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Crawford v. Guthmiller Clerk's Record Dckt. 45613

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IN THE SUPREME COURT OF THE STATE OF IDAHO

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Supreme Court Case No. 45613

Plaintiffs-Appellants

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMULLER, individually,

Defendants-Respondents.

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE STEVEN HIPPLER

MATT K. STEEN
ATTORNEY FOR APPELLANT
BOISE, IDAHO

TRUDY HANSON FOUSER
TAYLOR H.M. FOUSER
ATTORNEY FOR RESPONDENT
BOISE, IDAHO

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CV01-16-23543

Todd Crawford, Benjamin Crawford, Ethan Crawford §
Plaintiff, §
vs. §
Daniel Guthmiller, Dennis Guthmiller §
Defendant. §

Location: Ada County District Court
Judicial Officer: Hippler, Steven
Filed on: 12/29/2016

CASE INFORMATION

Case Type: AA- All Initial District Court Filings (Not E, F, and H1)

DATE	CASE ASSIGNMENT
------	-----------------

Current Case Assignment

Case Number	CV01-16-23543
Court	Ada County District Court
Date Assigned	12/29/2016
Judicial Officer	Hippler, Steven

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Crawford, Benjamin	Steen, Matthew Kenneth, III <i>Retained</i> 208-323-0024(W)
	Crawford, Ethan	Steen, Matthew Kenneth, III <i>Retained</i> 208-323-0024(W)
	Crawford, Todd	Steen, Matthew Kenneth, III <i>Retained</i> 208-323-0024(W)
Defendant	Guthmiller, Daniel	Fouser, Trudy Hanson <i>Retained</i> 208-336-9777(W)
	Guthmiller, Dennis	Fouser, Trudy Hanson <i>Retained</i> 208-336-9777(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
------	------------------------------	-------

12/29/2016	Initiating Document - District	
12/29/2016	 Summons Issued <i>And Filed</i>	
12/29/2016	 Complaint Filed <i>and Demand for Jury Trial</i>	
12/29/2016	Summons Guthmiller, Daniel Unserved Guthmiller, Dennis Unserved	
06/29/2017	 Motion	

CASE SUMMARY
CASE NO. CV01-16-23543

Motion for Order for Service by Publication and Extension of Time

- 06/29/2017  Affidavit
Affidavit of Joy Garrison in Support of Motion for Order for Service by Publication and Extension of Time
- 06/29/2017  Affidavit
Affidavit of Benjamin Storer in Support of Motion for Order for Service by Publication and Extension of Time
- 07/12/2017  Order
Denying Motion for Order Service by Publication and Extension of Time to Serve
- 07/24/2017  Amended
Amended Motion for Order for Service by Publication
- 07/24/2017  Affidavit
2nd Affidavit of Joy Garrison in Support of Motion
- 07/24/2017  Affidavit
2nd Affidavit of Benjamin Storer in Support of Motion
- 07/29/2017  Notice
Notice of Substitution of Counsel
- 07/31/2017  Notice of Appearance
Notice of Special Appearance on Behalf of Defendants
- 07/31/2017  Motion
Motion to Dismiss Plaintiff's Complaint
- 07/31/2017  Memorandum
Memo in Support of Motion to Dismiss Plaintiff's Complaint
- 07/31/2017  Affidavit
Aff in Support of Motion to Dismiss Plaintiff's Complaint
- 07/31/2017  Declaration
Dec in Support of Motion to Dismiss Plaintiff's Complaint
- 08/21/2017  Notice of Hearing
9/8/2017 @ 2:00 pm Motion to Dismiss
- 09/01/2017  Notice of Service
Notice of Service of Plaintiffs Memorandum
- 09/01/2017  Memorandum
Plaintiff's Memorandum in Opposition to Defendant's Motion
- 09/05/2017  Reply
Reply in Support of Motion to Dismiss

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CV01-16-23543

09/08/2017	Motion to Dismiss (2:00 PM) (Judicial Officer: Hippler, Steven)
09/08/2017	 Court Minutes
09/18/2017	 Notice of Service
09/18/2017	 Memorandum <i>Plaintiff's Supplemental Memo in Opposition to Defendant's Motion</i>
09/22/2017	 Memorandum <i>Memorandum in Support of Motion to Dismiss</i>
10/18/2017	 Memorandum <i>Decision and Order on Motions to Dismiss and to Enlarge Time</i>
10/18/2017	 Judgment
10/18/2017	Order Steen, Matthew Kenneth, III Unserved Fouser, Trudy Hanson Unserved
10/18/2017	Order Steen, Matthew Kenneth, III Unserved Fouser, Trudy Hanson Unserved
10/18/2017	Dismissed Without Prejudice (Judicial Officer: Hippler, Steven) Monetary/Property Award In Favor Of: Guthmiller, Daniel; Guthmiller, Dennis Against: Crawford, Todd; Crawford, Benjamin; Crawford, Ethan Entered Date: 10/18/2017 Current Judgment Status: Status: Dismissal of Judgment By Court Order Status Date: 10/18/2017
10/18/2017	Case Closed
11/29/2017	 Notice of Appeal
11/29/2017	Appeal Filed in Supreme Court
12/12/2017	 Request <i>for Additional Clerk's Record</i>
02/01/2018	 Notice <i>of Transcript Lodged - Supreme Court No. 45613</i>

DATE

FINANCIAL INFORMATION

Defendant Guthmiller, Daniel	
Total Charges	136.00
Total Payments and Credits	136.00
Balance Due as of 2/1/2018	0.00
Plaintiff Crawford, Todd	

000004

ADA COUNTY DISTRICT COURT
CASE SUMMARY
CASE NO. CV01-16-23543

Total Charges	450.00
Total Payments and Credits	450.00
Balance Due as of 2/1/2018	0.00

Bryan S. Storer, ISB #6944
STORER & ASSOCIATES
4850 N. Rosepoint Way, Suite 104
Boise, Idaho 83713
Telephone: (208) 323-0024
Facsimile: (208) 323-9730

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

CV01-16-23543

Case No.: _____

COMPLAINT AND DEMAND FOR JURY TRIAL

Fee Category: A(1)
Filing Fee: \$221.00

COMES NOW, the Plaintiffs, by and through their attorney, Storer & Associates, and hereby complains and alleges against the Defendants, DANIEL GUTHMILLER and, DENNIS GUTHMILLER as follows:

JURISDICTION

1. Plaintiffs were at all times mentioned in this Complaint, residents of Ada County, State of Idaho.
2. Defendants are and at all times mentioned in this Complaint, were residents of Ada County, State of Idaho.
3. This court has jurisdiction over this case because Defendants are alleged to have committed tortuous acts within this state. *Idaho Code § 5-514(b)*.

4. Venue is proper in Ada County because the Defendants now reside in Ada County. *Idaho Code § 5-404.*

5. Plaintiff's claims for damages are greater than the \$10,000.00 required to satisfy this Court's jurisdictional requirements. *I.R.C.P. 9(g).*

FIRST CAUSE OF ACTION: NEGLIGENCE

6. Plaintiffs reallege and incorporate herein by reference all allegations above.

7. That on January 2, 2015, Plaintiffs were in a vehicle stopped at a red light on N. Bogus Basin Road in Boise, Idaho in compliance with all state and local laws and ordinances when Defendant Daniel Guthmiller negligently rear ended Plaintiff's car.

8. As a direct and proximate result of the aforementioned negligence, Plaintiffs suffered damages as specified and demanded below.

SECOND CAUSE OF ACTION: OWNERSHIP OF VEHICLE

(As to Defendant Dennis Guthmiller)

9. Plaintiff realleges and incorporates herein by reference all allegations above.

10. Plaintiff is informed and believes and thereupon alleges that during the collision on or about January 2, 2015 Defendant Dennis Guthmiller was either the owner of the vehicle or co-owner of the vehicle Defendant Daniel Guthmiller was driving at the time of the subject collision and is, therefore, liable for Plaintiff's damages up to the statutory limit of \$25,000.00 due to ownership of said vehicle.

11. That as a direct and proximate result of the aforementioned negligence, Plaintiffs suffered damages, as specified and demanded below.

CLAIM FOR ATTORNEY FEES

12. Plaintiffs claim an award of costs pursuant to *I.R.C.P. 54*. Plaintiffs also claim attorney fees if entitled under *I.C. §12-121* and other applicable statutes, rules, and legal theories.

13. Plaintiffs have been required to retain the law firm of STORER & ASSOCIATES to prosecute this action. Plaintiffs ask this court to award them attorney fees and costs. The sum of \$7,000.00 or one-third of the amount recovered (whichever is greater) is a reasonable amount for the Plaintiff's attorneys' fees if judgment is taken by default.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants and each of them as follows:

1. Plaintiffs hereby demand a jury trial before a jury of twelve (12) jurors on all issues in this Complaint pursuant to *I.R.C.P. 38 (b)*.
2. As a direct and proximate result of Defendant's actions, and each of them, Plaintiffs incurred and suffered the following injuries and damages for which they are entitled to compensation in amounts to be proven at trial:
 - a. Past, present, and future pain and suffering, permanent disability and loss of enjoyment of life;
 - b. Bodily injury;
 - c. Past, present, and future medical, rehabilitation and related expenses to remedy physical and psychological injuries;
 - d. Past, present, and future loss of wages and earning capacity; transportation and car expenses occasioned by trips to and from doctor's offices and hospitals; loss of income from worked missed occasioned by trips to and from doctor's offices and hospitals, in sums to be proven at trial.
 - e. For property damage, all in amount to be proven at trial.
 - f. Additional injuries and damages yet to be discovered and to be proven at trial and further relief as the Court may deem just and reasonable.

g. That as a direct and proximate result of the aforementioned actions of the Defendants, Plaintiffs were required to retain legal counsel for prosecuting this action, have retained the services of Storer & Associates to represent them in this action, have agreed to pay reasonable attorneys fees and costs, and are therefore entitled to recover reasonable attorney's fees and costs herein from the Defendants pursuant to *Idaho Code §12-121* as well as other applicable statutes and legal theories.

DATED this 29 day of December, 2016.

STORER & ASSOCIATES



Bryan Storer, Attorney for Plaintiff

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4850 N. Rosepoint Way, Suite 104
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Telephone: (208) 323-0024
Facsimile: (208) 323-9730
storerlit@gmail.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No.: CV01-16-23543

**MOTION FOR ORDER FOR SERVICE
BY PUBLICATION AND EXTENSION OF
TIME PURSUANT TO I.R.C.P. 4(a)**

COMES NOW the Plaintiff, and moves this Court for an Order pursuant to IRCP 4(a) authorizing an extension of time ninety (90 days) for service by publication or personal service upon Defendants Daniel Guthmiller and Dennis Guthmiller, individually in this action for personal injury. This motion is based upon the Affidavit attached hereto indicating Defendants Daniel Guthmiller and Dennis Guthmiller avoided personal service of the Summons and Complaint or has otherwise made themselves unavailable for service of process.

DATED 28 day of June, 2017.

By: 
Bryan Storer, Attorney for Plaintiff

**MOTION FOR ORDER FOR SERVICE BY PUBLICATION AND FOR EXTENSION OF TIME
PURSUANT TO I.R.C.P. 4(a)**

Bryan S. Storer, ISB #6944
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4850 N. Rosepoint Way, Suite 104
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Telephone: (208) 323-0024
Facsimile: (208) 323-9730
storerlit@gmail.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No.: CV01-16-²³⁵⁴³~~22279~~

**AFFIDAVIT OF JOY GARRISON IN
SUPPORT OF MOTION FOR ORDER
FOR SERVICE BY PUBLICATION AND
EXTENSION OF TIME PURSUANT TO
I.R.C.P. 4(a)**

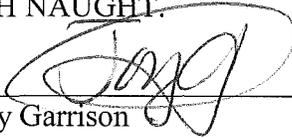
STATE OF IDAHO)
)ss.
County of Ada)

Joy Garrison, being first duly sworn upon oath, and based upon her own personal knowledge, deposes and says:

1. I attempted to serve Defendant a copy of the Summons and Complaint on several occasions and am personally familiar with the facts and circumstances asserted herein;

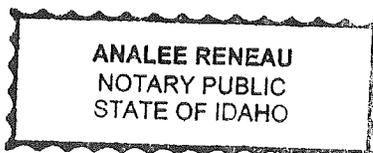
2. I personally tried to serve defendant on multiple occasions over the course of several months to no avail at 2484 N Hickory Way, Meridian, ID.
3. When I last tried to serve the summons and complaint, a woman came to the door who appeared to be familiar with defendant. She said that the defendant no longer lived at that address. However, she said, "He has not lived her for almost two years."
4. Despites several searches with various sources, I have been unable to find any other address for defendant other than the address where I tried to serve the summons and complaint.
5. Irreparable harm will be caused to Plaintiff if the Motion to Extend time and Motion for Service by Publication is not granted.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.



Joy Garrison

SUBSCRIBED AND SWORN to before me on this 28 day of June, 2017.





