Third District Court of Appeal
State of Florida, July Term, A.D. 2011

Opinion filed August 17, 2011.
Not final until disposition of timely filed motion for rehearing.

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No. 3D10-1736
Lower Tribunal No. 09-8815

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Jorge Robles-Martinez, et al.,
Appellants,

vs.

Diaz, Reus & Targ, LLP,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Marc Schumacher, Judge.

Bolivar C. Porta, for Appellants.

Diaz, Reus & Targ, LLP, and Carlos F. Gonzalez, Chad S. Purdie and Margaret Perez, for Appellee.

Before RAMIREZ, LAGOA, and EMAS, JJ.

EMAS, J.

Appellants seek review of the trial court's order denying their motion to quash service of process, asserting that the trial court applied the incorrect legal standard and there was not competent substantial evidence to conclude substituted service was properly effectuated. We affirm.

FACTUAL BACKGROUND

Appellee law firm Diaz, Reus & Targ, LLP sued its client, Cesar Lindo Hoyos, for unpaid fees.[1] It also sued Ana Cristina Robles-Martinez and Jorge Robles-Martinez, Mr. Hoyos' daughter and son-in-law. These two individuals were not personally served; substituted service was effectuated on May 21, 2009, upon Maria Uribe (the mother of Ana Cristina Robles-Martinez), who resided at the address in question at the time of service.

Appellants filed a motion to quash service of process, alleging they were not living at the address at the time of service of process. In support of their motion, Appellants filed an affidavit of Ms. Uribe, who averred that Appellants were not living at the address in question on the date of service and did not live there during the month of May 2009.

At a subsequent hearing, the trial court found Ms. Uribe's affidavit insufficient and granted Appellants twenty-one days to file their own affidavits,

[1] Mr. Hoyos is not a party to this appeal.

which they did. Thereafter, an evidentiary hearing was held on the motion to quash.

At the evidentiary hearing, Appellee presented the live testimony of the process server, Mr. Rodolfo Perez, who testified in relevant part:

Appellants' last known address was an apartment within a condominium complex on Key Biscayne. Upon arrival, Mr. Perez was met by a security guard at the main entrance. The security guard verified and advised Mr. Perez that Appellants did in fact live at the address in question. Mr. Perez inquired whether anyone else lived with them, and the guard indicated that the mother of Mrs. Robles-Martinez lived with them and that the mother should be at the apartment.

The security guard permitted Mr. Perez to enter the complex; he went to the apartment in question and knocked on the door. The mother, Ms. Uribe, opened the door. Mr. Perez asked for Appellants by name, and Ms. Uribe said that they lived there with her, but that they were not home. Mr. Perez testified that Ms. Uribe said her daughter "wasn't there but she'd be there shortly." Mr. Perez asked Ms. Uribe if she would accept the summonses and Ms. Uribe agreed and signed the paperwork accepting service on behalf of Appellants. As he was leaving the complex, Mr. Perez again verified that Appellants and Ms. Uribe all lived together in the same apartment. Mr. Perez identified Ms. Uribe (who was present in court)

as the person he served with the summonses. The summonses and verified returns of service were introduced into evidence without objection.

On cross-examination, Mr. Perez agreed that he did not specifically ask the security guard or Ms. Uribe whether Appellants were "currently" living in the apartment. However, Mr. Perez explained:

> When [Ms. Uribe] told me that [her daughter and son-in-law] both lived there, that [the daughter] wasn't home right now, that she had left and she would be back shortly, then is when I asked if she [Ms. Uribe] lives there . . . and she said yes. So she said if I wanted to wait for her [daughter] or could she take it for her and him, so that's what I did.

(Emphasis added.)

Appellants presented the live testimony of Ms. Uribe,[2] who testified in relevant part:

A process server came to the apartment with paperwork for her daughter and son-in-law. She told the process server that they did not live there, but that she would accept service on their behalf. Ms. Uribe testified that Appellants had not lived at the apartment for approximately eight months before the process server came to serve them. Ms. Uribe stated she lived alone in the apartment during that period. On cross-examination, Ms. Uribe acknowledged that during her deposition

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[2] Appellants did not attend the evidentiary hearing and the trial court did not permit their depositions to be taken prior to the hearing.

she testified that she could not recall what she had told the process server when he came to serve the summonses.

Appellants argued that there was insufficient evidence to establish that the apartment was their "usual place of abode" as opposed to their residence, because there was no evidence that Appellants currently resided at the apartment at the time service was effectuated.

The trial court indicated that, after reviewing the court file, the testimony at the hearing, and the affidavits, Appellants had failed to establish by clear and convincing evidence that service was not proper, and denied the motion to quash.

DISCUSSION AND ANALYSIS

1. The Presumption and the Burden

Appellants contend that the trial court erred by placing the burden upon them to prove improper service. A trial court's ruling on a motion to quash service of process, to the extent it involves questions of law, is subject to *de novo* review. Mecca Multimedia, Inc. v. Kurzbard, 954 So. 2d 1179, 1181 (Fla. 3d DCA 2007). Service made under the substitute service provisions of section 48.031, Florida Statutes, must be strictly complied with, and these provisions are to be strictly construed. Clauro Enter., Inc. v. Aragon Galiano Holdings, Inc., 16 So. 3d 1009, 1011 (Fla. 3d DCA 2009); Gonzalez v. Totalbank, 472 So. 2d 861, 864 (Fla. 3d DCA 1985). While a plaintiff bears the ultimate burden of proving valid service of

process, M.J.W. v. Dep't. of Children & Families, 825 So. 2d 1038, 1041 (Fla. 1st DCA 2002), a "return of service that is regular on its face is presumed to be valid absent clear and convincing evidence presented to the contrary." Telf Corp. v. Gomez, 671 So. 2d 818 (Fla. 3d DCA 1996).[3]

Here, the verified returns of service were regular on their face, containing all of the information in compliance with the specific requirements of section 48.031(1)(a).[4] The trial court correctly determined that this created a presumption of valid service of process. This presumption shifted the burden to Appellants to establish at the evidentiary hearing, by clear and convincing evidence, that service of process was not properly effectuated.

The dissent posits that, although the return of service was regular on its face, the affidavits submitted by Appellants "made a prima facie showing that the return of service was defective," shifting the burden back to Appellee to prove valid

[3] "Clear and convincing evidence" is "evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue." Fla. Std. Jury Inst. (Civ.) 405.4 (adopting definition set forth in Slomovitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

[4] That subsection provides: "Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents. Minors who are or have been married shall be served as provided in this section."

service. However, Appellants' affidavits do not challenge the facial regularity of the return; instead, the affidavits challenge the validity of the service of process itself. There is a significant difference between a facially defective return of service (for example, a return which, on its face, fails to contain the information required by statute)[5] and an invalid service of process (for example, a claim that the residence where service was effectuated was not the defendant's usual place of abode).[6] This distinction is essential in properly allocating the burden of proof and production.[7]

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[5] See, e.g., Gonzalez, 472 So. 2d at 861 (return of service was not regular on its face where return itself failed to contain a statement of the manner in which service was made and the name of person served, both of which are required under section 48.21, Florida Statutes); Nat'l Safety Assocs., Inc. v. Allstate Ins. Co., 799 So. 2d 316 (Fla. 2d DCA 2001) (defendants made prima facie showing that return of service was facially defective where return failed to include (as required by § 48.081(1)) statement that all superior corporate officers designated in the statute were absent when service was attempted on inferior corporate officer).

[6] See, e.g., Busman v. State, 905 So. 2d 956 (Fla. 2005) (return of service was regular on its face and therefore presumptively valid; defendant thus had burden of proving, by clear and convincing evidence, that he was not served at his usual place of abode).

[7] The dissent relies upon Thompson v. State, Department of Revenue, 867 So. 2d 603 (Fla. 1st DCA 2004), for the proposition that an affidavit alleging that defendant was not served at his usual place of abode is a challenge to the facial regularity of the return of service. In Thompson, our sister court appeared to blur the distinction between prima facie evidence showing a facially defective return of service versus proof of invalid service of process: "Thompson's motion and affidavit are based on the fact that the service did not comply with section 48.031 and was therefore legally deficient . . . Thompson's affidavit makes a *prima facie* showing that he was not served at his usual place of abode." Id. at 605. However, such a claim is a challenge to the validity of the service of process, rather than a challenge to the facial regularity of the return of service. As our Court previously

As we discussed in Gonzalez v. Totalbank, 472 So. 2d at 864 n.1:

> When the return of service is regular on its face, the party challenging the service has the burden of overcoming the presumption of its validity by presenting clear and convincing evidence. Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983); Winky's, Inc. v. Francis, 229 So. 2d 903 (Fla. 3d DCA 1969). On the other hand, when, as in this case, the challenging party makes a prima facie showing that the return is defective, then the burden shifts to the person acting under the substituted service provision to prove valid service. George Fischer, Ltd. v. Plastiline, Inc., 379 So. 2d 697 (Fla. 2d DCA 1980).

Gonzalez involved a return that was shown prima facie to be defective on its face, and therefore the presumption of valid service was unavailable to the plaintiff. This determination was made by simply reviewing the four corners of the return to see if it contained all of the information required by the applicable statute:

> Section 48.21, Florida Statutes (1979) requires those serving process to record, among other things, the manner of execution of the process and the name of the person served. *A failure to record those facts invalidates the service, unless it is amended. The return here did not reflect the name of the person served, merely indicating that a Jane Doe was served. With regard to the manner of execution, there is no indication that the person served was over 15 years old. Consequently, under section*

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has held, once a return of service is shown to be valid on its face, a presumption of valid service attaches, and a defendant who thereafter claims that service was not made at the defendant's usual place of abode must establish such a claim by clear and convincing evidence. See Busman, 905 So. 2d at 956; Telf Corp. v. Gomez, 671 So. 2d 818 (Fla. 3d DCA 1996); Fla. Nat'l Bank v. Halphen, 641 So. 2d 495 (Fla. 3d DCA 1994); Gonzalez, 472 So. 2d at 861.

48.21... the return of service was defective and the service was invalid.

Id. at 864 (emphasis added).

Johnston v. Halliday, 516 So. 2d 84, 85 (Fla. 3d DCA 1987), provides another example of what is meant by the concept of a return of service which is "regular on its face." In Johnston, the process server attempted substituted service under section 48.031(1) by serving the defendant's son. The return of service stated that a copy was left with the defendant's son who was "of suitable age and discretion." We held this language to be insufficient to meet the statutory requirements, because the return of service failed to state that the individual was over the age of fifteen.[8]

In contrast with Johnston and Gonzalez, the instant case involves returns of service that are regular on their face; the returns contained all of the information required to show compliance with the statute. The affidavits offered by Appellants did not challenge the facial regularity of the return of service; rather, by alleging that Appellants were not living at the apartment on the date process was served, the affidavits challenged the *veracity* of the information on the face of the return; Appellants' challenge is to the validity of the service of process itself, which created an issue of fact that required resolution at an evidentiary hearing. At that

[8] The return of service was additionally defective in failing to state (as required under section 48.031(1)) that the individual served resided with the defendant and that the process server informed him of the contents of the papers.

hearing, Appellee was entitled to the presumption that valid service was effectuated, and Appellants had the burden of establishing, by clear and convincing evidence, that service of process was invalid. In the absence of such clear and convincing evidence, the presumption created by a return of service regular on its face satisfied Appellee's burden of establishing valid service of process.[9]

2. Residence v. Usual Place of Abode

Section 48.031, Florida Statutes, provides in pertinent part that service of process shall be made "by delivering a copy of it to the person to be served . . . or by leaving [it] at his or her usual place of abode with any person residing therein who is 15 years of age or older . . . " (emphasis added.)

The term "usual place of abode" means "the place where the defendant is actually living at the time of service." Shurman v. Atl. Mortg. & Inv. Corp., 795 So. 2d 952, 954 (Fla. 2001). The word "abode" means "one's fixed place of residence for the time being when service is made." State ex rel. Merritt v. Heffernan, 195 So. 145, 147 (Fla. 1940). Therefore, if a person has more than one residence, that person must be served at the residence in which he is actually living at the time service is made. Id.

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[9] Stated another way, the ultimate burden of proving valid service of process always remains upon the plaintiff. However, a return of service, regular on its face, creates a presumption of valid service, which is sufficient to satisfy this burden in the absence of clear and convincing evidence to the contrary.

Appellants contend that the trial court focused on where Appellants "resided" rather than their "usual place of abode." In doing so, Appellants argue, the trial court's determination was erroneous as a matter of law. However, there is no record evidence indicating that the trial court based its determination upon Appellants' "residence" as opposed to their "usual place of abode." [10]

The mere fact that the process server, Mr. Perez, did not ask: "Are they currently living there?" does not carry the day for Appellants, given the other testimony presented at the evidentiary hearing; Ms. Uribe told Mr. Perez that her daughter and son-in-law "both lived there" and that her daughter "wasn't home right now, that she had left and would be back shortly." Ms. Uribe asked Mr. Perez if "he wanted to wait" for her daughter to return, or whether he wanted to leave the papers with her. This evidence, if found credible by the trial court, was sufficient to establish that Appellants, on the date of service, were living at the apartment with Ms. Uribe.

3. Competent Substantial Evidence

Finally, Appellants contend that there was no competent substantial evidence to support the trial court's finding that Appellants were served at their

[10] It is ironic that Appellants would argue this distinction, given that each Appellant averred in their affidavit merely that "before March, 2009, I have not resided at 765 Crandon Boulevard, Apt. 112, Key Biscayne, Florida, 33149." Absent from each affidavit is an averment that, on May 21, 2009 (the date of service of process), they were not living at that apartment.

usual place of abode. We disagree. As previously discussed, the verified returns of service, regular on their face, created a presumption of valid service of process. It was Appellants' burden to establish by clear and convincing evidence that the apartment in question was not their usual place of abode. The testimony and other evidence presented by the parties required the trial court, as the factfinder, to make credibility determinations and resolve the conflicts in the evidence. It is not the function of this court to re-weigh the evidence or substitute its judgment for that of the trial court, but rather to determine whether there was competent substantial evidence to support the trial court's factual determinations. Shaw v. Shaw, 334 So. 2d 13 (Fla. 1976). We hold that there was competent substantial evidence to support the trial court's determination.

CONCLUSION

The verified returns of service were regular on their face, creating a presumption of valid service. Appellants failed to overcome the presumption of valid service by clear and convincing evidence, and there was competent substantial evidence to support the trial court's determination that the apartment in question was Appellants' usual place of abode on the date of service. We affirm the trial court's denial of Appellants' motion to quash.

Affirmed.

RAMIREZ, J., concurs.

LAGOA, J. (dissenting).

I respectfully dissent as I find that the plaintiff did not prove valid service under the substituted service provision of section 48.031(1)(a), Florida Statutes (2010), and I would remand for further proceedings as set forth below.

Section 48.031(1)(a), which must be strictly construed, only allows for substitute service by "leaving the copies at [the defendant's] usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents." (emphasis added). The Florida Supreme Court, this Court, and our sister courts have drawn an important distinction between the term "residence" and the statute's more restrictive term, "usual place of abode."

The phrase "usual place of abode" means "the place where the defendant is actually living at the time of service." Thompson v. State, Dep't of Revenue, 867 So. 2d 603, 605 (Fla. 1st DCA 2004) (emphasis added) (quoting Shurman v. Atl. Mortg. & Inv. Corp., 795 So. 2d 952, 954 (Fla. 2001)); see State ex rel. Merritt v. Heffernan, 195 So. 145, 147 (Fla. 1940); Cordova v. Jolcover, 942 So. 2d 1045, 1046-47 (Fla. 2d DCA 2006) (reversing trial court and holding that defendant was not served at his "usual place of abode"; defendant submitted affidavits and other evidence replete with facts that he was not served at his usual place of abode); Busman v. State, Dep't of Revenue, 905 So. 2d 956, 958 (Fla. 3d DCA 2005)

(reversing trial court and holding that father was not properly served pursuant to substituted service of process; father presented clear, convincing and uncontroverted evidence that address was not his "usual place of abode"). "The word 'abode' means 'one's fixed place of residence for the time being when service is made.' If a person has more than one residence, he must be served at the residence in which he is actually living at the time of service." Torres v. Arnco Constr., Inc., 867 So. 2d 583, 586 (Fla. 5th DCA 2004) (quoting State ex rel. Merritt, 195 So. at 147); see Stern v. Gad, 505 So. 2d 531, 532 (Fla. 3d DCA 1987).

The "burden of proof to sustain the validity of service of process is upon the person who seeks to invoke the jurisdiction of the court," i.e., the plaintiff, not the defendant. Thompson, 867 So. 2d at 605 (citing M.J.W. v. Dep't of Children & Families, 825 So. 2d 1038, 1041 (Fla. 1st DCA 2002); see also Torres, 867 So. 2d at 587 ("[T]he party seeking to invoke the court's jurisdiction has the burden to prove the validity of service of process."). While "a process server's return of service on a defendant which is regular on its face is presumed to be valid absent clear and convincing evidence presented to the contrary," Telf Corp. v. Gomez, 671 So. 2d 818, 818 (Fla. 3d DCA 1996), "[i]f the party challenging service 'makes a prima facie showing that the return is defective, then the burden shifts to the person acting under the substituted service provision to prove valid service.'"

Haueter-Herranz v. Romero, 975 So. 2d 511, 518 (Fla. 2d DCA 2008) (quoting Gonzalez v. Totalbank, 472 So. 2d 861, 864 n.1 (Fla. 3d DCA 1985)).

Here, the defendants made a prima facie showing that service was defective. The defendants submitted undisputed affidavits showing that the service was defective and that they were not served at their "usual place of abode." See Thompson, 867 So. 2d at 605 (finding that defendant's affidavit made a prima facie showing that he was not served at his "usual place of abode" by valid substituted service). Specifically, defendant Jorge Robles-Martinez averred:

1. I am a defendant in the instant matter.
2. I was born on December 8, 1965.
3. I currently reside outside The United States of America.
4. I am not a citizen nor a legal resident of The United States of America.
5. Since before March, 2009, I have not resided at 765 Crandon Boulevard, Apt. 112, Key Biscayne, Florida 33149.
6. Since before March, 2009, Ana Cristina Lindo Uribe did not reside at 765 Crandon Boulevard, Apt. 112, Key Biscayne, Florida 33149.

Defendant Ana Cristina Lindo Uribe also averred:

1. I am a defendant in the instant matter.
2. I was born on August 24, 1973.
3. I currently reside outside The United States of America.
4. I am a citizen of The United States of America.
5. Since before March, 2009, I have not resided at 765 Crandon Boulevard, Apt. 112, Key Biscayne, Florida 33149.

> 6. Since before March, 2009, Jorge Robles-Martinez did not reside at 765 Crandon Boulevard, Apt. 112, Key Biscayne, Florida 33149.

Moreover, at the evidentiary hearing, Maria Victoria Uribe Velez, Ana Cristina Lindo Uribe's mother, and Jorge Robles-Martinez's mother-in-law, specifically testified that at the time of service the defendants did not live at the Key Biscayne condominium:

> Q. Can you tell the Court a little bit about what you remember happened that day.
> A. A process server came to bring a notification for Ana Cristina and George. I told him that they don't live there. But I accepted to sign to notify that the notification had been received, but I told him that they didn't live there.
> **Q. Approximately how long had Jorge Robles Martinez and Ana Cristina Lindo Uribe not been living at that apartment?**
> **A. Approximately eight months.**
> **Q. So you were living alone at that apartment?**
> **A. Yes.**

Once the defendants met their prima facie showing, the burden shifted to the plaintiff to prove valid service. Plaintiff, however, failed to rebut defendants' contention that they did not reside at the Key Biscayne address on the date of service. Significantly, as the majority concedes, the process server testified that he never determined whether the defendants currently lived at the Key Biscayne residence at the time of service, and therefore, whether the Key Biscayne residence was their "usual place of abode."

> Q. Now, you never requested from the security guard whether they were currently living there or they simply owned an apartment there? You never got that information, right?
>
> MR. PURDIE: Objection, asked and answered.
>
> THE COURT: Overruled.
>
> THE WITNESS: No, I asked them if they lived there, and they told me yes.
>
> BY MR. PORTA:
>
> Q. Did you exclude the possibility that they simply owned a condo there?
>
> A. No, I didn't do that.
>
> Q. Did you exclude the possibility that they no longer resided there?
>
> A. No. I asked them if they lived there.
>
> THE COURT: Did you ask them anything else or that's all you asked?
>
> THE WITNESS: That's all.
>
> . . . .
>
> Q. Did you ask security if they had seen the two defendants that week?
>
> A. No, I didn't ask them that. They told me that they lived there.
>
> Q. So you didn't ask any questions as to whether they actually had been residing in that apartment the week you served them or the month you served them or the two months prior to you serving them, you did not get into those conversations?
>
> A. I didn't get into that conversation because the lady that I served, she told me that they lived there, so I didn't need to ask that.

