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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

U.S. BANK NATIONAL ASSOCIATION, as Trustee for GreenPoint Mortgage Funding Trust Mortgage Pass-Through Certificates, Series 2007-AR2, Respondent, v. KEITH WELCH; All Occupants and Persons in Possession, Appellant.	No. 79934-7-I DIVISION ONE UNPUBLISHED OPINION

CHUN, J. — After filing a complaint for unlawful detainer, US Bank National Association could not locate defendant Keith Welch to serve him with process. The trial court authorized US Bank to serve Welch through alternative means. The court then held a show cause hearing and issued a writ of restitution in favor of US Bank. Welch appeals, arguing that deficiencies in the service of the summons, complaint, and notice of the show cause hearing merit reversal. We identify only one procedural violation, which was harmless. We affirm.

I. BACKGROUND

US Bank filed a complaint against Welch for unlawful detainer related to real property in Burlington, Washington (Property).

About a month later, US Bank moved for an order authorizing alternative service "due to the fact the defendants are evading service." The court entered

an order the next day, permitting alternative service.

Soon after, US Bank issued an amended eviction summons. The summons required Welch to respond by January 4, 2019. US Bank also submitted a declaration of service claiming that, on December 26, 2018, it posted at, and mailed to, the Property three copies of the summons and complaint.

US Bank then moved for an order to show cause "why a writ of restitution should not be issued restoring to [US Bank] possession of the [Property]." The court granted US Bank's motion. US Bank notified Welch of the show cause hearing through alternative service on April 24, 2019.

A few weeks after the court's order, Welch filed "Defendants Answer and Affirmative Defenses; and to Dismiss Plaintiffs Complaint; and Grant Defendant a Continuance Under CR 56(f); and for Costs and Fees under CR 56(g)." The court held a show cause hearing that both parties attended on May 3, 2019. See Report of Proceedings May 3, 2019. It then entered a judgment for restitution in favor of US Bank. Welch appeals.

II. ANALYSIS

A. Service under RCW 59.12.085

Welch argues that the trial court lacked personal jurisdiction over him because US Bank did not serve him in strict compliance with RCW 59.12.085.[1] We disagree.

We review de novo whether service of process was proper. Scanlan v.

[1] Welch also appears to suggest that the court should not have authorized alternative service. But because he does not assign error to this decision, we do not address the issue. See State v. Olson, 126 Wn.2d 315, 319, 893 P.2d 629 (1995).

Townsend, 181 Wn.2d 838, 847, 336 P.3d 1155 (2014).

To invoke personal jurisdiction over a defendant, there must be proper service of the summons and complaint. Scanlan, 181 Wn.2d at 847. Such service must satisfy both statutory and constitutional requirements. Scanlan, 181 Wn.2d at 847. The plaintiff initially bears the burden to prove a prima facie case of sufficient service. Scanlan, 181 Wn.2d at 847. An affidavit of service that is regular in form and substance is presumptively correct. Leen v. Demopolis, 62 Wn. App. 473, 478, 815 P.2d 269 (1991). If the plaintiff meets their initial burden, the party challenging the service must show that it was improper by clear and convincing evidence. Scanlan, 181 Wn.2d at 847. Evidence is clear and convincing if it shows the ultimate fact at issue is highly probable. In re Dependency of K.S.C., 137 Wn.2d 918, 925, 976 P.2d 113 (1999).

RCW 59.12.085 permits alternative service of process by (1) posting the summons and complaint "in a conspicuous place on the premises unlawfully held not less than nine days from the return date stated in the summons," and (2) depositing copies of the summons and complaint "in the mail, postage prepaid, by both regular mail and certified mail directed to the defendant or defendants' last known address not less than nine days from the return date stated in the summons." RCW 59.12.085(2)(a)-(b).

Welch claims that US Bank did not comply with RCW 59.12.085 because it posted the amended summons at the Property on December 28, 2018, which was fewer than nine days before the January 4, 2019 return date stated in the summons. But US Bank provided a declaration of service stating that it posted

and sent by first class and certified mail three copies of the amended summons and complaint to the Property on December 26, 2018. This satisfied its initial burden of proving a prima facie case of sufficient service. The burden then shifted to Welch to show improper service by clear and convincing evidence.

