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Hansen v. White Appellant's Brief Dckt. 45185

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IN THE SUPREME COURT OF THE STATE OF IDAHO

MELANIE HANSEN,

Plaintiff-Appellant,

v.

GARY E. WHITE,

Defendant-Respondent.

Docket No.: 45185

APPELLANT'S BRIEF

Appeal from the District Court of the Seventh Judicial District for Bonneville County
CV-16-2496
Honorable Dane H. Watkins, Jr. presiding

Michael R. McBride
Residing at Idaho Falls, for Appellant

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II.
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III. STATEMENT OF CASE

(i) Nature of Case

This is an appeal from the Final Judgment issued by District Judge Dane H. Watkins on May 5, 2017. On May 10, 2016, Plaintiff Melanie Hansen filed a civil lawsuit against Defendant Gary White in Bonneville County District Court for bodily injury damages caused by his negligence in crashing into the back of her vehicle. Defendant filed a motion to dismiss on the grounds that Plaintiff's complaint was not timely served within a (6) month period pursuant to I.R.C.P. 4(b)(2).

(ii) Course Proceedings

Plaintiff filed suit against Defendant on May 10, 2016. Defendant filed a special appearance on November 21, 2016 and therewith also filed Motion to Dismiss for lack of service. On December 12, 2016 Plaintiff filed a Response to Motion to Dismiss and a Motion to Extend Time for Service By Publication supported by memorandum and four Affidavits. On January 13, 2017 the District Court found that good cause existed for failure to timely serve and granted Plaintiff's Motion for Service by Publication. Publication was initiated on January 19, 2017 and completed on February 9, 2017. On January 31, 2017, Defendant filed Motion for Reconsideration again arguing a failure to timely serve. The Court reviewed its previous decision and On May 5, 2017 reversed by entering an Order of Dismissal Without Prejudice and Final Judgment. *R., p. 157* The Court did not provide a memorandum decision. Plaintiff timely filed a Notice of Appeal on May 25, 2017.

(iii) Statement of Facts

The underlying cause of action is a car crash caused by negligence. Melanie Hansen was stopped at a stop light on S. Yellowstone Highway in Idaho Falls when hit from behind by Gary E. White on May 23, 2014. She suffered physical injury as a result. A Complaint and Demand for Jury Trial was timely filed on May 10, 2016. On October 19, 2016, Plaintiff hired process servers, Marc and MerriLee Jorgensen of Bulldog Legal Services, to serve Defendant at his stated address as recorded in the Idaho Falls Police Vehicle Collision Report (hereafter referred to as the “Police report”). That specific address was 613 E. 750 N. Firth, Idaho 83236 (hereafter referred to as the “Firth” address).

On October 25, 2016, process server Marc Jorgensen went to the Firth address. He was met at the door by Jeremy White who identified himself as Defendant Gary White’s son. He informed Mr. Jorgenson that he had purchased the home from his father who had not lived there for “at least 10 years.” *R.*, p. 46 Jeremy White also stated that he did not know where his father lived but “thinks it may be in Mesquite, Nevada.” *R.*, p. 44, 46, 54 This was the best information available as to Mr. White’s whereabouts.

Given Defendant’s absence from the state, Plaintiff’s legal assistant affirmed through affidavit that she performed an internet search to determine where Defendant might be:

On October 24, 2016 I spent (1.5) hours on my computer searching for Defendant. I did a Google search of “Gary E. White,” “Gary E. White Mesquite Nevada,” and “Gary E. White Idaho;” and each time I clicked on all plausible result links, specifically: PeopleFinders.com, LinkedIn.com, BeenVerified.com, Whitepages.com, Facebook.com and Pipl.com. The closest I got was that a “Gary E. White” (who would have been of the correct age) had a Post Office Box in Macks Inn, Idaho. However, I could not locate Defendant’s physical whereabouts. On October 24, 2016, I informed Mr. McBride that Defendant was not located and he instructed me to publish the Summons. *R.*, p. 72, 73

In addition, Plaintiff sought assistance from Defendant's Insurer, Farm Bureau Mutual Insurance Company:

On October 26, I faxed a letter to Farm Bureau (Idaho Falls office) to Tyler Pincock's attention with the purpose of finding out who the correct adjuster was as well as (and in addition to my other efforts) to find the Defendant. As I did not receive any kind of response, I made a follow up call to Mr. Pincock on October 31, 2016. He was unavailable and so I left a voicemail for him. On November 8, 2016 I still had not heard back from Farm Bureau so I called Mr. Pincock again and was able to speak with him. While we were on the phone, he looked in the Farm Bureau notes system and informed me that the adjuster on the case was Amber Tubb and that there was indeed an open claim. I told Mr. Pincock that we were having trouble locating Gary White. Mr. Pincock informed me that Farm Bureau already had a copy of the Complaint and Summons because Natalie White (Defendant's daughter-in-law) had delivered it to their office. I thought Farm Bureau had accepted service. *R.*, p. 73

When no address, aside from the Firth address, was found, Plaintiff made an attempt to serve Defendant by publication starting on November 1, 2016. Publication was completed on November 28, 2016. *R.*, p. 59 However, Plaintiff had not previously obtained a court order to serve by publication as required by I.C. § 5-508. This was innocent oversight. Notwithstanding this attempt and not knowing whether Defendant had any legitimate residence or "dwelling" anywhere in Idaho or Nevada, Plaintiff instructed her process server to return to the Firth address to serve the complaint. On November 2, 2016, eight days before the 6 month limitation, Ms. Jorgenson was met at the door by Defendant's daughter-in-law, Natalie White. Ms. Jorgenson left the Complaint and Summons with Natalie on the premise that this was Defendant White's best known "dwelling." *R.*, p. 44

After the crash on May 23, 2014, Defendant admits he spoke with Officer Barker and

gave him his driver license and insurance information. *R.*, *p.* 122 During this conversation, Officer Barker affirmed the following:

. . . [Defendant] provided his driver’s license to me and I copied from that license, or verbally obtained the address of 613 E. 750 N. Firth Idaho 83236 as his current physical address . . . I copied this information to my Collision Report . . . **I also asked [Defendant] and he said this was his address.** *R.*, *p.* 34 [emphasis added]

Defendant did **not** tell Officer Barker that sometime before May 23, 2014, he had moved and was living elsewhere. Eventually, in April 2016, Defendant relocated to 3640 Hickory Court in Idaho Falls yet he still maintained his Firth address. *R.*, *p.* 140, 156 Over two years later, on October 20, 2016, Defendant filed a change of address with the U.S. Postal Service showing his relocation to 590 W. Mesquite Blvd., Mesquite, Nevada. *R.*, *p.* 153, 156 This was the first and only time Defendant notified any government entity of his relocation to Nevada.

Defendant’s vehicle involved in the accident on May 23, 2014 was a 2008 Black GMC pickup truck with license plate number 4B 6135. *R.*, *p.* 37 Bingham County is signified by ‘4B.’ Firth, Idaho is in Bingham County. As of January 2017, after the court extended time for service, Plaintiff made another attempt to find Defendant. Process server Marc Jorgensen engaged in skip trace search including Idaho Department of Motor Vehicles (“DMV”) website data, (*R.*, *p.* 142, 146) and found that Defendant’s current registration on his GMC truck with 4B 6135 license plates was still registered to his Firth address. Further, Plaintiff found Defendant’s ITD Driver License Record Report dated January 10, 2017 (with a driver license issue date of August 10, 2008 and an expiration date of August 10, 2016) with Defendant’s address as P.O. Box 352, Firth, Idaho 83236. *R.*, *p.* 140

Defendant, despite having moved from his Firth address as early as 2006, **never** updated his address on his driver license as mandated by I.C. § 49-320. Further, he violated I.C. § 49-

421(1) and (3), as he did not update his truck registration address. *R.*, p. 142

IV. ISSUES ON APPEAL

1. Did Plaintiff-Appellant timely serve Defendant-Respondent on his declared address (dwelling) in Firth, Idaho?
2. Does Defendant-Respondent's declaration of multiple addresses in Idaho and Nevada constitute de facto evasion of service and thus provide 'good cause' for Plaintiff's failure to serve within (6) months?
3. Is Defendant-Respondent barred by "equitable estoppel" from asserting a residence in Nevada when during all pertinent time frames he declared his residence in Firth, Idaho?

V. STANDARD OF REVIEW

The standard of review for "good cause" was articulated in the case of in *Elliot vs. Verska* 152 Idaho 280, 285; 271 P.3d 678, 683 (2012) referencing *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 346; 941 P.2d at 318 (1997):

. . . [I]t is clear that the determination of whether good cause exists is a factual one. Because this is a factual determination, the appropriate standard of review is the same as that used to review an order granting summary judgment . . . [W]e must liberally construe the record in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party's favor.

