercise of jurisdiction. (CP 765) Dr. Pulling filed a motion to dismiss Ms. Grant's claims, raising her objection to the exercise of personal jurisdiction absent personal service. (CP 75-86)<sup>1</sup>

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<sup>1</sup> Dr. Pulling also argued for dismissal on the grounds that, because Dr. Pulling's treatment of Ms. Grant was within the scope of her employment as a resident at the University of Washington, Ms. Grant's claims against her were subject to the State's sovereign immunity and she failed to comply with the procedural requirements of RCW 4.92.100. (CP 75-86)

In her response to Dr. Pulling's motion, Ms. Grant conceded that she had not personally served Dr. Pulling, arguing that she obtained personal jurisdiction by serving co-defendant Pacific Medical Center where Dr. Pulling had been on "rotation" and by listing Dr. Pulling along with the twelve co-defendants in her lawsuit. (CP 89-90) Ms. Grant argued that service on Pac Med was sufficient "since plaintiff has used reasonable diligence to pursue her claim." (CP 90)

Dr. Pulling continued the hearing date to give Ms. Grant additional time to respond. (CP 87, 519-20, 533-34) King County Superior Court Judge Jay White ("the trial court") then dismissed Ms. Grant's claims against Dr. Pulling for lack of jurisdiction. The trial court entered its order on October 29, 2012, after considering the motion, Ms. Grant's response and Dr. Pulling's reply, without oral argument. (CP 495-96) Several weeks later, on November 9, 2012, the trial court heard oral argument and granted most of the remaining defendants' motion for summary judgment. (CP 348-49, 517-18, 687-88)

The Court of Appeals affirmed in an unpublished decision and denied Ms. Grant's motion for reconsideration on May 29, 2014.

**E. Argument Why Review Should Be Denied.**

- 1. The Court of Appeals correctly affirmed Dr. Pulling's dismissal for lack of personal jurisdiction given Ms. Grant's concession that she never served Dr. Pulling with process.**

As a matter of both constitutional law and by statute, personal service of a complaint on a defendant is the predicate to the power to compel a party to appear and answer in court. *In re Estate of Kordon*, 157 Wn.2d 206, 210, 137 P.3d 16 (2006) ("Proper service of process is essential to invoke personal jurisdiction over a party.") (citation and internal quotation omitted); *Goettemoeller v. Twist*, 161 Wn. App. 103, 253 P.3d 405 (2011). RCW 4.28.080(15) specifically requires service "to the defendant personally, or by leaving a copy of the summons at the house of his or her usual abode..." Failure to strictly comply with this statutory requirement for service of process deprives the court of personal jurisdiction over a defendant. *Weiss v. Glemp*, 127 Wn.2d 726, 731-32, 903 P.2d 455 (1995); *Goettemoeller*, 161 Wn. App. at 107.

It is undisputed that Dr. Pulling was never served. Ms. Grant filed no affidavit alleging that she personally served Dr. Pulling or left a copy of the summons and complaint at Dr. Pulling's residence. (See CP 87-103) Ms. Grant instead alleged that she served co-

defendant Pacific Medical Center with “lawsuit action notifications” and exercised “reasonable diligence in pursuing her complaints against defendant Pulling in 2009 and 2012.” (CP 89-90) Ms. Grant’s service on a co-defendant is insufficient to establish personal jurisdiction over Dr. Pulling, who was never personally served. *See Dolby v. Worthy*, 141 Wn. App. 813, 817, 173 P.3d 946 (2007), *rev. denied*, 164 Wn.2d 1004 (2008).

Even had Dr. Pulling been an employee of Pac Med at the time of the alleged incident, service upon Pac Med would not have been sufficient to obtain jurisdiction over Dr. Pulling. *Dolby*, 141 Wn. App. at 817 (“An individual defendant cannot be served by serving an employee at his or her place of business.”). Dr. Pulling was “under no obligation to arrange a time and place for service or to otherwise accommodate the process server.” *Weiss*, 127 Wn.2d at 734 (*quoting Thayer v. Edmonds*, 8 Wn. App. 36, 42, 503 P.2d 1110 (1972), *rev. denied*, 82 Wn.2d 1001 (1973)).

