IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

BRUCE BORJESSON, Appellant, v. CITY OF SEATTLE, DEPARTMENT OF PLANNING AND DEVELOPMENT; DIANE SUGIMURA, Director; CLAY THOMPSON, Supervisor NAZANIN SAMIMI, Inspector; TOM BRADRICK, Inspector; and other anonymous parties, Respondents.	)	No. 67031-0-I DIVISION ONE UNPUBLISHED OPINION FILED: November 26, 2012

Appelwick, J. — Appearing pro se, Borjesson appeals dismissal of his challenge to two administrative orders under the City of Seattle land use ordinances and other claims. Borjesson failed to properly serve the City as required by RCW 4.28.080. The court dismissed the action. We affirm.

FACTS

The City of Seattle (City), Department of Planning and Development (DPD)

issued Bruce Borjesson multiple citations for improper junk storage on his property, in violation of the City's land use code. Borjesson requested two administrative hearings to contest those citations. At the first hearing, Borjesson claimed City inspectors trespassed on his property. At the second hearing, Borjesson claimed DPD was harassing him and violating his constitutional rights. At both hearings, the hearing examiner affirmed the citations and assessed a $500 fine. The hearing examiner also determined that it lacked jurisdiction to consider Borjesson's harassment and constitutional claims. Both written orders noted that the examiner's decision must be appealed to the superior court within 21 days, as required by the Land Use Petition Act (LUPA), chapter 36.70C RCW.

From a convoluted record on appeal, we cull the following procedural facts. Borjesson filed an appeal with the superior court within the 21 day time period. He then amended his appeal to include both citations. He did not file them as LUPA petitions. Borjesson delivered a copy of the first notice of appeal to Diane Davis, a DPD employee and the second notice to the hearing examiner's office. Davis accepted Borjesson's notice of appeal and forwarded it to the Seattle City Attorney's Office. Borjesson did not serve the mayor's office or city clerk's office, as required for a LUPA petition under RCW 36.70C.040 and 4.28.080. He also did not personally serve any of the four individually named DPD employees in the lawsuit. The only proof of service in the record is an affidavit from Borjesson stating that he served a request for postponement on the City. The affidavit does not mention a notice of appeal.

The City filed a motion to dismiss Borjesson's appeal. The City claimed lack of subject matter jurisdiction under CR 12(b)(1) and insufficient service of process under

CR 12(b)(5), because Borjesson failed to properly serve the City pursuant to LUPA's procedures. Borjesson appeared pro se at the motion hearing, and requested $3 million in damages for the City's alleged trespass and warrantless searches. Borjesson acknowledged that he only served Davis at DPD, but maintained that it nonetheless constituted proper service on the City. He also conceded that he did not file a LUPA petition, but argued his claim was a separate lawsuit that did not need to be filed under LUPA.

The superior court granted the City's motion to dismiss for all defendants. The court concluded that it lacked subject matter jurisdiction over both appeals, because Borjesson failed to properly serve the City as required by RCW 4.28.080. The court also dismissed all of Borjesson's other claims, concluding that all associated claims must be dismissed when a LUPA petition is not properly filed. Borjesson appeals.

DISCUSSION

Pro se litigants are held to the same standards as attorneys and must comply with all procedural rules on appeal. In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). Failure to do so may preclude appellate review. State v. Marintorres, 93 Wn. App. 442, 452, 969 P.2d 501 (1999). An appellant must provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6). We need not consider arguments not supported by any reference to the record or by citation of authority. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

I. Order of Dismissal

Borjesson argues that the superior court erroneously dismissed his lawsuit on the basis that it was improperly served. He contends that he effected proper service on DPD employee Davis, who he claims is the mayor's agent. He asserts that he did not need to follow LUPA procedures, because he made separate claims of trespass, harassment, and warrantless searches. As a result, he argues, the court erred in not addressing any of his these claims. We review de novo an order of dismissal under CR 12(b)(1) and CR 12(b)(5). Ricketts v. Bd. of Accountancy, 111 Wn. App. 113, 116, 43 P.3d 548 (2002); see Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

To achieve service of process on a city, the litigant must deliver a copy of the summons "to the mayor, city manager, or . . . to the mayor's or city manager's designated agent or the city clerk thereof." RCW 4.28.080(2). Under Seattle Municipal Code (SMC) 3.42.030, the Seattle city clerk is designated as the agent for service of summons for RCW 4.28.080. Strict compliance with these statutory requirements is a prerequisite to courts acquiring jurisdiction over a city. Meadowdale Neighborhood Comm. v. City of Edmonds, 27 Wn. App. 261, 267, 616 P.2d 1257 (1980) (holding that service of process on mayor's secretary instead of the mayor did not comply with RCW 4.28.020(2)).

LUPA provides the exclusive means for judicial review of a land use decision.[1]

[1] A land use decision is a "final determination by a local jurisdiction's body or officer with the highest level of authority to make a determination" on zoning enforcement actions. RCW 36.70C.020. Here, the hearing examiner's written order specified that it was the final decision for the City. Therefore, despite Borjesson's argument, the hearing examiner's decisions was a land use decision within the meaning of LUPA.