**VI.
ARGUMENT**

1. PLAINTIFF DID TIMELY SERVE DEFENDANT AT HIS DECLARED FIRTH ADDRESS WITHIN THE REQUISITE (6) MONTHS.

Service upon individuals is required in I.R.C.P. 4(d)(1):

An individual . . . may be served by doing any of the following: delivering a copy of the summons and of the complaint to the individual personally; or leaving a copy of each at the individual’s dwelling or usual place of abode with someone at least 18 years old who resides there . . .

Procedurally, I.C.R.P. 4(b)(2) “Time for Service” requires:

If a defendant is not served within 6 months after the complaint is filed, the court, on motion or on its own after 14 days’ notice to the plaintiff, must dismiss the action without prejudice against that defendant. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Plaintiff’s process server, Marc Jorgenson was provided a summons and complaint on October 19, 2016 with the instruction to serve Defendant at his declared address in Firth as found on the Police report. On October 25, 2016, Mr. Jorgensen went to the Firth address. He was met at the door by Defendant’s son, Jeremy White and was advised that Defendant had not lived there for at least (10) years. The best known address according to Jeremy was that Defendant had moved to Mesquite, Nevada. Based upon those facts, Plaintiff’s legal assistant searched the internet for (1.5) hours trying to find Gary E. White, in the Firth, Idaho Falls and Mesquite areas all to no avail. In other words, it was not known whether Defendant had any “usual place of abode” or multiple “abodes.” Consequently, Plaintiff’s Process Server was instructed to return to the Firth address, and on November 2, 2016 served Natalie White, Defendant’s daughter-in-law. *R., p. 22, 23* Ms. White accepted service but reaffirmed that Defendant did not live there and

had not lived there since 2009. *R.*, p. 23 Defendant's first affidavit corroborates that fact, confirming his departure from Firth in 2009, five years before the car crash with Plaintiff. *R.*, p. 18

It is Plaintiff's contention, that for purposes of service, Defendant must have some "dwelling or usual place of abode." He cannot simply be 'airborne' and without one. Plaintiff asserts that Defendant's declarations and representations to the State of Idaho Transportation Department and to investigating Officer Barker on May 23, 2014 constitute an affirmation of his current and correct "dwelling" or "usual place of abode" in Firth. It is undisputed that on said date, Defendant provided his Idaho driver license to Office Barker and he recorded Defendant's Firth address in the Police report. *R.*, p. 33, 34 Plaintiff then relied on this information to start the service process and made an attempt on October 25, 2016.

Plaintiff asserts that Defendant's declaration to State agencies and an Idaho Falls Police officer that he "resides" at his Firth address, absent any other acknowledgment, becomes his residence or "dwelling." In other words, he can run but he cannot hide. In Defendant's second affidavit dated January 30, 2017, supporting his Motion For Reconsideration, he asserts that in April 2016 he relocated to 3640 Hickory Court in Idaho Falls. *R.*, p. 122 Significantly though, he chose to not inform the District Court where he was residing at the time of the accident on May 23, 2014, nor where he lived after leaving Firth and before arriving at the Hickory Court address. What is known is that he moved at least three times before November 2016: once from Firth in 2009 to unknown location(s); then to 3640 Hickory Court, Idaho Falls in April 2016, and finally from Idaho Falls to Mesquite in October 2016, **all the while keeping his driver license resident address in Firth and keeping his 2008 GMC truck (the one involved in the crash) registered in Firth.** *R.*, p. 140 Never once, contrary to Idaho law, did he notify the DMV of his

whereabouts. Idaho Code §49-320 requires:

It is the responsibility of every licensed driver and every person applying for a driver's license to keep a **current address** on file with the department. (1) Whenever any person after applying for or receiving a driver's license shall move from the **address shown** in the application or in the driver's license issued, that person **shall, within thirty (30) days, notify the department in writing of the old and new addresses**

(3) It is an infraction for any person to fail to notify the department of a change of address as required by the provisions of subsection (1) of this section. [emphasis added]

Further, a physical resident address is mandated by I.C. § 49-401(B)(5):

Every owner of a vehicle registered by a county assessor **shall give his physical domicile residence address** or the business address or the physical principal address to the assessor so that the proper county can be entered upon the registration. Failure to do so shall be unlawful . . . For the purposes of vehicle registration, a person is an actual and permanent resident of the county in which he has his principal residence or domicile. A principal residence or domicile shall not be a person's workplace, vacation or part-time residence. [emphasis added]