Welch submitted a declaration providing merely that "Plaintiff posted an amended summons and complaint, on December 28, 2018." Welch, however, did not explain in any way the basis for his assertion. For example, he did not say that he witnessed the posting. As a matter of law, Welch's unsupported assertion does not make it highly probable that the declaration of service is incorrect, and it thus does not constitute clear and convincing evidence to overcome the presumption that the declaration of service is correct.[2] Thus, Welch fails to meet his burden.[3]

[2] Even assuming, under the clear and convincing standard, Welch had shown that an issue of fact existed as to whether service was proper, the court could have properly exercised its discretion to hold an evidentiary hearing if needed for a just determination. See Woodruff v. Spence, 76 Wn. App. 207, 210, 883 P.2d 936 (1994) (remanding for an evidentiary hearing where conflicting affidavits created an issue of fact). Welch, however, did not request an evidentiary hearing below nor does he ask for one on appeal. Under the facts of this case, had Welch requested such a hearing below, the court would have been within its discretion in denying it as he submitted only the unsupported assertion from his declaration to contradict the affidavit of service. Cf. Woodruff, 76 Wn. App. at 210 (determining that two declarations and an affidavit contradicting the affidavit of service created an issue of fact); Price ex rel. Estate of Price v. City of Seattle, 106 Wn. App. 647, 657, 24 P.3d 1098 (2001) (determining that a declaration was too conclusory to raise an issue of fact on summary judgment).

[3] Also, Welch states, "The amended summons received by Appellant Welch was *not* filed with the summons." But he does not explain how this assertion supports any legal argument, nor does he cite any applicable legal authority. Thus, we need not consider the assertion. See Bercier v. Kiga, 127 Wn. App. 809, 824, 103 P.3d 232 (2004) ("We need not consider arguments that are not developed in the briefs and for which a party has not cited authority.").

B. Service of Order to Show Cause Hearing Dates

Welch contends that US Bank did not serve him with notice of the show cause hearing dates in compliance with RCW 59.18.370 or Skagit County Local Court Rule (SCLCR) 6(d)(2)(i). Though we determine the service violated SCLCR 6(d)(2)(i), the violation was harmless.

Again, we review de novo whether service of process was proper. Scanlan, 181 Wn.2d at 847.

RCW 59.18.370 discusses the process for obtaining a writ of restitution and provides, in relevant part:

> The plaintiff . . . may apply to the superior court . . . for an order directing the defendant to appear and show cause, if any [they have], why a writ of restitution should not issue restoring to the plaintiff possession of the property . . . and the judge shall by order fix a time and place for a hearing of the motion, which shall not be less than seven nor more than thirty days from the date of service of the order upon the defendant.

Also, SCLCR 6(d)(2)(i) requires that "[m]otions, other than Summary Judgment motions, shall be filed and served upon all parties at least nine (9) court days before hearing."

Welch contends that US Bank did not comply with RCW 59.18.370 because it did not personally serve him at least seven days before the hearing date. While US Bank did not personally serve Welch, it served him through alternate means, which the court had authorized.[4] Also, US

[4] Welch appears to claim that RCW 59.18.370 was also violated because a court commissioner, rather than a judge, entered the order to show cause. But our state constitution grants superior court commissioners the authority "to perform like duties as a judge of the superior court at chambers." CONST. art. IV, § 23. This provision grants commissioners the "same powers which a judge at chambers had the right to exercise at the time of the adoption of the constitution," including hearing and determining "all

Bank submitted a declaration of service showing that on April 24, 2019, it posted at, and sent by first class and certified mail three copies of the order to show cause to, the Property. April 24, 2019 was nine calendar days before the show cause hearing on May 3, 2019. Thus, the service complied with RCW 59.18.370.

But because US Bank served Welch only seven court days before the hearing, the service violated SCLCR 6(d)(2)(i). We apply the harmless error test to the violation of a court rule. State v. Robinson, 153 Wn.2d 689, 697, 107 P.3d 90 (2005). Thus, we reverse only if, within reasonable probabilities, Welch shows that had the error not occurred, the outcome of the hearing would have been materially affected. Robinson, 153 Wn.2d at 697; State v. Sublett, 176 Wn.2d 58, 78, 292 P.3d 715 (2012) (noting that defendant has the burden to show that an error was harmless). As Welch does not argue that the two-court-day delay in service prejudiced him, the error does not require reversal.

We affirm.

Chun, J.

WE CONCUR:

Bowman, J.

Andrus, A.C.J.

actions, causes, motions, demurrers, and other matters not requiring a trial by jury." State ex rel. Lockhart v. Claypool, 132 Wash. 374, 375-77, 232 P. 351 (1925). Also, rulings by commissioners are subject to revision by superior court judges. RCW 2.24.050. In addition, Welch fails to show that having a commissioner, rather than a judge, enter the order prejudiced him. Thus, we reject Welch's argument.