

# WASHINGTON CASE UPDATE

## Failing to Provide Evidence: When Challenging Service Will Work Against You

**From the desk of Kyle D. Riley: When a defendant in a motor vehicle accident challenges service of process because he has moved out of state, will he be able to rely solely upon the declaration of his family member? Read on to see what pitfalls to avoid if you are challenging service.**

**Claims Pointer: In this auto accident case, the Washington Court of Appeals held that the defendant failed to rebut the presumption the plaintiff completed proper service of process. The defendant challenged substitute service at his “usual abode,” claiming he had moved out of his father’s home and was living, working, and attending school in Texas. However, he only provided his father’s declaration to support his claim, and the court noted that when a party fails to produce relevant evidence within its control without satisfactory explanation, a trial court is permitted to infer that the evidence would be unfavorable to the nonproducing party. Service was effective because the defendant failed to support his claim with clear and convincing evidence sufficient to overcome the presumption that service was proper.**

*Northwick v. Long*, 192 Wash App 256 (2015).

Following a motor vehicle accident, Peggy Northwick (“Northwick”) filed a lawsuit alleging Andrew Long (“Long”) was the at-fault driver. Northwick served Long by leaving copies of the Summons and Complaint with his father, Hoeun Long (“Hoeun”), at a Snohomish, Washington address where records showed Long’s car was registered.

Long claimed insufficient service of process and filed a motion to dismiss, supporting his motion with a declaration from Hoeun. In the declaration, Hoeun stated Long moved out some time before December 25, 2013. While Hoeun did admit a man had come to his house on March 8, 2014, and he told the man he was Long’s father, Hoeun stated the man did not ask whether Long lived there and did not request Long’s current address. Hoeun told him Long had his own car in his name, did not receive mail at that address, and was working and going to school in Texas.

The process server, Randy Bennett (“Bennett”), was deposed by Northwick. Bennett testified he went to Long’s last known address on March 8, 2014, to serve the Summons and Complaint. He spoke with Hoeun, who identified himself as Long’s father and said Long lived there. When

Bennet told Hoeun he had a delivery for Long, Hoeun said Long was not home but would be home later that night. Hoeun agreed to deliver the legal documents to Long, again confirming Long lived at the address.

The Declaration of Service was filed with the clerk of the trial court on March 24, 2014. At his deposition, Bennett testified it was his practice to get multiple confirmations of the residence from a co-resident, and he also discussed his review of Long’s vehicle identification from the Washington Department of Licensing database, a TransUnion Locate report, and U.S. Postal Service trace, all confirming Long lived at the Snohomish address as late as May 8, 2014.

Long filed a Motion to Dismiss, which the trial court denied after oral argument. Long sought discretionary review, arguing he was not properly served.

The parties agreed Bennett did not serve Long with a copy of the Summons and Complaint, so Northwick had to show Bennett completed proper substitute service. The core dispute, was the location of Long’s usual abode at the time Northwick attempted service. Long conceded that Northwick met her initial prima facie burden with Bennett’s Declaration of

case in point...



Contact: Kyle Riley | [www.smithfreed.com](http://www.smithfreed.com) | email: [kriley@smithfreed.com](mailto:kriley@smithfreed.com)

Ph: 206.576.7575 | Fax: 206.576.7580 | 705 Second Avenue, 17th Floor | Seattle | WA | 98104

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.

# WASHINGTON CASE UPDATE

## Failing to Provide Evidence: When Challenging Service Will Work Against You

case in point...

Service but contended Hoeun's declaration demonstrated it was highly probable Long did not reside at the Snohomish address, thus rebutting any presumption created by the Declaration of Service and shifting the burden back to Northwick to demonstrate proper service.

Northwick argued Long's evidence was insufficient to demonstrate clearly and convincingly that proper service did not occur. She pointed out that the Court of Appeals previously sided with the defendant in another case where substitute service was attempted at a house owned by the defendant but leased to her daughter and son-in-law because the defendant produced evidence she had established a new address by notifying the post office, obtaining a new driver's license, and informing her regular creditors. Long did not produce any similar evidence.

Long argued that Northwick's evidence showed only that he did not promptly update his contact information with the post office and Department of Licensing. He relied in part on a previous case where the court held that a defendant's unrefuted evidence of a California bank account, home purchase, lease, and tenant's statement showing he resided elsewhere was clear and convincing evidence of the defendant's usual abode. Northwick distinguished these cases, pointing out that in cases where the court found clear and convincing evidence of improper service, the defendant, unlike Long, presented substantial evidence that would have been available to a reasonably diligent plaintiff.

The court agreed with Northwick, noting Long did not present his own declaration, instead relying on Hoeun's declaration, and Northwick not only challenged Hoeun's credibility — Bennett's testimony contradicted Hoeun's declaration—but provided evidence that Long's address on file with both the post office

and the Department of Licensing at the time of service was the Snohomish address where service occurred. Because Long produced no similar evidence for a different address and provided no documentation relating to housing, banking, or other activities highly probative of domestic activity linking him to a different address, the trial court was permitted to draw the inference that his failure to produce relevant evidence within his control without satisfactory explanation indicated the evidence would be unfavorable. Accordingly, the Court of Appeals concluded that because Northwick proved her prima facie case and Long failed to demonstrate service was improper, the Motion to Dismiss was properly denied. The trial court was affirmed and the case was remanded for further proceedings.

*Case updates are intended to inform our clients and others about legal matters of current interest. They are not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.*



Contact: Kyle Riley | [www.smithfreed.com](http://www.smithfreed.com) | email: [kriley@smithfreed.com](mailto:kriley@smithfreed.com)

Ph:206.576.7575 | Fax: 206.576.7580 | 705 Second Avenue, 17th Floor | Seattle | WA | 98104

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.