Finally, as to vehicle registration requirements, Idaho Code §49-421 reads:

REGISTRATION CARDS. (1) Upon registration of a vehicle, the registering agency shall issue to the owner, as defined in section §49-116(3), Idaho Code, a registration card which shall contain the date, **the name and the address of the owner**, a description of the registered vehicle, identification number and any other information the department may require (3) **Upon a change of address the registrant shall report such change to the county assessor's office or the department within (30) days following the change of address.** (4) It is an infraction for any person to fail to notify the department of a change of address as required by the provisions of subsection (3) of this section. [emphasis added]

Registration Notices (forms) are sent to owners for vehicles annually by regular mail. This notice includes the requirement to change address as applicable and provides specific information on how to obtain and fill out a form. An example of notice and a form is contained in the record. *R., p. 137, 138* The record is void of information as to why Defendant selected not to submit an address change. Moreover, he does not dispute that he received registration notices relating to his 2008 GMC truck at his Firth address.

Despite all this, if Defendant still insists that his Firth address was not his “usual place of abode,” then he has some explaining to do. On May 23, 2104, he presented his license and registration to Officer Barker, asserting that Firth was his address. If this address was not correct and current, he was in violation of I.C. § 18-5413 which reads:

(1) A person is guilty of a misdemeanor if he **knowingly** gives or causes to be given false information to any law enforcement officer . . . concerning the commission of an **offense** . . . [emphasis added]

Appellant alleges an “offense” includes I.C. § 49-638 Driving – Following Too Closely and I.C. § 49-1401 –Inattentive Driving which were “contributing circumstances” in causing the car crash according to Officer Barker’s Police Report. *R., p. 48* In giving his license and address verbally to Officer Barker knowing it was incorrect, Defendant gave “false information.”

The foregoing statutes carry penalties and underscore the import of a current and correct residential reporting. The State **must** have an accurate resident name and address on file to provide driver licenses, proof of registration documents, license plate stickers and notices regarding driving privilege status. Providing said items to an Idaho driver at his resident address on file is required by Idaho Code §49-320(2) and constitutes the State’s providing “all the legal notice that is required”:

(2) Whenever any statute or rule requires a driver to receive notice of any official action with regard to the person's driver license or driving privileges taken or proposed by a court or the department, notification by first class mail at the address shown on the application for driver's license or at the address shown on the driver license or at the address given by the driver, shall constitute all the legal notice that is required.

It follows then, if Defendant declares his address or 'primary physical residence' at Firth to State and City officials, including Idaho Falls City Police, then he is bound to it. Service should be deemed complete when the Complaint and Summons were left with Defendant's daughter-in-law, Natalie White, on November 2, 2016. The District Court erred when it did not so find.

2. DEFENDANT'S STATUTORY VIOLATION IN FAILURE TO CHANGE ADDRESS SHOULD BE CONSIDERED AN EVASION OF PROCESS AND 'GOOD CAUSE' FOR PLAINTIFF NOT COMPLETING PERSONAL SERVICE WITHIN (6) MONTHS.

This court has discussed the standard of "good cause" as follows:

[T]he determination of whether good cause exists is a factual one." *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 346; 941 P.2d 314, 319 (1997)

[The court] must consider the totality of the circumstances, to determine whether the plaintiff had a legitimate reason for not serving the defendant with a copy of the state complaint during the relevant time period. *Nerco Minerals Co. v Morrison Knudsen Corp.*, 132 Idaho 531, 534; 976 P.2d 457, 460 (1999)

The burden is on the party who failed to effect timely service to demonstrate good cause. *Martin v. Hoblit*, 133 Idaho 372, 375; 987 P.2d 284, 287 (1999)

Courts look to factors outside of the plaintiff's control including sudden illness, natural catastrophe, or evasion of service of process. *Harrison v. Bd. Of Prof'l Discipline of Idaho State Board of Med.*, 145 Idaho 179, 183; 177 P.3d 393, 397 (2008)

A review of prior Idaho cases show fact patterns not constituting "good cause" for failure to serve. This includes arguments of mailing copies of the complaint and summons to Defendant's home (*Campbell v. Reagan*, 144 Idaho 254; 159 P3d 891 (2007)); settlement negotiations with Defendant's insurer (*Martin v. Hoblit*, 133 Idaho 372; 987 P.2d 284, (1999)); pending proceedings before the pre-litigation panel (*Rudd v. Merritt*, 138 Idaho 526; 66 P.3d 230 (2003)); the placement of papers at Defendant's office (*Elliot v. Verska*, 152 Idaho 280; 271 P.3d 678 (2012)).

In stark contrast to these fact patterns, this case presents facts of evasion in that Defendant had "no usual place of abode" or in the alternative, had multiple residences including his Firth address. Plaintiff argues that under these circumstances, her "failure" to find and personally serve Defendant within (6) month time limit is excused.

Had Defendant complied with the law, his current address would have been reflected on his driver license and vehicle registration when presented to Officer Barker on May 23, 2014. Had Defendant provided his current address (if indeed he had one), Plaintiff would have made easy work in providing individual and timely service of the complaint on or about October 25, 2016 or soon thereafter. Process server, Marc Jorgenson's experience confirms his reliance on a correct address filings with the DMV:

One of the 'people' locating search tools I use is "Access Idaho" which is a subcontractor to Idaho Department of Transportation. This permits me to obtain addresses associated with vehicles registered in Idaho based on plate and VIN# By using this tool I found that Gary White had no vehicles registered at 3640 Hickory Court Idaho

Falls address. I did find a GMC truck with a license plate of #4B 6135 **which was still registered to Gary E. White in Firth, Idaho.** . . . [I]t is my professional opinion, based on my experience that the Idaho Department of Transportation and Department of Motor Vehicles records yield a current accurate Idaho address location for a person living within Idaho. *R.*, p. 142

The significance of providing a correct and current address to State agencies cannot be overstated. It was discussed by this Court in *Gallagher v. Best Western Cottontree Inn Snake River Petersen Properties LLC*, Idaho Supreme Court Docket 43695, 2017 Opinion 1. In *Gallagher* the question posed was Plaintiff’s obligation to serve a defendant business entity who had not timely filed a Certificate of Assumed Business Name. Recognizing that a name change had occurred, Plaintiff filed a motion to extend time for service of process, which was granted by the District Court. Even though it was admitted that Defendant, Best Western Cottontree Inn Snake River Peterson Properties, LLC, had failed to so file, the District Court determined the statute of limitations should not be tolled. It found that because Plaintiff only searched the Secretary of State’s online business entity search, she did not exercise reasonable diligence to ascertain the proper party. On review, this Court found that a name change filing was mandatory under I.C. § 30-21-805, stating the purpose of the statute is to “ensure disclosure on the public record of the true names of persons who transact business in Idaho.” (*Id.* at p. 4) Consequences for such failure were provided in I.C. § 30-21-810:

Any person who suffers a loss because of another person’s noncompliance with the requirement of this chapter shall be entitled to recover damages in the amount of the loss and attorneys fees and costs incurred in connection with recovery of damages.

This Court then added:

In a case where a Plaintiff has been misled to his or her prejudice to properly name the proper defendant before the expiration of the statute of limitation the plaintiff's damages will include lost opportunity for recovery in the action. (Gallagher at p. 5)

Accordingly, this Court reversed, vacated and remanded the District Court's ruling so that appellant could file an amended complaint naming Best Western Cottontree Inn Snake River Petersen Properties, LLC as a defendant.

Appellant contends a similar result is justified here as Defendant's failure to report accurate up-to-date information in violation of statute is strikingly similar to Gallager. Granted, in this case neither Plaintiff nor Defendant are "business entities," but Plaintiff's bodily injury damages and expenses to treat these injuries are just as real.

To summarize, Plaintiff arranged for service through a process server. Next, Plaintiff commenced an online search spending (1.5) hours checking multiple website data bases trying to locate Defendant to no avail. *R.*, p. 56 Immediately upon failure to find Defendant via internet search, the decision was made to serve by publication locally as an address for Defendant could not be located in Mesquite. *R.*, p. 73 Admittedly, Plaintiff did not first obtain a court order for publication, but the actual publication procedure portion of I.C. § 5-508 was followed commencing on November 1 and completed on November 28, 2016. *R.*, p. 58-59 Once the failure to secure a court order was identified, Plaintiff remedied the oversight by filing a Motion for Extension of Time for Service of Process by Publication. The District Court granted this on January 10, 2017. Plaintiff again published, starting on January 19, 2017, concluding on February 15, 2017.