In an identical factual scenario, this Court in Portfolio Recovery Associates, LLC v. Gonzalez, 951 So. 2d 1037 (Fla. 3d DCA 2007), affirmed the trial court's order quashing substituted service of process "secured, purportedly under section 48.031(1)(a), Florida Statutes (2006), by leaving a copy of the summons and

complaint at [the] home with a woman who was the mother of one defendant and the mother-in-law of the other." Id. at 1038. This Court affirmed the trial court's ruling "because an undisputed affidavit demonstrated that neither of the defendants had lived at that address for five years, and thus that it was not their 'usual place of abode' as the statute requires." Id.

Here, the record contains not only two undisputed affidavits demonstrating that neither of the defendants lived at the address in question at the time of service and therefore it was not their "usual place of abode" as the statute requires, but also the testimony of the mother/mother-in law at the evidentiary hearing that the defendants did not live at the apartment at the time of service and therefore it was not their "usual place of abode" as the substituted service statute requires.

On appeal, the defendants contend that the trial court applied the incorrect legal standard in denying the motion to quash, *i.e.* "the focus of the hearing below was improperly on where the defendants 'lived' instead of their usual place of abode."[11] (Initial Br., p. 9). I agree.

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[11] At the conclusion of the May 21, 2010 evidentiary hearing, counsel for the defendants specifically argued that the correct legal standard for granting or denying motions to quash involving substituted service was "usual place of abode." Specifically, counsel for the defendants argued:

> Your Honor, when it comes to these types of statutes, they must be strictly construed. And the usual place of abode is not this apartment and we have presented clear and convincing evidence that that is not the usual place

The majority opinion states that "there is no record evidence indicating the trial court based its determination upon appellants' 'residence' as opposed to their 'usual place of abode,'" and further concludes that "there was competent substantial evidence to support the trial court's determinations that the apartment in question was Appellants' usual place of abode on the date of service." The record, however, is devoid of <u>any</u> determination by the trial court that the apartment in question was the defendants' "usual place of abode" on the date of service.

First, at the conclusion of the hearing, the trial court found as follows:

> Without further comment, the Court has had the opportunity to review the court file and hear the testimony and review the affidavits.
>
> This basically turns into a he-said-she-said situation. However, the verified return of service has been properly admitted into the courtroom.
>
> The standard is clear and convincing for the Court to determine – if the Court was to determine that they were not properly served upon the defendants.
>
> The Court finds that the defense has not reached the level of clear and convincing evidence. Therefore, the motion to quash service of process at this time is denied.

Moreover, in its subsequent written order denying the motion to quash, the trial court found as follows:

> of abode via live testimony, via her affidavit, via the two other affidavits from the defendants that your Honor requested us to file, which have been filed, which indicate that they do not reside at that location.

> The Court finds that the verified return of service was properly admitted into evidence and that the testimony produced by both sides has produced nothing more than a "he said-she said" situation. Given that, the Court finds that the Defendants have not met the burden of clear and convincing evidence to overcome the verified return of service that is regular on its face.

As such, neither the trial court's oral or written findings apply the correct legal standard for determining whether there was valid service under the substituted service provision of section 48.031(1)(a). Once the defendants made a prima facie case of invalid service, the return of service was not entitled to a presumption of correctness, and the burden shifted back to the plaintiff to establish that the Key Biscayne address was the defendants' "usual place of abode." As the record currently stands, the plaintiff failed to meet its burden. Indeed, the trial court made no findings as to whether the Key Biscayne address was the defendants' "usual place of abode."[12]

The statute for substituted service, however, must be strictly construed, and failure to comply with it renders service void. See Shurman, 795 So. 2d at 954; Busman, 905 So. 2d at 958; Milanes v. Colonial Penn Ins. Co., 507 So. 2d 777, 778 (Fla. 3d DCA 1987). "Indeed, because statutes authorizing substituted service are exceptions to the general rule requiring a defendant to be served personally, due process requires strict compliance with their statutory requirements." Torres,

[12] Nor does either ruling by the trial court apply the burden shifting required by the statute and case law.

867 So. 2d at 586. The majority's opinion constitutes a departure from not only this Court's existing precedent but from also those of our sister courts.

As this Court recognized in Stern, 505 So. 2d at 532, the terms "usual place of abode" and "residence" are not synonymous. Because the trial court did not find that the defendants were served at their "usual place of abode," I would reverse. I would hold, as this Court held in Stern, "that the record in this case will not support a finding that the appellant/defendant was served at a 'usual place of abode' in this county and remand the matter to the trial court" to make a finding as to whether the Key Biscayne address was the defendants' "usual place of abode" on the date suit papers were delivered.