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Washington Case Update

case in point...

How to Serve Motorist Defendant via Secretary of State

From the desk of Kyle D. Riley: Washington law permits a plaintiff to serve a motorist defendant through the secretary of state provided they exercise due diligence in trying to find the defendant. However, this alternate form of service has long been believed to require filing affidavits of compliance with the trial court. In this case, the Court of Appeals reviewed the relevant statute and announced the requirements it imposes on plaintiffs to effect proper service.

Claims Pointer: In this case arising out of a motor vehicle accident, the Washington Court of Appeals held: 1) that the applicable statute does not require filing an affidavit of compliance with the trial court; 2) that a defendant's "last known address" is based on plaintiff's reasonable belief; and 3) that a plaintiff need not attempt service at all of a defendant's known past addresses. The case clarifies the requirements a plaintiff must meet in order to successfully serve a motorist defendant through the secretary of state, a key consideration when moving to dismiss certain claims.

Corinn James and Ian James v. Casey McMurry et al., No. 47495-6-II, Washington Court of Appeals, Div. II. (July 19, 2016).

In December 2011, Casey McMurry ("McMurry") caused a collision with a car driven by Corinn and Ian James ("the Jameses"). In December 2014, nearly a full three years later, the Jameses filed a complaint against McMurry alleging negligence. The same day, the Jameses hired a private investigator to find McMurry's current address for service of process. The Jameses then attempted personal service twice each at the addresses the investigator indicated were most current. After those efforts failed, they twice attempted personal service at another address they believed to belong to McMurry's girlfriend, but they were again unsuccessful.

The Jameses then attempted service via the secretary of state pursuant to RCW 46.64.040. They mailed copies of the summons and complaint, affidavit of compliance and due diligence, and a check with the required fee to the secretary of state. They also mailed copies of the summons, complaint, and affidavits to McMurry via registered mail at the address they believed was current based on the investigator. They did not file affidavits of compliance with the trial court, instead filing a proof of service document. McMurry's attorney moved to dismiss the case because the statute of limitations period had run before McMurry was property served. The trial court granted the motion and dismissed the case, ruling that the Jameses failed to comply with RCW 46.64.040 because they had not filed a copy of the affidavit of compliance with the trial court. The Jameses appealed the dismissal.

The court was tasked with answering three separate procedural questions related to serving a motorist defendant through the secretary of state: 1) whether the statute required filing an affidavit of compliance with the trial court; 2) whether a defendant's "last known address" was his most recent address; and 3) whether the statute required attempted personal service at all known past addresses.

In a 1997 case, the Court of Appeals stated that this alternate form of service under the statute required the plaintiff to file an affidavit of compliance with the court. However, the statutory language only requires a plaintiff to: 1) perform "a due and diligent search for the defendant"; 2) pay the fee and give two copies of the summons or process to the secretary of state; and 3) mail a copy of the summons or process, with an affidavit of compliance and due diligence attached, to the defendant at his "last known address." The court therefore disavowed its prior statement, holding that the statute does not require filing an affidavit of compliance with the court.

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The court next examined whether the Jameses sent notice to McMurry's "last known address." McMurry argued that his "last known address" was the known address at which he most recently resided. The Jameses countered that if a plaintiff reasonably believes a known address to be the defendant's most recent, it should qualify as the "last known address." The court explained that McMurry's interpretation, which would effectively require service be sent to the defendant's current address, did not practically differ from standard service rules. The court held that the statute requires only that a plaintiff attempt service at the address where he or she reasonably believes the defendant most recently resided, based on due diligence and good faith.

Finally, the court scrutinized the statutory requirements for attempting personal service at past addresses. McMurry argued that the statute required personal service at all known former addresses, so the Jameses did not act with the necessary due diligence required by the statute. The court disagreed, noting that the plain meaning of the phrase "addresses known to [plaintiff] of defendant" refers only to addresses the plaintiff knows or reasonably suspects are current locations where the defendant might be communicated with or found. Because a defendant would likely not be found at past addresses, requiring a plaintiff to attempt personal service at past addresses would impose additional procedural difficulties on service without increasing the likelihood the defendant would be personally served. Thus, the court determined that the phrase "all addresses known to [the plaintiff] of defendant," as used in RCW 46.64.040, refers only to addresses known or reasonably suspected to be current, and a plaintiff acting with due diligence under the statute need not attempt personal service at addresses known or reasonably believed to be past addresses at which the defendant would no longer be.

Dismissal was therefore reversed, and the case was remanded to the trial court.

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.

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