Plaintiff contends these cumulative efforts constitute "due diligence." And, that diligence, in conjunction with the showing herein that Defendant has consistently and throughout all

relevant time periods asserted only his Firth address, demonstrates “good cause” for failure to provide personal service to Defendant within 6 months. As every wrong deserves a remedy, Plaintiff requests this Court to reverse the District Court finding that “good cause” for failure to serve was not shown.

3. DEFENDANT IS EQUITABLY ESTOPPED FROM ASSERTING A NON-FIRTH RESIDENCE WHEN HE AFFIRMATIVELY ASSERTED IT.

Unlike *Gallagher*, where the remedy was expressed by statute, the violation of statutes I.C. § 18-5413, or § 49-320 and 421 as cited earlier, have no civil **statutory** remedy for evasion of process. Accordingly, the notion of “equitable estoppel” seems applicable here.

In the case of *George v. Tanner*, 108 Idaho 40, 45; 696 P.2d 891 (1985) this Court referred favorably to the definition of “equitable estoppel” contained in 19 Am.Jur. 634, § 34:

Equitable estoppel or estoppel in pais is a term applied to a situation where, because of something which he has done or omitted to do, a party is denied the right to plead or prove an otherwise important fact. Any more exact or complete definition than this is difficult to formulate for the reason that an equitable estoppel rests largely on the facts and circumstances of the particular case, and consequently, any attempted definition usually amounts to no more than a declaration of an estoppel under those facts and circumstances. The cases themselves must be looked to and applied by way of analogy rather than rule.

As referenced in the case of *Little v. Bergdahl Oil Co.*, 60 Idaho 662, 672; 95 P.2d 833, 837 (1939), the necessary estoppel elements are enumerated:

In order to constitute an equitable estoppel there must exist a false representation or concealment of material facts; it must have been made with knowledge, actual or constructive, of

the facts; the party to whom it was made must have been without knowledge or the means of knowledge of the real facts; it must have been made with the intention that it should be acted upon to his prejudice.

Because Defendant maintained his Firth address by failing to notify DMV of any address change; because Defendant continued to register his 2008 GMC truck at his Firth address; because he told Officer Barker of his Firth address; and because by doing so, he in essence told Plaintiff of his Firth address in keeping with the exchange of information requirement per I.C. § 18-8007(1)(c), Defendant cannot assert multiple addresses or no address – a sort of shell game – to avoid service of process.

Defendant affirms he resided at 3640 Hickory Court in Idaho Falls from April to October 2016 and thereafter moved to Mesquite. He finally provided proof of such by completing a U.S. Postal Service change of address form in October 2016 (*R., p. 156*) in order to receive his mail. Yet, he never attested to his whereabouts on May 23, 2014, asserting all along that he resided at his Firth address. Plaintiff argues this is concealment. As Defendant knew he caused the crash, it logically follows that a civil suit may result, requiring service of process at his declared Firth address. Knowing this, he still did not offer an accurate address. Thus all elements of estoppel are intact.

Accordingly, and in application of equitable estoppel, Plaintiff requests this Court reverse the District Court by a declaration that Defendant's "dwelling" **was** his Firth address, and that service was properly provided by delivery of the complaint and summons to Defendant's daughter-in-law on November 2, 2017.

**VII.
CONCLUSION**

Appellant prays for relief from this Court in finding that Respondent is factually bound to the address he declared to State agencies and City police.

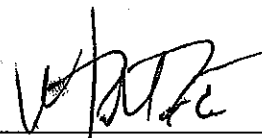
Second, Respondent's failure to provide a current and correct address constitutes an evasion of service and "good cause" for failure to serve.

Finally, this Court may also apply the principal of equitable estoppel and declare that a Defendant's "dwelling" was his Firth address, and that service was properly provided by delivery of the complaint and summons to Defendant's daughter-in-law on November 2, 2017.

Appellant is not requesting attorney fees on appeal, but that each party bear its own costs and fees.

RESPECTFULLY SUBMITTED this 17 day of November, 2017.

MCBRIDE ROBERTS & ROMRELL ATTORNEYS



Michael R. McBride
Attorney for Plaintiffs

CERTIFICATE OF SERVICE & COMPLIANCE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that on this 17 day of November, 2017, I caused a true and correct copy of the foregoing document to be served upon the person(s) listed below by mailing; and further that in compliance with all of the requirements set out in I.A. R. 34.1, an electronic copy was also served on each party at the following email addresses:

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