Notary Public for Idaho
Residing at ADA, Idaho
My Commission Expires: 3.8.23

Bryan S. Storer, ISB #6944
STORER & ASSOCIATES
4850 N. Rosepoint Way, Suite 104
Boise, Idaho 83713
Telephone: (208) 323-0024
Facsimile: (208) 323-9730
storerlit@gmail.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

23543

Case No.: CV01-16-~~22279~~

**AFFIDAVIT OF BENJAMIN STORER IN
SUPPORT OF MOTION FOR ORDER
FOR SERVICE BY PUBLICATION AND
EXTENSION OF TIME PURSUANT TO
I.R.C.P. 4(a)**

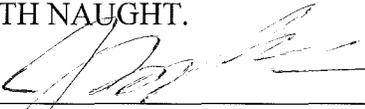
STATE OF IDAHO)
)ss.
County of Ada)

Benjamin Storer, being first duly sworn upon oath, and based upon her own personal knowledge, deposes and says:

1. I attempted to serve Defendant a copy of the Summons and Complaint on several occasions and am personally familiar with the facts and circumstances asserted herein;

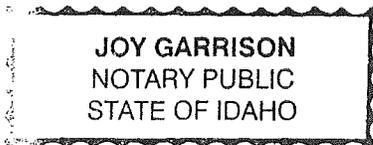
2. I personally tried to serve defendant on multiple occasions over the course of several months to no avail at 2484 N Hickory Way, Meridian, ID.
3. I was unable to find anyone at that address during different times of the day.
4. I am aware that Joy Garrison also tried to serve Defendants at the same address without success. I suspect that the information she was given regarding Defendants no longer living at that address is incorrect. All of my searches show that Defendants still reside there and are avoiding service.
5. I have been unable to find any other address for defendants other than the address where I and Joy Garrison tried to serve the summons and complaint.
6. Irreparable harm will be caused to Plaintiff if the Motion to Extend time and Motion for Service by Publication is not granted.

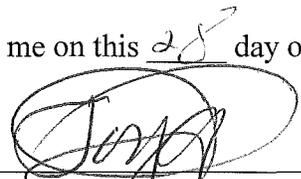
FURTHER, YOUR AFFIANT SAYETH NAUGHT.



Benjamin Storer

SUBSCRIBED AND SWORN to before me on this 28 day of June, 2017.





Notary Public for Idaho
Residing at Ada County, Idaho
My Commission Expires: 10/7/21

JUL 12 2017

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
CHRISTOPHER C. RICH, Clerk
By EMILY CHILD
DEPUTY

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No. CV01-16-23543

ORDER DENYING MOTION FOR ORDER
FOR SERVICE BY PUBLICATION AND
EXTENSION OF TIME TO SERVE

Plaintiffs brought this action on December 29, 2016 for injuries arising from a motor vehicle accident involving Defendants. No further action was taken in the action. On June 29, 2017—exactly six months after filing the Complaint—Plaintiffs filed the current motion seeking an extension of time under IRCP 4(b)(2) in which to serve Defendants by publication. In support, Plaintiffs provide affidavits by two individuals who attempted to serve Defendants unsuccessfully at their alleged residence. According to Joy Garrison, she attempted to serve “defendant” at the alleged residence but was met by a woman at the door who stated, “He has not lived here [sic] for almost two years.” Aff. Garrison, ¶ 3. Ms. Garrison does not identify which “defendant” she attempted to serve. According to Benjamin Storer, who also attempted service at the same address, he “suspects” the woman was not telling Ms. Garrison the truth because “[a]ll of my searches show that Defendants are still residing there and are avoiding service.” Aff. Storer, ¶ 4.

Rule 4(b)(2), IRCP, provides that “[i]f 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.” Plaintiffs have not demonstrated good cause of the failure to serve Defendants. The supporting affidavits do not specify when attempts to serve were made or what efforts were taken to ascertain that the

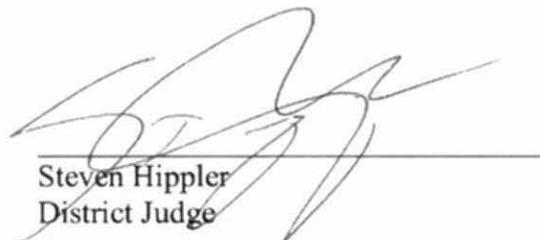
EV

address at which they have been attempting service is the correct address. From the affidavits, it is not reasonable to conclude that Defendants are, in fact, evading service. Further, Plaintiffs have not demonstrated good cause for waiting until the six month deadline to file a motion for an extension rather than move for leave to serve by publication earlier.

This Court will allow Plaintiffs fourteen (14) days from the date of this Order to provide supplemental affidavits establishing good cause. If Plaintiff fails to do so, or if the Court finds the supplemental affidavits fail to demonstrate good cause, the Court will dismiss the claim without prejudice without further notice.

IT IS ORDERED.

DATED this ¹⁴12 day of July, 2017.



Steven Hippler
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 12 day of July, 2017, I emailed (served) a true and correct copy of the within instrument to:

Bryan S. Storer
Attorney at Law
storerlit@gmail.com

CHRISTOPHER D. RICH
Clerk of the District Court

By: *E. Chitel*
Deputy Court Clerk



Bryan S. Storer, ISB #6944
STORER & ASSOCIATES
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Boise, Idaho 83713
Telephone: (208) 323-0024
Facsimile: (208) 323-9730
storerlit@gmail.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No.: CV01-16-23543

**AMENDED MOTION FOR ORDER FOR
SERVICE BY PUBLICATION AND
EXTENSION OF TIME PURSUANT TO
I.R.C.P. 4(a)**

COMES NOW the Plaintiff, and moves this Court for an Order pursuant to IRCP 4(a) authorizing an extension of time ninety (90 days) for service by publication or personal service upon Defendants Daniel Guthmiller and Dennis Guthmiller, individually in this action for personal injury. This motion is based upon the Affidavit attached hereto indicating Defendants Daniel Guthmiller and Dennis Guthmiller avoided personal service of the Summons and Complaint or has otherwise made themselves unavailable for service of process. Plaintiff has done multiple address searches on at least two occasions and the only address shown for Defendants is 2484 N Hickory Way, Meridian, ID. This is the same address given to Plaintiffs by Defendants at the scene of the subject collision. Plaintiff diligently attempted to serve

**AMENDED MOTION FOR ORDER FOR SERVICE BY PUBLICATION AND FOR EXTENSION OF
TIME PURSUANT TO I.R.C.P. 4(a)**

defendant on numerous occasions as shown on the attached Affidavits of Joy Garrison and Benjamin Storer. There were no other addresses to be found that would have indicated that Defendants did not live at 2484 N. Hickory Way, Meridian, ID. Plaintiff suspects, and there is no reason to believe otherwise, that Defendants continue to reside at this address but are avoiding service of process. Irreparable harm will be caused to Plaintiff if the Motion to Extend time and Motion for Service by Publication is not granted.

DATED 24 day of July, 2017.


By: _____
Bryan Storer, Attorney for Plaintiff

Bryan S. Storer, ISB #6944
STORER & ASSOCIATES
4850 N. Rosepoint Way, Suite 104
Boise, Idaho 83713
Telephone: (208) 323-0024
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storerlit@gmail.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No.: CV01-16-23543

**SECOND AFFIDAVIT OF JOY
GARRISON IN SUPPORT OF MOTION
FOR ORDER FOR SERVICE BY
PUBLICATION AND EXTENSION OF
TIME PURSUANT TO I.R.C.P. 4(a)**

STATE OF IDAHO)
)ss.
County of Ada)

Joy Garrison, being first duly sworn upon oath, and based upon her own personal
knowledge, deposes and says:

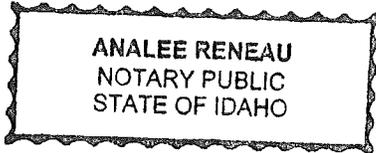
1. I attempted to serve Defendant a copy of the Summons and Complaint on several
occasions and am personally familiar with the facts and circumstances asserted
herein;

2. I personally tried to serve defendant on multiple occasions over the course of several months to no avail at 2484 N Hickory Way, Meridian, ID.
3. The dates that I personally attempted to serve the Defendants were April 13, 2017, April 29, 2017, May 24, 2017, June 9, 2017, June 20, 2017, and June 24, 2017.
4. When I last tried to serve the summons and complaint, a woman came to the door who appeared to be familiar with defendant. She said that the defendant no longer lived at that address. However, she said, "He has not lived her for almost two years."
5. I did searches on several address search sites prior to giving the Summon and Complaint to the initial process server. Each site came up with the same address at 2484 N. Hickory Way, Meridian Idaho 83646 for both Daniel Guthmiller and Dennis Guthmiller. I did another search for this today to compare search results. Attached are current print outs as of July 24, 2017 that show that the address has not changed despite the woman who previously answered the door saying that Defendants did not reside there. (See Exhibits "1," "2," "3," "4")
6. Irreparable harm will be caused to Plaintiff if the Motion to Extend time and Motion for Service by Publication is not granted.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.


Joy Garrison

SUBSCRIBED AND SWORN to before me on this 24th day of July, 2017.



Analee Reneau
Notary Public for Idaho
Residing at ADA, Idaho
My Commission Expires: 3/8/23



REMOVE YOUR INFO (CLICK HERE)

Mr. Dennis Guthmiller Online Profile

Google Custom Search



Search Death Records

Enter any name and search free! Find their death records now.

Public Records Data

Address:

2484 N Hickory Way
Meridian,
83646-8075

Phone: (208) 863-0100

Mobile Phone:

eMail:

Birthday:

Month: Date: Year:

Age:

Marital Status:

* Each designates an available data point. To access this secured data Click Here

Education:

Occupation:

Occupation Specifics:

Wealth & Financial - Estimated*

Household Income*:

Net Worth*:

Lines Of Credit*: 1

Credit Range*:

Credit Card User*:

Investments

Donations, Hobbies & Interests

AddressType:

Home Owner Verification:

CRA* Income Classification:

Length Of Residence: +/- 07 Years

Property Built: 2002

Number Of Adults: 3

Total In Household: 3

Generations In Household: 2

Air Conditioning:

Heating:

Water:

Sewer:

*Community Reinvestment Act

Exh. 1

Neighborhood

ANDRIY CHUMA 2497 N HICKORY WAY
NADIA CHUMA 2497 N HICKORY WAY
RAEMI NOLEVANKO 2450 N HICKORY WAY
DENNIS GUTHMILLER 2484 N HICKORY WAY
JENNIFER GUTHMILLER 2484 N HICKORY WAY

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3. The information available on our website may not be 100% accurate, complete, or up to date, so do not use this information as a substitute for your own due diligence.

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Tree
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Related

Full Name **Dennis T Guthmiller**
 Birth Year **1959**
 Age **57**

AdChoices
Family Tree
Genealogy
Find Ancestry

Associated Names

- Dennis G Guthmiller
- Dennis Terry Guthmille
- Jennifer Guthmiller Trus
- Dennis Guthmiller Trus

Possible Relatives

Name	Age	Birth Year
Jennifer T Guthmiller	54	1963
Daniel C Guthmiller	23	1994
Delbert A Guthmiller	84	1932
Jennifer J Huck	54	1963
Jessica L Jones	25	1991
Lois L Guthmiller	85	1932
Rachael L Guthmiller	21	1995

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Possible Associates

Name	Age	Birth Year
Jeff A Gray	54	1962
Andrew C Jones	81	1936
Bill J Huck	61	1956
Danae L Huck	35	1982
Elizabeth A Jones	25	1992
Mary P Garent	37	1980
Nicholas J Huck	33	1984
Patrick D Jones	26	1990
Rhett L Jones	32	1984
Sandra K Jones	54	1963

Exh 2



Current & Past Addresses

2484 N Hickory Way
 Meridian, ID 83646 
Current Address

98030 Heaaha St #18
 Aiea, HI 96701 
(Dec 2016)

94-539 Puahi St #2
 Waipahu, HI 96797 
(Apr 2006)

2484 W Hichory Wa
 Meridian, ID 83642 
(Jan 2006)

92-1050 Kanehoa Loop #65
 Kapolei, HI 96707 
(Jan 1996 - Jul 2005)

92100 Makakilo Dr #47
 Kapolei, HI 96707 
(Aug 2003)

921004 Maka
 Kapolei, HI 96707 
(Nov 2002)

92100 Makakilo Dr
 Ewa Beach, HI 96707 
(Oct 2002)

92114 Makakilo Dr #53
 Kapolei, HI 96707 
(Jul 2002)

98-030 Hekaha St #1
 Aiea, HI 96701 
(Jul 2001)

92-105 Kanehoa Loop #65
 Kapolei, HI 96707 
(Jul 2001)

94-539 Puahi St
 Waipahu, HI 96797 
(Jul 2001)

92-105 Kanehoa Lo 65
 Kapolei, HI 96707 
(Jul 2001)

92 1009 Makakilo #53
 Kapolei, HI 96707 
(Dec 2000)

941002 Makakilo #53
 Kapolei, HI 96707 
(Nov 2000)

941002 Makakilo 53
 Kapolei, HI 96707 
(Nov 2000)

94-359 Puahi St #2
 Waipahu, HI 96797 
(Jul 2000)

92-100 Makakilo 53
 Kapolei, HI 96707 
(Apr 2000)

92-100 Makakilo Dr #53
 Kapolei, HI 96707 
(Apr 2000)

- 2nd
Waipahu, HI 96797 
(Aug 1999)
- 94 539 Kaiki St
Waipahu, HI 96797 
(Dec 1998)
- 617 W Viola Ave
Yakima, WA 98902 
(Jan 1998)
- 98-030 Hekaha St #18
Aiea, HI 96701 
(Apr 1997)
- 92 Makakilo 53
Kapolei, HI 96707 
(Nov 1996)
- 92-1004 Makakilo Dr #53
Kapolei, HI 96707 
(Jul 1996)
- 94-1061 Kaaholo St
Waipahu, HI 96797 
(Mar 1993 - Jan 1996)
- 1697 Nana St #8
Wailuku, HI 96793 
(Mar 1995)
- 94 Kaaholo 1061
Waipahu, HI 96797 
(Dec 1993)
- 94 Kaaholo St #1061
Waipahu, HI 96797 
(Aug 1993)
- 3306 McCullough Rd
Yakima, WA 98903 
(Jan 1993 - Mar 1993)

Phone Numbers 

- (208) 863-0100 Wireless
- (208) 893-5179 Landline

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Daniel Guthmiller

() -

Landline and mobile info for Daniel Guthmiller

Landline and mobile info

SEE PHONE NUMBER WITH PREMIUM SEE PHONE NUMBER

2484 N Hickory Way Meridian ID 83646-8075

Oops! A map couldn't be rendered for this address.

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More About Daniel Guthmiller

PREMIUM

Family

Relatives of Daniel Guthmiller

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Exh 3

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Full Name **Daniel C Guthmiller**
 Birth Year 1994
 Age 23

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Associated Names ⓘ

Daniel P Guthmiller

Possible Relatives ⓘ

Name	Age	Birth Year
Delbert A Guthmiller	84	1932
Dennis T Guthmiller	57	1959
Jennifer T Guthmiller	54	1963
Jennifer J Huck	54	1963
Jessica L Jones	25	1991
Lois L Guthmiller	85	1932
Rachael L Guthmiller	21	1995

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Possible Associates ⓘ

Name	Age	Birth Year
Andrew C Jones	81	1936
Bill J Huck	61	1956
Danae L Huck	35	1982
Elizabeth A Jones	25	1992
Mary P Garent	37	1980
Nicholas J Huck	33	1984
Patrick D Jones	26	1990
Rhett L Jones	32	1984
Sandra K Jones	54	1963

Exh 4

Who's Texting Him/Her? <small>Enter His/Her Phone Number. Brace Yourself for the Results spokeo.com/see-whos-texting</small>	
Easy Public Record Search <small>View Arrests, Criminal Records, Address, Phone, Age, and More Here! arrests.findfinder.com</small>	
Free Public Record Search <small>1) Enter Name - Check 100% Free. 2) Get Background Report Instantly! backgroundcheck.com</small>	
Maps & Driving Directions <small>Start Now gomeps.co</small>	

Current & Past Addresses

2484 N Hickory Way
 Meridian, ID 83646 
Current Address

SOURCE: FAMILYTREENOW.COM. LIVING PEOPLE RECORDS [ONLINE].

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Facsimile: (208) 323-9730
storerlit@gmail.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No.: CV01-16-23543

**SECOND AFFIDAVIT OF BENJAMIN
STORER IN SUPPORT OF MOTION FOR
ORDER FOR SERVICE BY
PUBLICATION AND EXTENSION OF
TIME PURSUANT TO I.R.C.P. 4(a)**

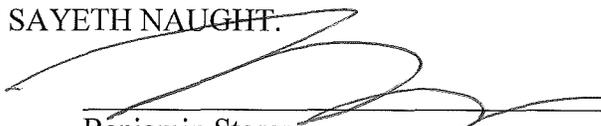
STATE OF IDAHO)
)ss.
County of Ada)

Benjamin Storer, being first duly sworn upon oath, and based upon her own personal knowledge, deposes and says:

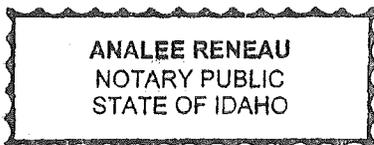
1. I frequently serve documents on parties throughout western Idaho and eastern Oregon and am familiar with rules and procedures involving service of process.

2. I personally tried to serve defendants at 2484 N. Hickory Way, Meridian, ID on the following dates:
 - a. February 7, 2017 at about 7:20 pm.
 - b. February 14, 2017 at about 5:00 pm.
 - c. February 23, 2017 at about 5:30. I waited on the street for a while thereafter but no one showed up.
 - d. March 5, 2017 at about 11 am and again 5 pm.
3. I was unable to find anyone at that address during those different times of the day.
4. I am aware that Joy Garrison also tried to serve Defendants at the same address without success after my attempts. I suspect that the information she was given regarding Defendants no longer living at that address is incorrect. All of my searches show that Defendants still reside there and are avoiding service.
5. Irreparable harm will be caused to Plaintiff if the Motion to Extend time and Motion for Service by Publication is not granted.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.


Benjamin Storer

SUBSCRIBED AND SWORN to before me on this 24th day of July, 2017.




Notary Public for Idaho
Residing at Adn, Idaho
My Commission Expires: 3/8/23

Trudy Hanson Fouser, ISB No. 2794

tfouser@gfidaholaw.com

Taylor H. M. Fouser, ISB No. 9540

taylor.fouser@gfidaholaw.com

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Special Appearing Attorneys for Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

v.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No. CV01-16-23543

**NOTICE OF SPECIAL APPEARANCE
ON BEHALF OF DEFENDANTS**

Defendants Daniel Guthmiller and Dennis Guthmiller (collectively hereafter “Defendants”) by and through their attorney, Trudy Hanson Fouser and Taylor H. M. Fouser, of the law firm of Gjording Fouser, PLLC, and hereby gives Special Notice of their Appearance pursuant to I.R.C.P. 4.1(b), and any other applicable rule or statute on behalf of said Defendants in said cause and controversy by said attorneys, and requests that all

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Taylor H. M. Fouser, ISB No. 9540

thfouser@gfidaholaw.com

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Special Appearing Attorneys for Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

v.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No. CV01-16-23543

**MOTION TO DISMISS PLAINTIFF'S
COMPLAINT PURSUANT TO I.R.C.P.
12(b)(5)**

COMES NOW the above entitled Defendants, Daniel Guthmiller and Dennis Guthmiller (collectively hereafter "Defendants"), by and through their attorneys of record, Gjording Fouser, PLLC, and pursuant to their special notice of appearance, and hereby submits this Motion to Dismiss. By this motion, Defendants seek dismissal of the Complaint against them, without prejudice, on the grounds stated in the memorandum filed herewith. Defendants also seek that service of the Summons be quashed.

This motion is supported by the memorandum and affidavits filed herewith.

Hearing is not requested on this matter because oral argument is not necessary.

DATED this 31st day of July, 2017.

GJORDING FOUSER, PLLC

By /s/ Taylor H. M. Fouser
Trudy Hanson Fouser – Of the Firm
Taylor H. M. Fouser – Of the Firm
Special Appearing Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 2017, a true and correct copy of the foregoing was served on the following by the manner indicated:

Bryan S. Storer
STORER & ASSOCIATES, PLLC
4850 N. Rosepoint Way, Ste. 104
Boise, ID 83713

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile: (208) 323-9730
- Email: lawdocstorer@gmail.com
- iCourt E-File

/s/ Taylor H. M. Fouser
Trudy Hanson Fouser
Taylor H. M. Fouser

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E-service: gfcases@gfidaholaw.com

Special Appearing Attorneys for Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

v.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No. CV01-16-23543

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS PLAINTIFFS'
COMPLAINT PURSUANT TO I.R.C.P.
12(b)(5)**

COMES NOW the above entitled Defendants, Daniel Guthmiller and Dennis Guthmiller (collectively hereafter "Defendants"), by and through their attorneys of record, Gjording Fouser PLLC, and hereby submits this Memorandum in Support of Motion to Dismiss Plaintiffs' Complaint pursuant to I.R.C.P. 12(b)(5).

BACKGROUND

On December 29, 2016, Plaintiffs filed a Complaint alleging personal injuries as a result of a rear-end accident on January 2, 2015. *Complaint and Demand for Jury Trial*, dated December 29, 2016 (“*Complaint*”). On the final day to complete service under the Idaho Rules of Civil Procedure, Plaintiffs filed a Motion for Order for Service by Publication and Extension of Time Pursuant to I.R.C.P. 4(a).¹ The motion was supported by the Affidavits of Joy Garrison and Benjamin Storer. On July 10, 2017, his Court issued its Order Denying Motion for Order for Service by Publication and Extension of Time to Serve. In its Order, the Court permitted Plaintiffs 14 days to provide supplemental affidavits establishing good cause. On July 24, 2014, Plaintiff’s filed their Amended Motion for Order for Service by Publication and Extension of Time Pursuant to I.R.C.P. 4(a), with the Second Affidavits of Joy Garrison and Benjamin Storer.² The supplemental affidavits include dates upon which personal service was attempted, as well as four screen shots from publicwhitepages.com, familytreenow.com, and whitepages.com that show Mr. Guthmiller’s address as 2484 N. Hickory Way, Meridian, ID. *See Second Affidavits of Joy Garrison and Benjamin Storer in Support of Motion for Order for Service by Publication and Extension of Time pursuant to I.R.C.P. 4(a)*, dated July 24, 2017.

Defendants enter this special appearance to contest personal jurisdiction pursuant to Idaho Rule of Civil Procedure 12(b)(5) because Plaintiffs failed to properly serve Defendants within 6 months of filing the Complaint without good cause shown. Defendants

¹ These documents were obtained via a public records request to the Ada County Courthouse.

² Plaintiff’s amended motion was received via the Court’s e-file system without an appearance being entered.

believe the Court has the necessary information to render a decision without oral argument.

LEGAL STANDARD

Pursuant to Idaho Rule of Civil Procedure 12(b)(5), a challenge to the sufficiency of service of process may be made by motion rather than by other responsive pleadings.

I.R.C.P. 12(b). Idaho Rule of Civil Procedure 4(b)(2) [formerly I.R.C.P. 4(a)(2)] reads:

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.

This rule is substantively very similar to the rule set forth in I.R.C.P. 4(a)(2) prior to July 2016. Therefore, the case law addressing the prior rule should be utilized to guide the Court in its interpretation and application of the current rule.

Rule 4(b)(2) requires that service be accomplished within six months of the date the complaint is filed. "Rule 4(a)(2) is couched in mandatory language, requiring dismissal where a party does not comply, absent a showing of good cause." *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 347, 941 P.2d 314, 319 (1997). "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). Despite the motion being titled a motion to dismiss, the proper standard for dismissal under I.R.C.P. 4(b)(2) is a summary judgment standard. In *Sammis*, the Supreme Court held:

Although we have not previously articulated the standard of review applicable to cases involving this rule, it 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. Thus, when reviewing the trial

court's decision that the Sammises failed to establish good cause under the rule, we 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.

Id. at 346, 941 P.2d at 318 (citations omitted).

This is because by its terms, “Rule 4(a)(2) imposes the burden of demonstrating good cause on the party who failed to effect timely service.... To show good cause, such party must present sworn testimony by affidavit or otherwise setting forth facts that show good cause for failing to serve the summons and complaint timely.” *Taylor v. Chamberlain*, 154 Idaho 695, 698, 302 P.3d 35, 38 (2013). Applying the summary judgment standard is therefore appropriate, because when the Court, “considered evidence and information extraneous to the pleadings in resolving the motion . . . the motion is properly treated as one for summary judgment and is reviewed under the summary judgment standards expressed in I.R.C.P. 56(c).” *Storm v. Spaulding*, 137 Idaho 145, 147, 44 P.3d 1200, 1202 (Ct. App. 2002). Thus, the records should be liberally construed in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party’s favor. *Sammis* at 346, 941 P.2d at 318.

ARGUMENT

There is no bright line test for determining good cause but, rather, the court must consider the totality of the circumstances. *Elliot v. Verska*, 152 Idaho 280, 290, 271 P.3d 678, 688 (2012). “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 Bd. of Med.*, 145 Idaho 179, 183, 177 P.3d 393, 397 (2008). “In deciding whether there were circumstances beyond the plaintiff's control that justified the failure to serve the summons and

complaint within the six-month period, the court must consider whether the plaintiff made diligent efforts to comply with the time restraints imposed by Rule 4(a)(2).” *Elliot*, 152 Idaho at 290, 271 P.3d at 688. Additionally, the Supreme Court has instructed that certain factors are “irrelevant” for purposes of determining if good cause exists; these include: *pro se* status, time bar if dismissed, lack of prejudice to defendant, settlement negotiations, defendant’s actual knowledge of the pending litigation, other pre-litigations proceedings, or timing of the motion to dismiss under Rule 4(b)(2). *Id.* at 686-87. Furthermore, a court must focus its inquiry on the six months after the complaint was filed to determine whether good cause existed.

In this case, Plaintiffs’ resistance to discover Defendants’ current dwelling address demonstrates a lack of diligence and good cause. Based on pleadings received by the Court, Plaintiffs argue that Mr. Guthmiller is evading service. *Motion and Amended Motion for Order for Service by Publication and Extension of Time pursuant to I.R.C.P. 4(a)*, dated June 29, 2017 and July 24, 2017, respectively. Idaho case law does indeed hold that evasion of service of process could rise to the level of good cause. *See Elliot*, 152 Idaho at 290, 271 P.3d at 688. However, Plaintiffs’ conclusory assertion that Defendants must be avoiding service is insufficient to meet their burden to demonstrate evasion of service or that they made any diligent efforts to meet the six month deadline.

Plaintiffs claim Mr. Guthmiller is evading service because publicwhitepages.com, familytreenow.com, and whitepages.com show Mr. Guthmiller’s address as 2484 N. Hickory Way, Meridian, ID, and no one was found at that address after multiple personal attempts at service beginning in February 2017. However, a records search from a reliable source shows Plaintiffs’ conclusion is incorrect. A simple Westlaw public records search – a free service at the Idaho Law Library – shows that Mr. Guthmiller has not lived at that address

since 2015. *Declaration of Counsel in Support of Motion to Dismiss Plaintiffs' Complaint Pursuant to I.R.C.P. 12(b)(5)*, dated July 31, 2017, ¶ 2. An Ada County land records search for 2484 N. Hickory Way also identifies the primary owner, as of 2017, as an individual who is not a party to this litigation. *Id.* at ¶ 3. This information is corroborated by Mr. Guthmiller, who states that he has not lived at the Hickory address since October 2015 and did not have any knowledge of attempted service. *Affidavit of Dennis Guthmiller*, ¶¶ 1 – 3. Indeed, Plaintiffs were even informed of this information on their last attempt to serve when a woman at the Hickory address stated, “[Mr. Guthmiller] has not lived her [sic] for almost two years.” *Second Affidavit of Joy Garrison in Support of Motion for Service by Publication and Extension of Time Pursuant to I.R.C.P. 4(a)*, dated July 24, 2017, ¶ 4. As opposed to conducting further investigation, Plaintiffs jumped to the bare bones conclusion that Defendants still reside there and are avoiding service. *Id.* This does not rise to the level of diligence required by the rules of civil procedure in attempting to serve a party over a six month period of time.

It also deserves mention that, assuming the woman at the Hickory address was over 18 years of age and did in fact reside with Defendants, then service could have been completed by simply leaving a copy of the summons and complaint with her. I.R.C.P. 4(d)(1)(B) (An individual may be served by “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.”). In addition, Plaintiffs could have filed a motion to publish after numerous failed attempts to locate Defendants, but rather, they waited to file their motion for publication until the final day to serve the Complaint.

Trudy Hanson Fouser, ISB No. 2794

tfouser@gfidaholaw.com

Taylor H. M. Fouser, ISB No. 9540

thfouser@gfidaholaw.com

GJORDING FOUSER, PLLC

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Special Appearing Attorneys for Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

v.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No. CV01-16-23543

**AFFIDAVIT OF DENNIS
GUTHMILLER IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' COMPLAINT
PURSUANT TO I.R.C.P. 12(B)(5)**

STATE OF IDAHO)
 : ss.
County of ADA)

Dennis Guthmiller, being duly sworn upon oath, and based upon his own personal knowledge, deposes and says:

1. I do not currently reside at 2484 N. Hickory Way, Meridian, ID.
2. Our family moved from that address in October 2015.

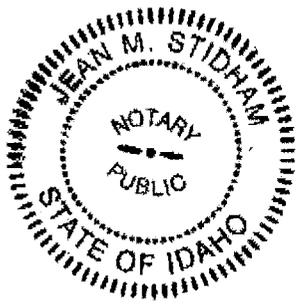
3. I do not have any knowledge of persons attempting to serve me with a Complaint and Summons.

[Handwritten signature]

Dennis Guthmiller

SUBSCRIBED AND SWORN to before me this 31 day of July, 2017.

[Handwritten signature: Jean M. Stidham]
Notary Public for Idaho
Residing in Boise, Idaho
My Commission Expires 8/15/2022



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31 day of July, 2017, a true and correct copy of the foregoing was served on the following by the manner indicated:

Bryan S. Storer
STORER & ASSOCIATES, PLLC
4850 N. Rosepoint Way, Ste. 104
Boise, ID 83713

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile: (208) 323-9730
- Email: lawdocstorer@gmail.com
- iCourt E-File

/s/ Taylor H. M. Fouser

Trudy Hanson Fouser
Taylor H. M. Fouser

Trudy Hanson Fouser, ISB No. 2794

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Taylor H. M. Fouser, ISB No. 9540

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Special Appearing Attorneys for Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
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TODD CRAWFORD, individually;
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ETHAN CRAWFORD, individually,

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DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No. CV01-16-23543

**DECLARATION OF COUNSEL IN
SUPPORT OF MOTION TO DISMISS
PLAINTIFFS' COMPLAINT
PURSUANT TO I.R.C.P. 12(b)(5)**

Taylor H. M. Fouser, under penalty of perjury of the law of the State of Idaho, and pursuant to I.R.C.P. 2.7 and Idaho Code § 9-1406, and the Rule re: Electronic Filing and Electronic Service (dated Dec. 20, 2016), § c.1.C., declares as follows:

1. I am an associate of Gjording Fouser, PLLC and one of the attorneys representing the above-named Defendant and as such have personal knowledge of the matters set forth herein.

Matt Steen, ISB #10285
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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

<p>TODD CRAWFORD, individually; BENJAMIN CRAWFORD, individually; ETHAN CRAWFORD, individually,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>DANIEL GUTHMILLER, individually; DENNIS GUTHMILLER, individually,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.: CV01-16-23543</p> <p>PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS</p>
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COMES NOW the above named Plaintiffs, by and through their attorney of record, Matt Steen, and files their Memorandum In Opposition To Defendant's Motion To Dismiss.

I. FACTS AND PROCEDURE

On January 2, 2015 Plaintiff Todd Crawford was the driver of a car that was rear-ended by Defendant Daniel Guthmiller while Plaintiffs were stopped at a red light. It is believed that Defendant Dennis Guthmiller was the owner of the vehicle driven by Daniel Guthmiller at the time of the subject collision. Plaintiffs Benjamin and Ethan Crawford were passengers of Plaintiff Todd Crawford. Plaintiff Ethan Crawford was and is a minor.

Plaintiffs filed their complaint against Defendants on December 29, 2016. Two different process servers attempted to serve Defendant's without success at various times during the spring of 2017 after the complaint and summons were filed. (See Exhibit "1", Affidavit of Benjamin Storer and Affidavit of Joy Garrison attached hereto) Plaintiffs timely filed their Motion For Order For Service By Publication And Extension Of Time Pursuant To I.R.C.P. 4(A) on June 28, 2017. The Court denied Plaintiff's motion subject to Plaintiffs providing more specific affidavits within 14 days showing good cause as to why an extension should be granted. Plaintiffs timely filed supplemental affidavits showing good cause for the extension. (See Exhibit "2", Second Affidavit of Benjamin Storer and Second Affidavit of Joy Garrison attached hereto)

Defendants filed their motion dismissal of all claims under I.R.C.P. 12(b)(5) with the Court for on July 31, 2017 with a hearing set for September 8, 2017 at 2:00 pm.

II. DISCUSSION

The determination of whether good cause exists is a factual one. *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 941 P.2d 314 (1997). Because this is a factual determination, the appropriate standard is the same as that used regarding an motion for summary judgment. *Id.* at 346, 941 P.2d at 318. Thus, when determining whether the Plaintiffs failed to establish good cause under the rule, the Court 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. *Telford v. Mart Produce, Inc.*, 130 Idaho 932, 950 P.2d 1271 (1998); *Sammis*, 130 Idaho at 346, 941 P.2d at 318.

Idaho Rule of Civil Procedure 4(a)(2) provides as follows:

If service of the summons and complaint is not made upon a defendant within six (6) months after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without

prejudice upon the court's own initiative with 14 days notice to such party or upon motion. I.R.C.P. 4(a)(2).

The case law regarding this rule is well settled. In *Martin v. Hoblit*, 133 Idaho 372, 987 P.2d 284 (1999), the Supreme Court stated:

When the defendant makes a prima facie showing that service of process was not accomplished during the six months prescribed by the rule, the district court must determine whether there was good cause for the untimely service. The burden is on the party who failed to effect timely service to demonstrate good cause. *Sammis*, 130 Idaho 342, 941 P.2d 314 (1997); *Telford*, 130 Idaho 932, 950 P.2d 1271 (1998)

The determination of whether good cause exists is a factual one. *Sammis*, 130 Idaho at 346, 941 P.2d at 318, (citing *Shaw v. Martin*, 20 Idaho 168, 175, 117 P. 853, 855 (1911)). The Court in *Shaw*, that was not bound by a statute or rule defining timely service of a complaint, instructed that the factual question was “to be determined upon the proof offered and the diligence shown by the plaintiff in making such service, and must be decided by the court upon the facts as they are presented.” *Shaw*, 20 Idaho 168, 175, 117 P. 853, 855. In ascertaining whether good cause exists, there is no bright-line test; the question of whether legal excuse has been shown is a matter for judicial determination based upon the facts and circumstances in each case. See *State v. Beck*, 128 Idaho 416, 419, 913 P.2d 1186, 1189 (Ct.App.1996). See also *State v. Hobson*, 99 Idaho 200, 202, 579 P.2d 697 (1978).

It is [the] six-month period following the filing of the complaint that should be the focus of the Court's good cause inquiry regarding why timely service was not made. *Sammis*, 130 Idaho at 346, 941 P.2d at 318; *Telford*, 130 Idaho at 936, 950 P.2d at 1275. The complaint in this action was filed on December 29, 2016. Two persons unsuccessfully attempted to serve Defendants numerous times during the next six months. The address where these attempts took place was the only address known at that time by Plaintiffs as Defendant's residence.

The reasonableness of the efforts made by the Plaintiffs is a factor for the Court to consider. Plaintiffs were diligent in attempting to make service in a timely manner - the multiple timely attempts show that. There was not what Defendants refer to as a "lack of diligence." Even if Defendants shows that there were other methods of locating Defendants, that does not indicate that Plaintiffs efforts were not reasonable under the circumstances or that they were not diligent. "Good cause" does not mean "perfect cause." If every Plaintiff were to be held to a standard of hindsight viewed perfection, then every similar Plaintiff's motion would fail.

Defense counsel asserts that they were able to find Defendant's correct address by other means and that any attempts by Plaintiff fell short of a reasonable standard. However, hindsight is 20/20. Going through those additional steps as Defendant claims should have been done may appear reasonable in hindsight, however Plaintiff did not have reason to believe that Defendants did not live at the 2484 N. Hickory Way, Meridian, Idaho address until Joy Garrison finally found someone home on June 24, 2017. Hence, Plaintiff filed his motion to extend time within a few days thereafter and still within the six month time to serve pursuant to I.R.C.P. 4(a) once it was clear that it was the wrong address.

This is not the case where a Plaintiff waited until the last day to attempt service and then filed a motion to extend, or where a Plaintiff waited until after the 6 months lapsed to request an extension. This is not a case where Plaintiff ignored the deadlines. Plaintiff's first attempts to effectuate service of process was within a few weeks after the summons and complaint were filed and continued throughout the 6 months thereafter. Plaintiff then attempted to exercise what appeared to be the best option at that time when locating the Defendants proved difficult - timely filing a motion to extend time to complete service of process by publication.

It should also be noted that procedural rules such as these should be understood and applied to facilitate adjudication on the merits so long as that does not come at the expense of

fairness to one or more of the parties. Defendant's insurer knew on January 24, 2017 that suit had been filed shortly after it had been done. This was confirmed with Defendant's insurer on April 28, 2017. (See Exhibit "3", Third Affidavit of Joy Garrison) Defendants knew a motion to extend time for service had been filed by Plaintiff no later than July 31, 2017, the date Defendants filed their Motion to Dismiss. Defendant had actual knowledge as well as constructive knowledge that suit had been filed and service had been attempted, otherwise they would not have known to file their Motion to Dismiss. Hence, Defendants cannot claim that they have been prejudiced in any way (other than the inherent 'prejudice' in having to defend the lawsuit) nor that Plaintiffs proceeding as they did was in any way unfair to Defendant. The only prejudice is to Plaintiffs since dismissing the claim will allow Defendants to avoid responsibility for their negligent acts due a technicality rather than the case being adjudicated on its merits. Granting an extension to serve would not have impacted the judicial proceedings since the service by publication, or personal service with current knowledge of Defendant's actual residence, would have been effectuated by the time the Motion to Dismiss hearing had been held. Hence, a significant extension of time was not required to effectuate service.

Plaintiff incorrectly asserting that Defendant was avoiding service should not be outcome determinative of this issue. The "avoidance of service" was a natural conclusion given the inability to contact anyone at the address after multiple attempts over an extended period of time. Plaintiff's counsel has had other occasions where Defendants have gone through great lengths to avoid service. It appeared to be the case here as well. Plaintiffs claim that they were diligent in attempting to timely effectuate service of process is supported by fact that Plaintiff made enough attempts to serve Defendants that "avoidance of service" was even an issue. That hindsight

shows that Defendant was not attempting to avoid service of process does not negate "good cause" existing for an extension of time to serve.

Should the Court find that good cause does not exist to extend the time for service, the Court should still examine whether it *should* dismiss the action or order that service be made by publication or, now that Defendants whereabouts are known, by personal service within a specified time. Should the Court not allow an extension, the dismissal will be with prejudice relative to Todd and Benjamin Crawford since they are both adults and the 2 year statute of limitations has lapsed to re-file the summons and complaint. The dismissal will be without prejudice relative to Ethan Crawford since he was a minor child at the time of the collision and the statute of limitations has not run against him. This will result in an absurd result where one party's case will go forward and be adjudicated on its merits and 2 other parties claims will be dismissed with prejudice because of technical issues.

Whether the dismissal would substantially prejudice the Plaintiff should carry significant weight and may be dispositive of the issue under the circumstances of this case. Perhaps this would not apply where Plaintiff had not filed suit, attempted to serve, and filed a motion for an extension to serve all within the time periods proscribed by the I.R.C.P.. However, in this case, Plaintiff made reasonable attempts to follow the spirit and letter of the law. If the question comes down to whether the Court "can" dismiss the case with prejudice as to Todd and Benjamin Crawford, or if the Court "should" dismiss the case - clearly the Court should allow the extension of time to serve Defendants and deny Defendant's Motion to Dismiss by relying on the facts as stated above and the principle that cases should be heard on their merits.

CONCLUSION

Under the totality of the circumstances, Plaintiffs have shown good cause to explain why service did not occur within six months. Plaintiffs do not claim simple inadvertence or mistake of counsel or ignorance of the rules. Liberally construing the record in the light most favorable to Plaintiffs and drawing all reasonable inferences in their favor, a review of the record shows that Plaintiffs do demonstrate good cause to extend to time to serve the summons and complaint and to deny Defendant's Motion to Dismiss. This is also supported by the policy of resolving disputes based on their merits.

DATED this 1st day of September, 2017.


Matt K. Steen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of September, 2017, the foregoing document was served upon the following, by the manner indicated:

Trudy Fouser
GJORDING FOUSER, PLLC
121 N. 9th St., Ste. 600
Boise, ID 83701

iCourt eFile and Serve
gfcases@gfidaholaw.com



Matt Steen

Bryan S. Storer, ISB #6944
STORER & ASSOCIATES
4850 N. Rosepoint Way, Suite 104
Boise, Idaho 83713
Telephone: (208) 323-0024
Facsimile: (208) 323-9730
storerlit@gmail.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No.: CV01-16-22279

**AFFIDAVIT OF BENJAMIN STORER IN
SUPPORT OF MOTION FOR ORDER
FOR SERVICE BY PUBLICATION AND
EXTENSION OF TIME PURSUANT TO
I.R.C.P. 4(a)**

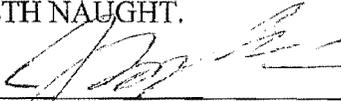
STATE OF IDAHO)
)ss.
County of Ada)

Benjamin Storer, being first duly sworn upon oath, and based upon her own personal knowledge, deposes and says:

1. I attempted to serve Defendant a copy of the Summons and Complaint on several occasions and am personally familiar with the facts and circumstances asserted herein;

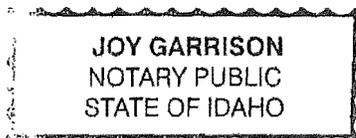
2. I personally tried to serve defendant on multiple occasions over the course of several months to no avail at 2484 N Hickory Way, Meridian, ID.
3. I was unable to find anyone at that address during different times of the day.
4. I am aware that Joy Garrison also tried to serve Defendants at the same address without success. I suspect that the information she was given regarding Defendants no longer living at that address is incorrect. All of my searches show that Defendants still reside there and are avoiding service.
5. I have been unable to find any other address for defendants other than the address where I and Joy Garrison tried to serve the summons and complaint.
6. Irreparable harm will be caused to Plaintiff if the Motion to Extend time and Motion for Service by Publication is not granted.

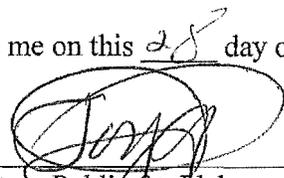
FURTHER, YOUR AFFIANT SAYETH NAUGHT.



Benjamin Storer

SUBSCRIBED AND SWORN to before me on this 28 day of June, 2017.





Notary Public for Idaho
Residing at Ada County, Idaho
My Commission Expires: 10/9/21

Bryan S. Storer, ISB #6944
STORER & ASSOCIATES
4850 N. Rosepoint Way, Suite 104
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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No.: CV01-16-22279

**AFFIDAVIT OF JOY GARRISON IN
SUPPORT OF MOTION FOR ORDER
FOR SERVICE BY PUBLICATION AND
EXTENSION OF TIME PURSUANT TO
I.R.C.P. 4(a)**

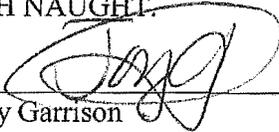
STATE OF IDAHO)
)ss.
County of Ada)

Joy Garrison, being first duly sworn upon oath, and based upon her own personal knowledge, deposes and says:

1. I attempted to serve Defendant a copy of the Summons and Complaint on several occasions and am personally familiar with the facts and circumstances asserted herein;

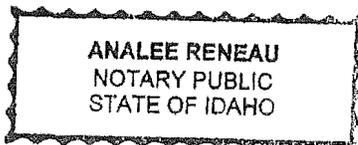
2. I personally tried to serve defendant on multiple occasions over the course of several months to no avail at 2484 N Hickory Way, Meridian, ID.
3. When I last tried to serve the summons and complaint, a woman came to the door who appeared to be familiar with defendant. She said that the defendant no longer lived at that address. However, she said, "He has not lived her for almost two years."
4. Despites several searches with various sources, I have been unable to find any other address for defendant other than the address where I tried to serve the summons and complaint.
5. Irreparable harm will be caused to Plaintiff if the Motion to Extend time and Motion for Service by Publication is not granted.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.



Joy Garrison

SUBSCRIBED AND SWORN to before me on this 28 day of June, 2017.





Notary Public for Idaho
Residing at ADA, Idaho
My Commission Expires: 3.8.23

Bryan S. Storer, ISB #6944
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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No.: CV01-16-23543

**SECOND AFFIDAVIT OF BENJAMIN
STORER IN SUPPORT OF MOTION FOR
ORDER FOR SERVICE BY
PUBLICATION AND EXTENSION OF
TIME PURSUANT TO I.R.C.P. 4(a)**

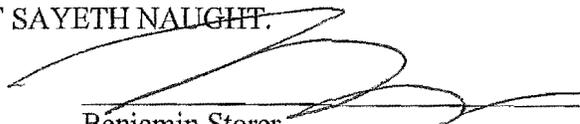
STATE OF IDAHO)
)ss.
County of Ada)

Benjamin Storer, being first duly sworn upon oath, and based upon her own personal knowledge, deposes and says:

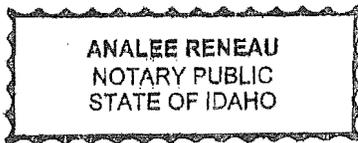
1. I frequently serve documents on parties throughout western Idaho and eastern Oregon and am familiar with rules and procedures involving service of process.

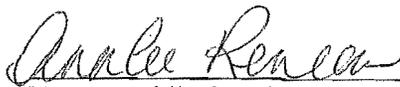
2. I personally tried to serve defendants at 2484 N. Hickory Way, Meridian, ID on the following dates:
 - a. February 7, 2017 at about 7:20 pm.
 - b. February 14, 2017 at about 5:00 pm.
 - c. February 23, 2017 at about 5:30. I waited on the street for a while thereafter but no one showed up.
 - d. March 5, 2017 at about 11 am and again 5 pm.
3. I was unable to find anyone at that address during those different times of the day.
4. I am aware that Joy Garrison also tried to serve Defendants at the same address without success after my attempts. I suspect that the information she was given regarding Defendants no longer living at that address is incorrect. All of my searches show that Defendants still reside there and are avoiding service.
5. Irreparable harm will be caused to Plaintiff if the Motion to Extend time and Motion for Service by Publication is not granted.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.


Benjamin Storer

SUBSCRIBED AND SWORN to before me on this 24th day of July, 2017.




Notary Public for Idaho
Residing at Ada, Idaho
My Commission Expires: 3/8/23

Bryan S. Storer, ISB #6944
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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No.: CV01-16-23543

**SECOND AFFIDAVIT OF JOY
GARRISON IN SUPPORT OF MOTION
FOR ORDER FOR SERVICE BY
PUBLICATION AND EXTENSION OF
TIME PURSUANT TO I.R.C.P. 4(a)**

STATE OF IDAHO)
)ss.
County of Ada)

Joy Garrison, being first duly sworn upon oath, and based upon her own personal knowledge, deposes and says:

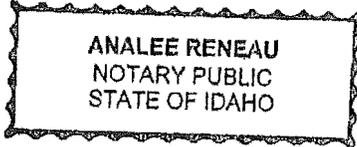
1. I attempted to serve Defendant a copy of the Summons and Complaint on several occasions and am personally familiar with the facts and circumstances asserted herein;

2. I personally tried to serve defendant on multiple occasions over the course of several months to no avail at 2484 N Hickory Way, Meridian, ID.
3. The dates that I personally attempted to serve the Defendants were April 13, 2017, April 29, 2017, May 24, 2017, June 9, 2017, June 20, 2017, and June 24, 2017.
4. When I last tried to serve the summons and complaint, a woman came to the door who appeared to be familiar with defendant. She said that the defendant no longer lived at that address. However, she said, "He has not lived her for almost two years."
5. I did searches on several address search sites prior to giving the Summon and Complaint to the initial process server. Each site came up with the same address at 2484 N. Hickory Way, Meridian Idaho 83646 for both Daniel Guthmiller and Dennis Guthmiller. I did another search for this today to compare search results. Attached are current print outs as of July 24, 2017 that show that the address has not changed despite the woman who previously answered the door saying that Defendants did not reside there. (See Exhibits "1," "2," "3," "4")
6. Irreparable harm will be caused to Plaintiff if the Motion to Extend time and Motion for Service by Publication is not granted.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.


Joy Garrison

SUBSCRIBED AND SWORN to before me on this 24th day of July, 2017.



Analee Reneau
Notary Public for Idaho
Residing at ADU, Idaho
My Commission Expires: 3/8/23



REMOVE YOUR INFO TO CLICK HERE!

Mr. Dennis Guthmiller Online Profile

Google Custom Search



Search Death Records

Enter any name and search free! Find their death records now.

Public Records Data

Address:
2484 N Hickory Way
Meridian,
83646-8075
Phone: (208) 863-0100
Mobile Phone:
eMail:

Birthday:
Month: **Date:** **Year:**
Age:

Marital Status:

* Each designates an available data point. To access this secured data Click Here

Education:
Occupation:
Occupation Specifics:

Wealth & Financial - Estimated* (2)
Household Income*:
Net Worth*:
Lines Of Credit*: 1
Credit Range*:
Credit Card User:

Investments

Donations, Hobbies & Interests

AddressType:
Home Owner Verification:
CRA* Income Classification:
Length Of Residence: +/- 07 Years
Property Built: 2002
Number Of Adults: 3
Total In Household: 3
Generations In Household: 2

Air Conditioning:
Heating:
Water:
Sewer:

*Community Reinvestment Act

Exh. 1

Neighborhood

ANDRIY CHUMA 2497 N HICKORY WAY
NADIA CHUMA 2497 N HICKORY WAY
RAEMI NOLEVANKO 2450 N HICKORY WAY
DENNIS GUTHMILLER 2484 N HICKORY WAY
JENNIFER GUTHMILLER 2484 N HICKORY WAY

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3. The information available on our website may not be 100% accurate, complete, or up to date, so do not use this information as a substitute for your own due diligence.

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Tree

Save

Related

Full Name **Dennis T Guthmiller**
Birth Year **1959**
Age **57**

Ad Choices

Family Tree

Genealogy

Find Ancestry

Associated Names

- Dennis G Guthmiller
- Dennis Terry Guthmille
- Jennifer Guthmiller Trus
- Dennis Guthmiller Trus

Possible Relatives

Name	Age	Birth Year
Jennifer T Guthmiller	54	1963
Daniel C Guthmiller	23	1994
Delbert A Guthmiller	84	1932
Jennifer J Huck	54	1963
Jessica L Jones	25	1991
Lois L Guthmiller	85	1932
Rachael L Guthmiller	21	1995

Marriage Records & Names

Discover your ancestors - 6 billion records: births, marriages & more at worldvitalrecords.com

Find Death Records Online

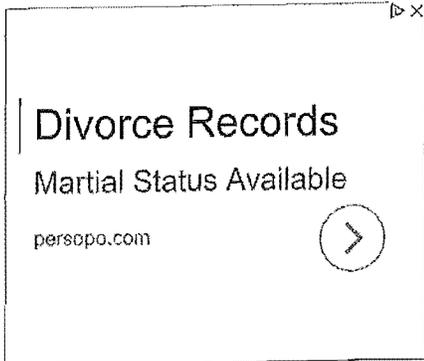
Search Death Records

Who's He/She Been Texting

Possible Associates

Name	Age	Birth Year
Jeff A Gray	54	1962
Andrew C Jones	81	1936
Bill J Huck	61	1956
Danae L Huck	35	1982
Elizabeth A Jones	25	1992
Mary P Garent	37	1980
Nicholas J Huck	33	1984
Patrick D Jones	26	1990
Rhett L Jones	32	1984
Sandra K Jones	54	1963

Exh 2



Current & Past Addresses

2484 N Hickory Way
 Meridian, ID 83646 
Current Address

98030 Heaaha St #18
 Aiea, HI 96701 
 (Dec 2016)

94-539 Puahi St #2
 Waipahu, HI 96797 
 (Apr 2006)

2484 W Hickory Wa
 Meridian, ID 83642 
 (Jan 2006)

92-1050 Kanehoa Loop #65
 Kapolei, HI 96707 
 (Jan 1996 - Jul 2005)

92100 Makakilo Dr #47
 Kapolei, HI 96707 
 (Aug 2003)

921004 Maka
 Kapolei, HI 96707 
 (Nov 2002)

92100 Makakilo Dr
 Ewa Beach, HI 96707 
 (Oct 2002)

92114 Makakilo Dr #53
 Kapolei, HI 96707 
 (Jul 2002)

98-030 Hekaha St #1
 Aiea, HI 96701 
 (Jul 2001)

92-105 Kanehoa Loop #65
 Kapolei, HI 96707 
 (Jul 2001)

94-539 Puahi St
 Waipahu, HI 96797 
 (Jul 2001)

92-105 Kanehoa Lo 65
 Kapolei, HI 96707 
 (Jul 2001)

92 1009 Makakilo #53
 Kapolei, HI 96707 
 (Dec 2000)

941002 Makakilo #53
 Kapolei, HI 96707 
 (Nov 2000)

941002 Makakilo 53
 Kapolei, HI 96707 
 (Nov 2000)

94-359 Puahi St #2
 Waipahu, HI 96797 
 (Jul 2000)

92-100 Makakilo 53
 Kapolei, HI 96707 
 (Apr 2000)

92-100 Makakilo Dr #53
 Kapolei, HI 96707 
 (Apr 2000)

- 2nd
Walpahu, HI 96797 
(Aug 1999)
- 94 539 Kalki St
Walpahu, HI 96797 
(Dec 1998)
- 617 W Viola Ave
Yakima, WA 98902 
(Jan 1998)
- 98-030 Hekaha St #18
Aiea, HI 96701 
(Apr 1997)
- 92 Makakilo 53
Kapolei, HI 96707 
(Nov 1996)
- 92-1004 Makakilo Dr #53
Kapolei, HI 96707 
(Jul 1996)
- 94-1081 Kaaholo St
Walpahu, HI 96797 
(Mar 1993 - Jan 1996)
- 1697 Nana St #8
Wailuku, HI 96793 
(Mar 1995)
- 94 Kaaholo 1061
Walpahu, HI 96797 
(Dec 1993)
- 94 Kaaholo St #1061
Walpahu, HI 96797 
(Aug 1993)
- 3306 McCullough Rd
Yakima, WA 98903 
(Jan 1993 - Mar 1993)

Phone Numbers 

(208) 863-0100
(208) 893-5179

Wireless
Landline

SOURCE: FAMILYTREENOW.COM. LIVING PEOPLE RECORDS [ONLINE].
ORIGINAL DATA: FAMILYTREENOW.COM. COMPILED FROM 1000'S OF U.S. PUBLIC RECORDS SOURCES, INCLUDING PROPERTY, BUSINESS, HISTORICAL AND CURRENT RECORDS.

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Daniel Guthmiller

() -

Landline and mobile info for Daniel Guthmiller

Landline and mobile info

SEE PHONE NUMBER WITH PREMIUM SEE PHONE NUMBER

2484 N Hickory Way Meridian ID 83646-8075

Oops! A map couldn't be rendered for this address.

[SHOW MAP](#)

More About Daniel Guthmiller

PREMIUM

Family

Relatives of Daniel Guthmiller

[View All Relatives](#)

Crime/Traffic

Public Record Databases

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Phone

Landline and mobile info

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Exh 3

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Full Name **Daniel C Guthmiller**
 Birth Year 1994
 Age 23

Associated Names

Daniel P Guthmiller

Possible Relatives

Name	Age	Birth Year
Delbert A Guthmiller	84	1932
Dennis T Guthmiller	57	1959
Jennifer T Guthmiller	54	1963
Jennifer J Huck	54	1963
Jessica L Jones	25	1991
Lois L Guthmiller	85	1932
Rachael L Guthmiller	21	1995

Divorce Records
Marital Status Available pazapo.com

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Search Death Records
Locate Deceased Relatives With The Largest Obituary Archive Online! genealogytank.com

Easy Public Record Search
View Arrests, Criminal Records, Address, Phone, Age, and More Here! arrests.truthfinder.com

Possible Associates

Name	Age	Birth Year
Andrew C Jones	81	1936
Bill J Huck	61	1956
Danae L Huck	35	1982
Elizabeth A Jones	25	1992
Mary P Garent	37	1980
Nicholas J Huck	33	1984
Patrick D Jones	26	1990
Rhett L Jones	32	1984
Sandra K Jones	54	1963

Exh 4

Who's Texting Him/Her? <small>Enter His/Her Phone Number. Brace Yourself for the Results apokee.com/ages-whos-texting</small>	
Easy Public Record Search <small>View Arrests, Criminal Records, Address, Phone, Age, and More Here! anants.hullfindia.com</small>	
Free Public Record Search <small>1) Enter Name - Check 100% Free. 2) Get Background Report Instantly! background-latest.com</small>	
Maps & Driving Directions <small>Start Now go4maps.co</small>	

Current & Past Addresses

2484 N Hickory Way
Meridian, ID 83646 
Current Address

SOURCE: FAMILYTREENOW.COM. LIVING PEOPLE RECORDS [ONLINE].
ORIGINAL DATA: FAMILYTREENOW.COM. COMPILED FROM 1000'S OF U.S. PUBLIC RECORDS SOURCES, INCLUDING PROPERTY, BUSINESS, HISTORICAL AND CURRENT RECORDS.

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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No.: CV01-16-22279

THIRD AFFIDAVIT OF JOY GARRISON

STATE OF IDAHO)
)ss.
County of Ada)

Joy Garrison, being first duly sworn upon oath, and based upon her own personal knowledge, deposes and says:

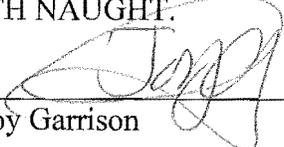
1. On January 24, 2017 I received a phone call from Garrett at State Farm - Defendant's insurer. He stated that he had informed Plaintiff that he needed to either settle with him or hire an attorney. Garrett told me the purpose of his call was to make sure he

Exh 3

got to us in time and that we were aware of the statute of limitations. I told him that indeed we had already filed on the case to protect statute.

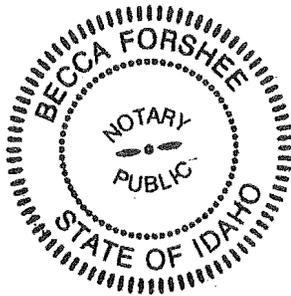
2. On April 28, 2017 Garrett from State Farm called again. He was well aware that we had already filed the Summons and Complaint on this case and I instructed him to look at the repository/iCourt to confirm that the Summons and complaint had been timely filed.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.



Joy Garrison

SUBSCRIBED AND SWORN to before me on this 1st day of ~~August~~ ^{September} 2017.





Notary Public for Idaho
Residing at State of Idaho, Idaho
My Commission Expires: 08/17/2021

Trudy Hanson Fouser, ISB No. 2794

tfouser@gfidaholaw.com

Taylor H. M. Fouser, ISB No. 9540

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Special Appearing Attorneys for Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

v.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No. CV01-16-23543

**REPLY IN SUPPORT OF MOTION TO
DISMISS PLAINTIFFS' COMPLAINT
PURSUANT TO I.R.C.P. 12(b)(5)**

COMES NOW the above entitled Defendants, Daniel Guthmiller and Dennis Guthmiller (collectively hereafter "Defendants"), by and through their attorneys of record, Gjording Fouser, PLLC, and pursuant to their special notice of appearance, hereby submit the following reply in support of their motion to dismiss.

ARGUMENT

A. Plaintiffs' arguments regarding lack of prejudice to Defendants, time bar if dismissed, and Defendant's constructive knowledge of the pending litigation are irrelevant to a good cause determination.

At the outset, it should be noted that Plaintiffs assert numerous arguments that are irrelevant for purposes of determining if good causes exists. *See Elliot v. Verska*, 152 Idaho 280, 288 – 289, 271 P.3d 678, 686 – 687 (2012). Plaintiffs claim the Defendants had constructive knowledge that suit had been filed, and thus, would not be prejudiced by continuing this litigation. *See Sammis v. Magnetek, Inc.*, 130 Idaho 342, 348, 941 P.2d 314, 320 (1997) (“[T]he rule’s language renders a consideration of prejudice to the defendants irrelevant to good cause determinations.”). *See also Campbell v. Reagan*, 144 Idaho 254, 159 P.3d 891 (2007) (“*Telford v. Mart Produce, Inc.*, 130 932, 935, 950 P.2d 1271, 1274 (1998)] stands for the proposition that such notice will not excuse a plaintiff’s failure to timely serve process.”). Plaintiffs further claim that dismissal would be substantially prejudicial to Plaintiff because the statute of limitations has lapsed with respect to Todd and Benjamin Crawford. *See Sammis*, 130 Idaho at 347, 941 P.2d at 319 (1997) (“[T]he running of the statute of limitations and the subsequent time-bar to refileing the action is not a factor to be considered in determining whether good cause exists under Rule 4(a)(2).”). To this end, Plaintiffs’ irrelevant arguments should be disregarded, and the focus should be on whether Plaintiffs met their burden to demonstrate a legitimate reason for not serving Defendants within the mandatory six-month period.

B. Plaintiffs failed to meet their burden to demonstrate good cause exists.

Rule 4(b)(2) requires this Court to dismiss the action unless Plaintiffs are able to demonstrate good cause for failure to timely serve Defendants within the relevant six-month time period. *Sammis*, 130 Idaho at 318, 941 P.2d at 346. “[Rule 4(b)(2)] imposes the burden of demonstrating good cause on the party who failed to effect timely service.” *Id.*

In this case, Plaintiffs argue they diligently attempted to serve Defendants. Plaintiffs appear to concede that Defendants were not evading service, but instead contend that Plaintiffs could not have known they were at the wrong address until told so on June 24, 2017 – four days before the six-month service period expired. However, Plaintiffs’ efforts to serve were half-hearted at best. The only effort to locate Defendants was to depend on an outdated address that was retrieved from unreliable websites. Such efforts cannot and should not be the diligence standard by which we judge Idaho attorneys in attempting to serve a complaint. Plaintiffs are, at the very least, required to pursue alternative methods of finding and serving Defendants, particularly after multiple failed attempts. Defendants do not demand “perfect cause” from Plaintiffs. However, a requirement to take appropriate steps to verify the locations of Defendants is reasonable.

In addition, Plaintiffs failed to demonstrate a sense of urgency to further locate the Defendants after learning they had been attempting service at the wrong address for five months. There is nothing in the record to indicate that Plaintiffs hired a private legal process firm or took any additional steps to locate Defendants’ correct address. Plaintiffs instead waited until the final day to complete service and filed a motion for extension and publication.

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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

<p>TODD CRAWFORD, individually; BENJAMIN CRAWFORD, individually; ETHAN CRAWFORD, individually,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>DANIEL GUTHMILLER, individually; DENNIS GUTHMILLER, individually,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.: CV01-16-23543</p> <p>PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS</p>
--	---

COMES NOW the above named Plaintiffs, by and through their attorney of record, Matt Steen, and files their Supplemental Memorandum In Opposition To Defendant's Motion To Dismiss.

I. FACTS AND PROCEDURE

On January 2, 2015 Plaintiff Todd Crawford was the driver of a car that was rear-ended by Defendant Daniel Guthmiller while Plaintiffs were stopped at a red light. It is believed that Defendant Dennis Guthmiller was the owner of the vehicle driven by Daniel Guthmiller at the

time of the subject collision. Plaintiffs Benjamin and Ethan Crawford were passengers of Plaintiff Todd Crawford. Plaintiff Ethan Crawford was and is a minor.

Plaintiffs filed their complaint against Defendants on December 29, 2016. Two different process servers attempted to serve Defendant's without success at various times during the spring of 2017 after the complaint and summons were filed. (See Exhibit "1", Affidavit of Benjamin Storer and Affidavit of Joy Garrison attached hereto) Plaintiffs timely filed their Motion For Order For Service By Publication And Extension Of Time Pursuant To I.R.C.P. 4(A) on June 28, 2017. The Court denied Plaintiff's motion subject to Plaintiffs providing more specific affidavits within 14 days showing good cause as to why an extension should be granted. Plaintiffs timely filed supplemental affidavits showing good cause for the extension. (See Exhibit "2", Second Affidavit of Benjamin Storer and Second Affidavit of Joy Garrison attached hereto)

Defendants filed their motion dismissal of all claims under I.R.C.P. 12(b)(5) with the Court on July 31, 2017. At hearing on the matter on September 8, 2017, the Court reserved a ruling and requested the parties submit supplemental memorandums in support of their motions.

II. DISCUSSION

The determination of whether good cause exists is a factual one. *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 941 P.2d 314 (1997). In all of the cases Plaintiff's counsel has found discussing failure of timely service, the Court focuses on the *efforts actually made* to determine whether good cause has been shown for failing to timely serve. None of the cases explicitly deny a Plaintiff's appeal based on what the Plaintiff *should have done*. Rather, the court examines what the non-moving party actually did and determines if those actions were diligent and meet the standard of good cause.

In *Elliott v. Verska*, 152 Idaho 280, 271 P.3d 678 (2012), the Plaintiff only attempted to serve Defendants five days before the expiration of the six month time period after incorrectly serving an employee of Dr. Verska who was not a registered agent of Dr. Verska and not authorized to accept service.

In the instant case, Plaintiff did not wait to initiate service until the last minute, but began attempts to serve a few months after filing the complaint with two different process servers.

In *Martin v. Hoblit*, 133 Idaho 372, 987 P.2d 284 (1999), Plaintiff's counsel delivered the complaint and summons to the sheriff to be served upon the Defendant a mere 11 days before the six month deadline, only to discover the Defendant had moved to Washington. An order seeking permission to serve by publication was not sought by Plaintiff under *after* the six month deadline. The Court found no good cause because a "single timely act" of giving the summons and complaint to the sheriff did not constitute "diligent efforts." The Court also found that the ongoing settlement talks between the parties was the only reason service was not timely effectuated. Yet even this "single timely act" was enough for two justices, Justice Kidwell and Justice Silak, to dissent. It is significant that Justice Kidwell argued that at least the Plaintiffs had attempted to serve the Defendant before the deadline, adding that "IRCP 4(a)(2) should not be used as a procedural trap."

In this case, Plaintiff began the first of many diligent attempts to serve within a few months of filing the complaint. Two different process servers attempted to serve the Defendant ten times between April and June 2017. Days after Plaintiff discovered the Defendant did not reside at the North Hickory address, Plaintiff attempted to secure permission to serve by publication - before the six month deadline. The Defendant is trying to use IRCP 4(a)(2) as a "procedural trap" just as Justice Kidwell in *Martin* warned should not happen. Defendant then

then asks the Court to now use hindsight to construe the facts in a light most favorable to them and then to completely disregard the reasonable and timely efforts of Plaintiff to effectuate service on Defendants.

In another Idaho case, *Campbell v. Reagan*, 144 Idaho 254 159 P.3d 891 (2007), the Court found the Plaintiff had not properly served the Defendant because service was made by a party to the suit, and not an authorized officer. In this case, the Plaintiff attempted to serve by two different authorized servers.

In *Harrison v. Board of Professional Discipline of Idaho State Bd. Of Medicine*, 145 Idaho 179, 177 P.3d 393 (2008), the Court found the Plaintiff had not established good cause for not serving because *no efforts* had been made to serve Defendant. Again, in the instant case many attempts were timely made by Plaintiff over several months.

After Plaintiffs determined that the address was incorrect where the numerous service attempts had been made, Plaintiffs requested additional time to serve by publication. This unequivocally shows that Plaintiffs were not disregarding the time limits imposed by IRCP 4(b)(2) and correctly moved for an extension of time to serve by publication.

CONCLUSION

Defendants ask the Court to not only disregard the requirement of construing the record in a light most favorable to the non moving party, but to reverse it and construe the record in a light most favorable to the moving party. To accept the Defendant's argument that "because the Defendant's address was available elsewhere if the Plaintiff knew where to find it, the Plaintiff failed in his duty" would be to ignore case law and heighten the standard of review, which is to evaluate the *actual efforts* of the Plaintiff in attempting to serve. The very existence of a rule

allowing a Plaintiff more time to serve suggests that sometimes his efforts to serve will be fruitless, otherwise there would be no such exception allowed under law. Defendants are asking this Court to require not just diligent efforts of the Plaintiff, but also fail-proof and perfect efforts as evaluated in hindsight. Based on Defendant's point of view every Defendant should be found every time by every Plaintiff no matter what the circumstances and no Plaintiff should ever be allowed an extension of time. Based on Defendant's analysis, since everybody can be found at some point in time by somebody, a Plaintiff is per se not diligent if the Defendant is not found in six months; if it was six months and a day, Plaintiff was not diligent. However, based on the cases noted above, it is precisely for this type of case that IRCP 4(b)(2) allows for an extension of time to serve.

To Plaintiff's knowledge, no Court has ever found that attempting service on 10 different occasions by two different servers over three months and requesting an extension to serve by publication *before* the six month deadline was found to not be "diligent." In light of the fact that the Defendant previously resided at the North Hickory address but did not when the service attempts were made, Plaintiff does not argue his efforts were perfect in hindsight; they were, however, diligent and reasonable, and that is the standard by which the Idaho Supreme Court has judged this issue for many years.

For the foregoing reasons, the Plaintiff respectfully asks the Court to deny the Defendant's motion to dismiss and allow the extension of time to serve defendant.

DATED this 18th day of September, 2017.



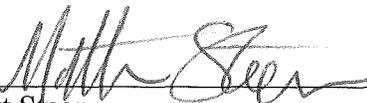
Matt K. Steen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18 day of September, 2017, the foregoing document was served upon the following, by the manner indicated:

Trudy Fouser
GJORDING FOUSER, PLLC
121 N. 9th St., Ste. 600
Boise, ID 83701

iCourt eFile and Serve
gfcases@gfidaholaw.com


Matt Steen

Trudy Hanson Fouser, ISB No. 2794

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Special Appearing Attorneys for Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs,

v.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No. CV01-16-23543

**SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF DEFENDANTS' MOTION
TO DISMISS PLAINTIFFS'
COMPLAINT PURSUANT TO I.R.C.P.
12(b)(5)**

COMES NOW the above entitled Defendants, Daniel Guthmiller and Dennis Guthmiller (collectively hereafter "Defendants"), by and through their attorneys of record, Gjording Fouser PLLC, and hereby submits this Memorandum in Support of Motion to Dismiss Plaintiffs' Complaint pursuant to I.R.C.P. 12(b)(5).

BACKGROUND

This case arises out of a rear-end vehicle accident that occurred on January 2, 2015. *Complaint and Demand for Jury Trial*, dated December 29, 2016 (“*Complaint*”). On the eve of the running of the statute of limitation, on December 29, 2016, Plaintiffs filed this Complaint alleging personal injuries as a result of the accident. *Id.* On June 29, 2017, the final day to complete service under the Idaho Rules of Civil Procedure, Plaintiffs filed a Motion for Order for Service by Publication and Extension of Time Pursuant to I.R.C.P. 4(a). The motion was supported by the Affidavits of Joy Garrison and Benjamin Storer – the apparent third parties to whom process of service was delegated. On July 10, 2017, this Court issued its Order Denying Motion for Order for Service by Publication and Extension of Time to Serve. In its Order, the Court permitted Plaintiffs 14 days to provide supplemental affidavits establishing good cause. On July 24, 2014, Plaintiff’s filed their Amended Motion for Order for Service by Publication and Extension of Time Pursuant to I.R.C.P. 4(a), with the Second Affidavits of Joy Garrison and Benjamin Storer.

Defendants entered a special appearance to contest personal jurisdiction pursuant to Idaho Rule of Civil Procedure 12(b)(5) on the grounds that Plaintiffs failed to properly serve Defendants within 6 months of filing the Complaint without good cause shown. On September 8, 2017, this Court held a hearing into the matter and, at the close of hearing, directed the parties to submit additional briefing within 14 days of the hearing on the issue of whether good cause and due diligence requires Plaintiffs to pursue alternative methods when multiple attempts at a single address does not yield success.

ARGUMENT

In Idaho, there is no bright line test for determining if good cause exists. *Elliott v. Verska*, 152 Idaho 280, 290, 271 P.3d 678, 688 (2012). Instead, the analysis of good cause focuses on, under the totality of the circumstances, the “diligent efforts” of the party and “circumstances beyond plaintiff’s control.” *Id.* Diligent efforts generally include efforts to (1) “locate the [defendants]” and (2) “to ascertain how . . . [to] serve them.” *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 347, 941 P.2d 314, 319 (1997). “Rule 4(a)(2) is mandatory.” *Taylor v. Chamberlain*, 154 Idaho 695, 700, 302, P.3d 35, 40 (2013) Indeed, in interpreting a substantially similar service rule, federal courts caution, “The lesson to the federal plaintiff’s lawyer is not to take any chances. Treat the 120 days with the respect reserved for a time bomb.” *Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1306-07 (3d Cir. 1995) (quoting *Braxton v. United States*, 817 F.2d 238, 241 (3rd Cir. 1987)). Similarly, in *Petrucelli v. Bohringer & Ratzinger*, the court reasoned neither “reliance upon a third party or process server” nor “half-hearted efforts by counsel to effect service” constitute good case. *Petrucelli*, 46 F.3d at 1307. It is Plaintiffs’ burden to show good cause, and the Court must construe the record in the light most favorable to Plaintiffs and draw all reasonable inferences in their favor. *Elliott*, 271 P.3d at 683.

Due to the lack of Idaho case law specifically interpreting the Court’s issue, it is appropriate to seek federal case law for guidance. *See Martin v. Hoblit*, 133 Idaho 372, 376, 987 P.2d 284, 288 (1999) (fn. 3) (Where there is a paucity of Idaho case law interpreting a rule of procedure, it is appropriate to look to federal case interpreting a similar rule). In determining whether attempted service at a single address is sufficient to be considered diligent, the Court of International Trade has reasoned:

When twenty days have passed after mailing without return of the acknowledgement that that the mail was received [or here, for example, when certain amount of time has passed without the return of an executed waiver of service form], the diligent plaintiff should recognize that other means of service will have to be used within the approximately 100 days which remain. *United States v. Gen'l Int'l Mktg. Group*, 742 F. Supp. 1173, 1176 (CIT 1990); *see also Petrucelli*, 46 F. 3d at 1307 (affirming denial of extension of time, stating that “[a] prudent attorney exercising reasonable care and diligence would have inquired further into the matter when it was obvious that the acknowledgment form [included with plaintiff’s attempted service of complaint] was not forthcoming”). In the instance case, when the Government’s first mailing failed to yield executed waivers of service from the two Defendants, the Government simply made another mailing, rather than taking more active steps to accomplish service of process. (citations omitted).

United States v. Rodrigue, 645 F. Supp. 2d 1310, 1325 – 26 (CIT 2009). In *Rodrigue*, the Government filed suit on the day the five-year statute of limitations would have expired. The U.S. then had 120 days from the filing of the complaint to effect service on defendants father and son. After failed attempts to waive service and mailing the complaint, the Government attempted to personally serve the father and son at a single prior address. The Court held:

In contrast, here (as discussed above) the Government contended itself with sending professional process servers to a single address for each of the Defendants – and in neither case was it the address that the Florida Department of Highway Safety & Motor Vehicles had identified as the respective Defendant’s most recent address-of-record. (citations omitted). Moreover, the Government never sought updated contact information from that Florida agency, and instead continued to rely on addresses that the agency had provided some eight months before the September 18, 2008 deadline for service of process. (citations omitted). Finally, the Government failed to undertake any additional research to use other sources to identify other potential addresses for the Defendants. And for at least the last three days of the 120-day period, the Government did absolutely nothing – *nothing whatsoever* – to locate or effect service on the two Defendants.

The record of action – and inaction – outlined above does not portray the Government as a plaintiff intent on diligently seeking to effect proper service of process on the Defendants in order to ensure the viability of its case, ever-

mindful that the 120-day period for service of process was a ticking “time bomb” with the potential to “mark the death of the action.” (citations omitted). The Government simply has not shown “good cause” for failure to serve the Defendants within the 120-day period following the filing of its Complaint in this matter. Nor can it do so. The Government therefore is not entitled to an extension of time to effect service of process.

Rodrigue, 645 F. Supp. 2d at 1328 – 1329.

In this case, Plaintiffs have not put forth any evidence that Defendants evaded service or even made it difficult on Plaintiffs to effect service. Furthermore, it is undisputed the Plaintiffs attempted service at only a single address – Hickory Way. After multiple failed attempts at the Hickory Way address, Plaintiffs did not undertake any additional research to identify other potential addresses for Defendants. Instead, they remained content with the address information, until told on June 24, 2017 (5 days before the deadline for service of process) that they had the wrong address. Again, at that point, a diligent attorney would research alternative addresses. However, rather than taking active steps, Plaintiffs jumped to the conclusion that the Hickory Way address information was correct and, with no evidence other than the same free websites, that Defendants were evading service. *Second Affidavit of Joy Garrison*. In fact, the affidavits presented to the Court reflect that no further action was taken during those last five days to serve until a motion for extension of time was filed on the last day to serve – a motion which itself requires good cause can hardly be a saving grace for Plaintiffs to establish good cause on Defendants’ motion to dismiss.

Defendants agree with the Court that as a threshold, a starting point, Plaintiffs may rely upon free public internet sources for an address. However, after that address fails to yield results and the “time bomb” continues to tick, flags should be raised. Diligence

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF ADA

OCT 18 2017
CHRISTOPHER D. RICH, Clerk
By EMILY CHILD
DEPUTY

TODD CRAWFORD, individually; BENJAMIN
CRAWFORD, individually; ETHAN
CRAWFORD, individually,

Plaintiffs,

v.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No. CV01-16-23543

MEMORANDUM DECISION AND ORDER
ON MOTIONS TO DISMISS AND TO
ENLARGE TIME

I. INTRODUCTION

This matter is before the Court on Defendants' motion to dismiss pursuant to IRCP 12(b)(5) and IRCP 4(b)(2) for insufficiency of service of process and failure to serve the complaint within six months of filing, as well as Plaintiffs' renewed motion for enlargement of time to serve.¹ Oral argument was held on the motions on September 8, 2017 after which the Court directed the parties to submit supplemental briefing with regard to the elements of good cause and due diligence in attempting to effect service. The Court took the matter under advisement on September 22, 2017.

II. STANDARD

For orders granting or denying a motion pursuant to IRCP 12(b), a district court's findings of fact will be upheld where they are supported by substantial and competent evidence in the record, and the court's application of law to those facts is freely reviewed. *Herrera v. Estay*, 146 Idaho 674, 679, 201 P.3d 647, 652 (2009). Here, since there is no dispute that service was not effected upon Defendants, the question is whether dismissal is proper under IRCP 4(b)(2); that is, whether Plaintiffs had good cause for failing to serve Defendants within six months of filing the complaint. The standard of review for dismissal pursuant to IRCP 4(a)(2) is

¹ Plaintiffs' renewed motion to serve by publication is moot as Defendants were subsequently served through counsel.

EV

the same as summary judgment, liberally construing the record in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor. *Elliott v. Verska*, 152 Idaho 280, 285, 271 P.3d 678, 683 (2012). A trial court's decision whether to grant a motion for enlargement is reviewed for abuse of discretion. *In re SRBA*, 149 Idaho 532, 538, 237 P.3d 1, 7 (2010).

III. FACTS

The Complaint in this matter was filed on December 29, 2016. Plaintiffs alleged they were injured when Defendant, Daniel Guthmiller, rear-ended their vehicle while driving Dennis Guthmiller's vehicle. The accident occurred on January 2, 2015.² Plaintiffs assert a claim of negligence against Daniel and a claim for imputed liability against Dennis under § 49-2417(1).

On June 29, 2017—exactly six months after filing the Complaint—Plaintiffs filed a motion seeking an extension of time under IRCP 4(b)(2) in which to serve Defendants by publication. In support, Plaintiffs provide affidavits by two individuals—Joy Garrison and Benjamin Storer—who attempted to serve Defendants unsuccessfully at their alleged residence at 2484 North Hickory Way in Meridian. (“Hickory Way address”). According to Garrison, she attempted to serve Defendants at the alleged residence on several occasions and, on her last service attempt, she was met by a woman at the door who informed Garrison that “[h]e has not lived her [sic] for almost two years.” Aff. Garrison, ¶ 3 (June 29, 2017). Storer also unsuccessfully attempted service at the Hickory Way address and opined that the woman at the residence was not telling Garrison the truth because “[a]ll of my searches show that Defendants are still residing there and are avoiding service.” Aff. Storer, ¶ 4 (June 29, 2017).

