

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

	)	
	)	DIVISION ONE
RANDY HALL,	)	
	)	No. 62557-8-I
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
TRACEY NORTON and DARREN J.	)	
KOSSEN,	)	
	)	
Appellants.	)	FILED: November 9, 2009
	)	

Dwyer, A.C J.—Service by publication requires reasonably diligent efforts to locate the defendant by exhausting all information readily available. Randy Hall’s mail to Tracey Norton and Darren Kossen at their last known address was returned stamped with “no forwarding address.” Hall’s attorney “conducted research on the internet.” A prior attempt to serve Norton and Kossen at the last known address was unsuccessful when a woman in the house refused to come to the door. No other details were offered in support of service by publication. Hall knew the name of Kossen’s employer and Kossen’s prior address, but did not describe any efforts to pursue those leads. Hall’s reliance upon “research on the internet” is vague and general. Because Hall did not support the service by publication with a showing of reasonable diligence, the default judgment taken based upon that service is void. We reverse.

## FACTS

Hall leased the residence at 13419 Meadow Road, Everett, Washington to Norton and Kossen. In March 2008, Hall mailed Norton and Kossen a three day notice for failure to pay the February and March rent. In April 2008, he filed an unlawful detainer action. A process server's April 26, 2008 attempt to serve the unlawful detainer pleadings was unsuccessful. The process server noted in his return of non-service that "there is a woman sitting in the basement and refused to come to the door."

On May 5, 2008, Norton and Kossen moved out of the residence. On July 14, 2008, Hall filed a complaint seeking damages for breach of contract. On August 5, 2008, Hall's attorney filed a declaration in support of service by publication. The declaration recites that Norton and Kossen vacated the premises on May 5, 2008. On July 16, 2008, the attorney sent correspondence to Norton and Kossen at their last known address of 13419 Meadow Road, Everett, WA 98208, but the correspondence was returned with the envelope marked no forwarding address. In support of a motion to serve by publication, Hall's counsel averred that, "I have also conducted research on the internet in an attempt to locate the defendants, to no avail." The declaration also recited that "I have exercised due diligence in trying to locate the above-named defendants in order to personally serve process upon them. I believe the defendants are avoiding service of process." The declaration also noted the absence of information that either Norton or Kossen are members of any branch of the United

States Armed Forces.

A summons was published in The Herald newspaper once a week for six weeks. On October 9, 2008, the trial court entered an order of default and a default judgment in the amount of \$12,044.36. Norton and Kossen timely filed a notice of appeal.

#### ANALYSIS

Personal jurisdiction requires valid service of process; any judgment based upon invalid service is void. Rodriguez v. James-Jackson, 127 Wn. App. 139, 146, 111 P.3d 271 (2005). CR 4(d)(3) provides for service of a summons by publication as authorized by statute. RCW 4.28.100(2) allows service by publication when “the defendant, being a resident of this state, has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with like intent.” For jurisdiction to attach when a summons is served by publication, strict compliance with the statute is required. Bruff v. Main, 87 Wn. App. 609, 612, 943 P.2d 295 (1997). The plaintiff must demonstrate that “following reasonably diligent efforts to personally serve the defendant by exhausting all information readily available, the defendant cannot be found in the state.” Rodriguez, 127 Wn. App. at 141.

Service by publication or mail is in derogation of the common law and cannot be used when personal service is possible. Strict compliance with the statute authorizing service by publication is required. The issue before this court is not only whether the affidavit required by RCW 4.28.100 is sufficient, but whether the plaintiff made an honest and reasonable effort to locate the defendant before seeking service by publication or mail.

Rodriguez, 127 Wn. App. at 143-44 (footnotes omitted). Whether a plaintiff has

satisfied the requirements for service by publication under RCW 4.28.100 is a question of law, reviewed by this court de novo. Rodriguez, 127 Wn. App. at 144.

The court in Rodriguez concluded that the plaintiff did not make an adequate showing where the plaintiff had not contacted the post office, and the plaintiff had not exhausted other readily available information by checking with the defendant's previous employer or insurance company. The court also noted that general allegations of searches in telephone directories and the Internet were "conclusory at best." Rodriguez, 127 Wn. App. at 144.

Hall's attorney provided limited details of the efforts to locate Norton and Kossen. The returned envelope revealed that the post office did not have a forwarding address. The vague allegation of "internet research" is conclusory at best. The April return of non-service revealed that a woman at the residence refused to come to the door. This information may be consistent with avoiding service, but is hardly sufficient to satisfy the statutory requirements. Most significantly, Hall knew Kossen's prior address and the name of his employer, but did not identify any steps taken to pursue that information.

The record does not reveal an honest and reasonable effort to locate Kossen and Norton before relying on service by publication. The judgment is void for lack of proper service and therefore is reversed. Because the service of process was inadequate we need not reach the other arguments raised by Norton and Kossen.<sup>1</sup>

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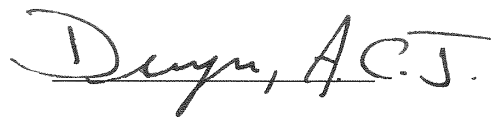
<sup>1</sup> Hall moves to strike the appendices to appellant's opening brief consisting of factual declarations filed for the first time in this court. The declarations were not before the trial court and Norton and Kossen have not sought any relief under RAP 9.11. In their reply brief, Norton and Kossen suggest that such information could be presented to the trial court in a motion to vacate the default

Norton and Kossen request reasonable attorney fees, but their brief provides a vague list of possible grounds for an award:

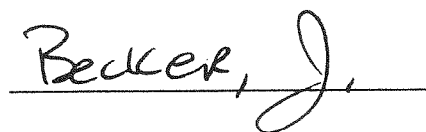
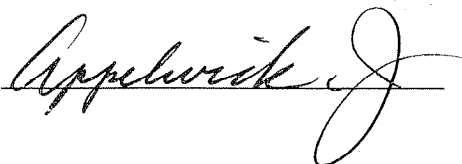
under all equitable principles, case law, Washington statutes (including but not limited to RCW 59.18. et seq. including 59.18.280, RCW 4.28 et seq. including 4.28.100, RCW 19.86 (landlord deceptive practices in rental business to public), and other statutes that may be applicable to any of the issues here on appeal or in Respondent's responses), civil rules, RAPs, and under the lease, if the court upholds it, and any other remedies the court finds just and equitable.

The Rules of Appellate Procedure require more than a bald request or vague laundry list of general authority for attorney fees on appeal; argument and citation to authority are required to advise the appellate court of appropriate grounds for an award of attorney fees and costs. Wilson Court Ltd. P'ship v. Tony Maroni's, Inc., 134 Wn.2d 692, 710-11 n. 4, 952 P.2d 590 (1998). Additionally, the lease contains no attorney fee provision and the few specific statutes listed in the appellants' brief do not apply to this complaint for breach of contract. The request for attorney fees is denied.

Reversed.



WE CONCUR:



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judgment, but they have not pursued a motion to vacate the default judgment. Rather, they have chosen to pursue a direct appeal of the judgment. The affidavits are not part of the record on appeal and the motion to strike is granted.

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