Ms. Pulling’s “reasonable diligence,” standing alone, does not satisfy the statutory requirement for substitute service under RCW 4.28.080(15). *See Goettmoeller*, 161 Wn. App. at 108 (when personal service cannot be achieved through reasonable diligence “the question becomes whether the service amounts to valid

substitute service. . .”). Without proper service of process, the trial court lacked personal jurisdiction and properly dismissed the claims against Dr. Pulling. The Court of Appeals’ affirmance of the trial court’s order of dismissal follows established law and presents no grounds for review. RAP 13.4(b).<sup>2</sup>

**2. Ms. Grant was not deprived of any procedural or substantive right in the trial court.**

Dr. Pulling’s dismissal did not violate any procedural or substantive right of Ms. Grant. Ms. Grant’s claims of disability discrimination, judicial bias and denial of 14<sup>th</sup> amendment rights do not present any basis for review of the Court of Appeals decision.

The trial court considered Dr. Pulling’s motion to dismiss without oral argument after the motion was continued upon Ms. Grant’s objection that she lacked sufficient time to respond. (CP 87, 519-20, 533-34) The trial court considered the motion, Ms. Grant’s response and Dr. Pulling’s reply before entering its order of dismissal. (CP 495-96) Ms. Grant did not seek additional time to

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<sup>2</sup> Ms. Grant contends that she did not know Dr. Pulling was a state employee, but the Court of Appeals did not address Ms. Grant’s failure to comply with the claim filing statute, RCW 4.92.100, as an alternative basis for affirming the dismissal of the claims against Dr. Pulling. In the event this Court grants review, it should address this alternative grounds of dismissal or remand for the Court of Appeals to address it. RAP 13.7(b)

serve Dr. Pulling or to engage in discovery on the issue of service. Instead, she conceded that she had not served Dr. Pulling. (CP 89-90)

To the extent, Ms. Grant complains that she was not heard in person and could not present oral argument on Dr. Pulling's motion to dismiss, neither the 14<sup>th</sup> Amendment nor the right to access the courts gives a litigant, pro se or represented, a right to oral argument on a motion. *See FCC v. WJR, The Goodwill Station, Inc.*, 337 U.S. 265, 276-77, 69 S.Ct. 1097, 93 L.Ed. 1353 (1949); *Johnson v. Horizon Fisheries, LLC*, 148 Wn. App. 628, 642, 201 P.3d 346 (2009). Nor can Ms. Grant complain that she was entitled to additional time as an "accommodation," given the fact that her response to Dr. Pulling's motion to dismiss was continued for an additional week. (CP 87, 519-20, 533-34) Ms. Grant complains that her personal interactions with the courtroom staff prejudiced her (Petition 15-16), but since there was no courtroom hearing on Dr. Pulling's motion to dismiss, those allegations, even if true, cannot establish any reversible error in the trial court's dismissal of Dr. Pulling. Ms. Grant received the right to be heard in a meaningful manner available to all litigants in a Washington court.

Ms. Grant's far ranging claims of disability discrimination and bias are also baseless. Her contention that Dr. Pulling's counsel, Douglas Yoshida, was complicit in creating a hostile courtroom environment (Petition 16) or that he was precluded from representing Dr. Pulling because of an unspecified conflict of interest (Petition 19) lack any support in the record. Her arguments do not present any ground for review by this Court.

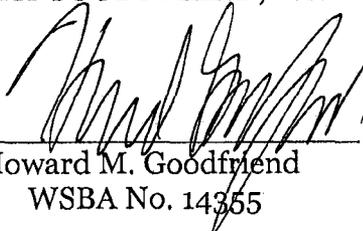
**F. Conclusion.**

The Court of Appeals properly affirmed the dismissal of Ms. Grant's claims against Dr. Pulling. Its decision presents no issue for review.

Dated this 29<sup>th</sup> day of July, 2014.

SMITH GOODFRIEND, P.S.

OGDEN MURPHY WALLACE,  
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By:   
Howard M. Goodfriend  
WSBA No. 14355

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Special Assistant Attorneys General  
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**DECLARATION OF SERVICE**

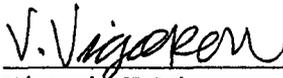
The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on July 29, 2014, I arranged for service of the foregoing Dr. Michele Pulling's Answer to Petition for Review, to the court and to the parties to this action as follows:

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**DATED** at Seattle, Washington this 29th day of July, 2014.

  
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Victoria K. Vigoren

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**Subject:** Grant v. Claudio Alperovich, M.D., et al.

Attached for filing is Dr. Michele Pulling's Answer to Petition for Review, in *Grant v. Claudio Alperovich, M.D., et al.*, Cause No. 90429-4. The attorney filing this document is Howard M. Goodfriend, WSBA No. 14355, e-mail address: [howard@washingtonappeals.com](mailto:howard@washingtonappeals.com).

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