RCW 36.70C.030. A superior court does not have jurisdiction to review a land use decision if a LUPA petition is not timely served on the proper parties. RCW 36.70C.040(2), (3); Knight v. City of Yelm, 173 Wn.2d 325, 337, 267 P.3d 973 (2011). Service must be achieved by delivery of a copy of the petition to the persons identified in RCW 4.28.080. RCW 36.70C.040(5). To achieve service on the City, Borjesson needed to deliver a copy of his LUPA petition to the city clerk's office. RCW 4.28.080(2); SMC 3.42.030. Borjesson delivered his first superior court appeal to Davis, DPD manager of housing and zoning inspectors, and his amended superior court appeal to the hearing examiner. Davis is a DPD employee, not a Seattle city clerk. Davis accepting Borjesson's appeal and delivering it to the Seattle City Attorney's Office did not effectuate service. Overhulse Neighborhood Ass'n v. Thurston County, 94 Wn. App. 593, 596, 599, 972 P.2d 470 (1999) (board of commissioners' employee accepting and forwarding land use petition was not sufficient service of process on county auditor). There is no evidence in the record that Borjesson served the mayor's office or city clerk's office within the 21 day deadline. Borjesson also failed to serve any of the individually named defendants in the lawsuit, as required by RCW 4.28.080(15). Borjesson's unfamiliarity with the legal system does not excuse his failure to serve the proper parties. Improper and untimely service divested the superior court of jurisdiction to review the hearing examiner's decisions and Borjesson's claims arising from them. We hold that the court properly dismissed those claims.

Borjesson nevertheless contends that a LUPA petition was not necessary, because his claims of trespass, harassment, and warrantless searches constituted a separate lawsuit. He argues that the superior court erred in not addressing those

claims. The superior court justified dismissing these claims because failure to challenge a land use decision in a LUPA petition not only bars appeal of that decision, but also bars all associated claims arising from that decision. Mercer Island Citizens for Fair Process v. Tent City 4, 156 Wn. App. 393, 402-03, 232 P.3d 1163 (2010); Asche v. Bloomquist, 132 Wn. App. 784, 799, 133 P.3d 475 (2006). We agree with Borjesson. His claims of trespass, harassment, and warrantless searches as pleaded did not arise out of the hearing examiner's decision. Dismissal of those claims with prejudice on the basis that they were outside the court's jurisdiction was not proper. However, Borjesson still failed to properly serve the city and the individually named defendants as required by RCW 4.28.080. RCW 4.28.080 applies to LUPA and non-LUPA claims alike. Neither Davis nor the hearing examiner were the proper agent for service of process on the City. Dismissal of those claims was proper, but should have been without prejudice.

II. Other Arguments

Borjesson makes a number of other disparate arguments on appeal. First, he argues that the superior court's order of dismissal should be vacated under CR 60(b)(1), because he mistakenly filed a motion to postpone instead of an amended complaint to prove service. CR 60(b)(1) allows a trial court to vacate a final judgment based on mistakes, inadvertence, surprise, and excusable neglect. Pursuant to RAP 7.2(e), a postjugment motion to vacate under CR 60(b)(1) must first be heard and decided by the superior court. Borjesson did not file a motion to vacate with the superior court. Rather, he filed it with this court. Borjesson nonetheless claims the trial court should have corrected his mistake on its own initiative. He cites no authority for

this proposition. RAP 10.3(6). Judges may make reasonable accommodations to ensure a fair hearing for pro se litigants, but ultimately must remain impartial. CJC 2.2. The trial court was under no obligation to correct Borjesson's mistake.

Borjesson also contends that the superior court erred because it failed to make findings of facts and conclusions of law. He contends that this failure violates his due process rights. CR 52(a)(5)(B) provides that when a superior court makes decisions on motions under CR 12, findings of fact and conclusions of law are not necessary. The trial court below dismissed Borjesson's case under CR 12(b)(1) and 12(b)(5), so findings of facts and conclusions of law were unnecessary. We find no error.

Borjesson argues that the trial court infringed his First Amendment right to free speech when it "blocked [him] from speaking [c]ompletely" at the motion hearing. This claim is without merit. An attorney's right to free speech in the courtroom is "extremely circumscribed," because judges must be able to maintain control over their courtrooms. Zal v. Steppe, 968 F.2d 924, 928 (9th Cir. 1992); RCW 2.28.010. Here, the trial court allowed Borjesson to make his case. The court also asked him pointed questions to ensure it understood his claim and relief requested. The court did not need to give Borjesson unlimited time to argue. Rather, the judge was entitled to exercise reasonable control over her courtroom. We find no violation of Borjesson's free speech rights.

Borjesson raises a number of new claims for the first time on appeal. For instance, he discusses laches, statute of limitations, forfeiture statutes, and improper default judgment. These arguments were not presented below. We generally refuse to consider issues raised for the first time on appeal. RAP 2.5(a); Demelash v. Ross

Stores, Inc., 105 Wn. App. 508, 527, 20 P.3d 447 (2001). Borjesson does not assert any manifest constitutional error, lack of trial court jurisdiction, or failure to establish facts that would compel our review of these issues. RAP 2.5(a). In his reply brief, Borjesson also argues for the first time that because his property was inherited through probate, the City did not have authority to issue citations and the trial court had no jurisdiction to hear the case. Because he raises this argument for the first time in his reply brief, we need not address it. RAP 10.3(c); Cowiche Canyon Conservancy, 118 Wn.2d at 809. Moreover, Borjesson fails to cite any authority, which further precludes our review. RAP 10.3(6). Thus, we decline to consider these issues.

We have no doubt that Borjesson was at a significant disadvantage without an attorney. However, the law does not distinguish between those who elect to conduct their own legal affairs and those who seek assistance of counsel. In re Marriage of Wherley, 34 Wn. App. 344, 349, 661 P.2d 155 (1983). Borjesson's frustration with the process is not a basis for us to reverse.

We affirm dismissal of Borjesson's non-LUPA claims, but without prejudice to refile. We affirm dismissal with prejudice of his LUPA claims.

WE CONCUR: