

WASHINGTON CASE UPDATE

Service by Mail Requires Evidence that Defendant is Avoiding Service

From the Desk of Kyle D. Riley: In Washington, service by mail is permitted only if the Plaintiff can provide evidence that the Defendant was avoiding service. What type of evidence will suffice? Read on to find out.

Claims Pointer: In this case arising out of a car accident, the Washington Court of Appeals held that without evidence raising the inference that the Defendant was avoiding service, either by fleeing the state or by hiding within the state, it was improper to allow substitute service by mail. The case is a reminder of the requirements for substitute service, an important consideration for plaintiffs and defendants alike.

Forsberg v. Griep, No. 33742-1-III, Washington Court of Appeals, Division 3 (October 13, 2016) (unpublished)

Katherine Forsberg (“Forsberg”) and Weston Griep (“Griep”) were involved in a car accident in February 2012. In February 2015, Forsberg filed a negligence action against Griep. It was not until late April 2015 that Forsberg learned that Griep no longer lived at the address listed in the accident report. Notably, Griep was 19 at the time of the accident and was living at his father’s home.

Forsberg had less than one month remaining to effect service. She filed a motion requesting permission to serve Griep by mail, arguing that she had exhausted all reasonable measures to locate Griep and he was avoiding service. The trial court allowed Forsberg to serve Griep by mail at his father’s address, and her attorney mailed the summons and complaint immediately.

Griep filed a motion for reconsideration of the order authorizing service by mail. He also filed a motion for summary judgment arguing that service at his father’s address was ineffective, and the action should be dismissed because the statute of limitations had now expired. In a declaration, Griep stated that he had moved to Spokane four months after the accident, and he had not lived with his parents since then. He had not been personally served with the complaint, never received a copy from his father, and never attempted to avoid service.

The trial court reconsidered the order to serve by mail, found it had been in error, and granted summary judgment in favor of Griep. Forsberg appealed.

On appeal, Forsberg argued that service at the father’s house was effective substitute service, and that the trial court erred in reconsidering its order authorizing service by mail. In Washington, substitute service is effective when a copy of the summons is left at the defendant’s usual place of abode with some person of suitable age and discretion then resident therein. The only issue regarding substitute service was whether Griep’s usual place of abode was his father’s home where service was attempted.

Forsberg argued that because statutory provisions permitting substitute service are to be liberally construed, service at Griep’s father’s house was sufficient. The Court of Appeals noted that Forsberg offered no evidence that Griep continued to use his father’s address as his residence address, nor did she demonstrate that he ever returned there to live or stay there for any extended period of time. Thus, there was no genuine issue as to whether the father’s house was a second house of usual abode for Griep at the time of attempted service.

The Court of Appeals then turned to the issue of whether the trial court’s reconsideration of its order authorizing service by mail was in error. To prevail, Forsberg did not need to clearly

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prove Griep's intent to avoid service, but she at least had to articulate facts that raised an inference that he intended to avoid service.

Forsberg relied on evidence that a neighbor told the second process server that the Griep family was in California. The court determined this evidence was insufficient because (1) it was hearsay, and (2) it did not support the conclusion that the "family" included Griep himself. Moreover, even if Griep had been in California, it would not raise an inference that he was there in order to avoid service. Forsberg also relied on evidence that 12 days before the statute of limitations ran, Griep changed his address with the Department of Licensing from one Spokane address to a more current Spokane address. The court, however, pointed out that Griep's having updated his address actually increased the likelihood he would be served.

Because Forsberg failed to present facts supporting an inference that Griep intended to avoid service, it determined the trial court's original order authorizing service by mail was not supported by the record. Thus, the trial court's reconsideration of the order was not an abuse of discretion. Because there was insufficient service prior to the running of the limitations period, summary judgment was appropriate, and the trial court was affirmed.

NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

View full opinion at: https://www.courts.wa.gov/opinions/pdf/337421_unp.pdf

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