On July 12, 2017, this Court denied Plaintiffs' motion on grounds that they did not demonstrate good cause under IRCP 4(b)(2) for failure to serve Defendants within six months after filing the Complaint. The Order stated, in relevant part:

The supporting affidavits do not specify when attempts to serve were made or what efforts were taken to ascertain that the address at which they have been attempting service is the correct address. From the affidavits, it is not reasonable to conclude that Defendants are, in fact, evading service. Further, Plaintiffs have

² If the Complaint is dismissed, Todd and Benjamin Crawford would be barred by the statute of limitations from re-filing but Ethan Crawford, a minor, would be able to re-file. The running of the statute of limitations and the consequent bar to re-filing the action is *not* a factor to be taken into account when determining whether good cause exists. *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 347, 941 P.2d 314, 319 (1997).

not demonstrated good cause for waiting until the six month deadline to file a motion for an extension rather than move for leave to serve by publication earlier.

The Court gave Plaintiffs fourteen days to supply supplemental affidavits demonstrating good cause.

Subsequently, Plaintiffs submitted additional affidavits from Garrison and Storer. Garrison asserted that she did searches on “several address search sites” prior to giving the Summons and Complaint to the process server, each of which showed Defendants residing at the Hickory Way address. 2nd Aff. Garrison, ¶ 5 (July 25, 2017). She attached copies of her search results, which revealed searches on three websites: whitepages.com, publicwhitepages.com and familytreenow.com *Id.*, Exhs. 1-4. Armed with this information, Storer attempted service at the Hickory Way address once per week between February 7 and March 5, 2017 between the hours of 5:00 pm and 7:20 pm, but was unable to find anyone home during those visits. 2nd Aff. Storer, ¶ 2 (July 25, 2017). Garrison then attempted to personally serve Defendants at the same address on six occasions between April 13 and June 24. 2nd Aff. Garrison, ¶¶ 2-3. Based on these two supplemental affidavits, Plaintiffs renewed their motion to serve by publication and to enlarge the time within which to serve.

On July 31, 2017, Defendants made a special appearance seeking dismissal of Plaintiffs’ Complaint pursuant to IRCP 12(b)(5) and IRCP 4(b)(2). Submitted in support was an affidavit from Dennis Guthmiller averring that he and his family moved away from the Hickory Way address in October of 2015. According to defense counsel, a simple Westlaw public records search of “Guthmiller, Dennis” performed on July 25, 2017 showed that he did not reside at the Hickory Way address and, additionally, an Ada County tax assessor search for the Hickory Way address did not list Dennis Guthmiller as the owner of the property. Decl. Fouser, ¶¶ 2-3 (July 31, 2017).

III. ANALYSIS

Service of process is the due process mechanism that vests a court with jurisdiction over a person, with the power to require such person to comply with the court's orders. *Herrera*, 146 Idaho at 681, 201 P.3d at 654. The applicable rule governing service in this case provides, in relevant part, that Defendants must be served by “(A) delivering a copy of the summons and the complaint to the individual personally; [or] (B) by leaving a copy of each at the individual's

dwelling house or usual place of abode with someone at least 18 years old who resides there[.]”

IRCP 4(d)(2). According to IRCP 4(b)(2):

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.

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

The parties do not dispute that Defendants were not properly served within the six month period prescribed by IRCP 4(b)(2). As such, the issue before the Court is whether good cause exists under IRCP 4(b)(2) to extend the six month time period for service of the complaint and summons. Plaintiffs carry the burden of demonstrating good cause and if unable to do so, dismissal under the rule is mandatory. *Elliot*, 152 Idaho at 288, 271 P.3d at 686. In *Elliot*, the Court summarized the good cause standard to wit:

The determination of whether good cause exists is a factual one. The burden is on the party who failed to effect timely service to demonstrate good cause. When deciding whether there was good cause, the court must, considering the totality of the circumstances, 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. Courts look to factors outside of the plaintiff's control including sudden illness, natural catastrophe, or evasion of service of process. In deciding whether there were circumstances beyond the plaintiff's control that justified the failure to serve the summons and complaint within the six-month period, the court must consider whether the plaintiff made diligent efforts to comply with the time restraints imposed by Rule 4(a)(2).

Id. at 290, 271 P.3d at 688, internal cites and quotes omitted.

Plaintiffs contend that good cause is present based on: 1) searches of three different websites showing that Dennis resided at the Hickory Way address; 2) service attempts on ten different occasions between February and June of 2017, and; 3) Defendants' insurer knew of the filing of the action in January of 2017. Defendants dispute that this constitutes good cause.

For purposes of determining if good cause exists, the Court has held that several factors are “irrelevant” to the determination, including defendant's actual knowledge of the pending litigation. *Elliot*, 152 Idaho at 288-89, 271 P.3d at 686-87. Therefore, this Court will not consider

knowledge by Defendants' insurer as a factor here. Rather, the focus is on whether Plaintiffs made diligent efforts to effect service within the six months after the complaint. *Id.* at 291, 271 P.3d at 689. To this end, the Court must consider efforts made "to locate the [defendants] and to ascertain how ... [to] serve them." *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 347, 941 P.2d 314, 319 (1997).

The accident at issue occurred on January 2, 2015. Plaintiffs waited until the nearly the last possible moment to file the action prior to the statute of limitations running, at least as to the adult plaintiffs. By doing so, Plaintiffs assumed the risk of entirely forfeiting their cause of action if they failed to effect service of process in the six month period. Faced with this circumstance, one would think Plaintiffs would be especially diligent in attempting timely service. *See, Tuke v. United States*, 76 F.3d 155, 156 (7th Cir. 1996)("An attorney who files suit when the statute of limitations is about to expire must take special care to achieve timely service of process, because a slip-up is fatal.")³

To be sure, Plaintiffs' initial efforts to effect service were diligent. They consulted with public records websites to obtain what they believed to be Defendants' current address and attempted service once per week over a month's time during the evening hours. However, with four unsuccessful attempts, no sign that Defendants were evading service,⁴ due diligence required that Plaintiffs revisit their efforts. *Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1307 (3d Cir. 1995) (affirming denial of extension of time, stating that "[a] prudent attorney exercising reasonable care and diligence would have inquired further into the matter when it was obvious that the acknowledgment form [included with plaintiff's attempted service of complaint] was not forthcoming.")

³ Because IRCP 4(d)(2) is nearly identical to its federal counterpart, FRCP 4(m), federal case law on the issue of good cause is instructive. *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 941 P.2d 314 (1997) (relying on federal case law to interpret IRCP 4(a)(2)).

⁴ While Mr. Storer opined in his affidavit that he thought Defendants were evading service, his belief was not supported by any objective evidence besides the fact that no one was home on the four occasions he went to the address. This is not sufficient. Indeed, as it turns out, Plaintiffs were simply looking in the wrong place. *See, e.g., Beasley v. United States*, 162 F.R.D. 700, 702 (M.D. Ala. 1995)(conclusory statements made in the affidavit submitted by the plaintiffs that defendant was avoiding service coupled with the process server's failed attempts to perfect service upon him are insufficient to establish that defendant was indeed evading service).

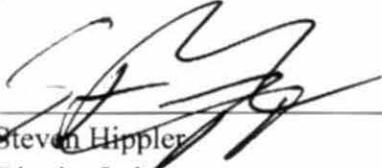
Instead of taking steps to confirm that Defendants indeed resided at the Hickory Way address, such as consulting public records websites that draw from government records, Plaintiffs persisted in their fruitless efforts to serve at the Hickory Way address, this time assigning Garrison to the task. While Garrison was diligent in her task, having visited the Hickory Way home six times between April 13 and June 24, Plaintiffs should have recognized after her first or second visit that it was a fool's errand. At that point—after several unsuccessful attempts, only a handful of weeks to effect service, and having failed to expand their research of Defendants' residence—it was incumbent upon Plaintiffs, had they been exercising due diligence, to—at a minimum—seek assistance with this Court through a motion for additional time to serve or a motion for leave to serve through publication. Despite the fact that their claim would forever expire without effecting service, Plaintiffs did neither, instead waiting until the eve of the deadline to take any substantive action.

The plaintiff “who seeks to rely on the good cause provision [of FRCP 4(m)] must show meticulous efforts to comply with the rule.” *In re Kirkland*, 86 F.3d 172, 176 (10th Cir.1996). “[H]alf-hearted efforts” at service simply do not suffice. *Petrucelli*, 46 F.3d at 1307. This record of action—and lack thereof—does not portray Plaintiffs as intent on diligently seeking to effect service of process on Defendants in order to ensure the viability of their case. To establish “good cause” under IRCP 4(b)(2), far more was required. Consequently, the Court will decline to extend the deadline to serve and will dismiss Plaintiffs' claims without prejudice.

IV. ORDER

Based on the foregoing, Plaintiffs' motion for an extension of time to serve is DENIED and Defendants' motion to dismiss is GRANTED.
IT IS SO ORDERED.

Dated this 15th day of October, 2017.



Steven Hippler
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 18 day of October, 2017, I emailed (served) a true and correct copy of the within instrument to:

Matt Steen
Attorney at Law
storerlit@gmail.com

Trudy Fouser
Attorney at Law
gfcases@gfidaholaw.com

CHRISTOPHER D. RICH
Clerk of the District Court

By: *E. Chital*
Deputy Court Clerk



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF ADA

OCT 18 2017

CHRISTOPHER D. RICH, Clerk
By EMILY CHILD
DEPUTY

TODD CRAWFORD, individually; BENJAMIN
CRAWFORD, individually; ETHAN
CRAWFORD, individually,

Plaintiffs,

v.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants.

Case No. CV01-16-23543

JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

Plaintiffs' claims are dismissed without prejudice.

IT IS SO ORDERED.

Dated this 15th day of October, 2017.



Steven Hippler
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 18 day of October, 2017, I emailed (served) a true and correct copy of the within instrument to:

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gfcases@gfidaholaw.com

CHRISTOPHER D. RICH
Clerk of the District Court

By: *D. Child*
Deputy Court Clerk



NOV 29 2017

CHRISTOPHER D. RICH, Clerk
By KATRINA HOLDEN
DEPUTY

Matt Steen, ISB #10285
STORER & ASSOCIATES
4850 N. Rosepoint Way, Suite 104
Boise, Idaho 83713
Telephone: (208) 323-0024
Facsimile: (208) 323-9730
storerlit@gmail.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

<p>TODD CRAWFORD, individually; BENJAMIN CRAWFORD, individually; ETHAN CRAWFORD, individually,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>DANIEL GUTHMILLER, individually; DENNIS GUTHMILLER, individually,</p> <p>Defendants.</p>	<p>Case No.: CV01-16-23543</p> <p>NOTICE OF APPEAL</p>
--	---

TO: THE ABOVE NAMED DEFENDANTS/RESPONDENTS AND THE PARTY'S
ATTORNEY OF RECORD, TRUDY FOUSER AND TAYLOR H. M. FOUSER, PLAZA ONE
TWENTY ONE 121 NORTH 9TH STREET, SUITE 600 P.O. BOX 2837, BOISE, IDAHO
83701.

NOTICE IS HEREBY GIVEN:

1. The above named party, Todd Crawford, Benjamin Crawford, and Ethan Crawford, as appellants hereby appeal against the above named Defendants, Daniel Guthmiller and Dennis Guthmiller, to the Idaho Supreme Court from the 'Memorandum and Decision Order' entered in

the above titled action on October 15, 2017, and the related certified final judgments entered on October 18, 2017 in favor of Defendants Daniel Guthmiller and Dennis Guthmiller.

2. That the party has a right to appeal to the Idaho Supreme Court, and that the order and judgments described in paragraph 1 above are appealable judgments and/or orders pursuant to I.A.R. 11 having been certified by the District Court as final, and therefore jurisdiction is appropriate in the Idaho Supreme Court.

3. A preliminary statement of the issues on appeal is:

a. Whether the court erred in ruling that as a matter of law the Crawfords did not demonstrate good cause in failing to serve the Defendants within the 6 months as required by I.R.C.P. 4(b)(2).

4. The appellants request the following documents to be included in the clerk's record:

a. Judge's Memorandum Decision and Order on Motion to Dismiss and to Enlarge Time, October 15, 2017.

b. Memorandum in Support of Defendant's Motion to Dismiss Plaintiff's Complaint, July 31, 2017.

c. Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss, September 1, 2017.

d. Supplemental Memorandum in Support of Defendant's Motion to Dismiss Plaintiff's Complaint, September 22, 2017.

e. Plaintiff's Supplemental Memorandum in Opposition to Defendant's Motion to Dismiss, September 18, 2017.

5. No order has been entered sealing all or any part of the record or transcript.

6. Matt Steen, the undersigned, hereby certifies:

- a. That all appellate filing fees have been paid.
- b. That service has been made upon all other parties required pursuant to I.A.R. 20, to
wit:

Daniel Guthmiller and Dennis Guthmiller,
Trudy Fouser and Taylor H. M. Fouser
GJORDING FOUSER, PLLC
121 N. 9th St., Ste. 600
Boise, ID 83701

DATED this 29th day of November, 2017.


Matt K. Steen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of November, 2017, the foregoing document was served upon the following, by the manner indicated:

Trudy Fouser
GJORDING FOUSER, PLLC
121 N. 9th St., Ste. 600
Boise, ID 83701

Fax 208-336-9177
gfcases@gfidaholaw.com

Taylor H. M. Fouser
GJORDING FOUSER, PLLC
121 N. 9th St., Ste. 600
Boise, ID 83701


Matt Steen

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF ADA

OCT 18 2017
CHRISTOPHER D. RICH, Clerk
By EMILY CHILD
DEPUTY

TODD CRAWFORD, individually; BENJAMIN
CRAWFORD, individually; ETHAN
CRAWFORD, individually.

Plaintiffs.

v.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually.

Defendants.

Case No. CV01-16-23543

MEMORANDUM DECISION AND ORDER
ON MOTIONS TO DISMISS AND TO
ENLARGE TIME

I. INTRODUCTION

This matter is before the Court on Defendants' motion to dismiss pursuant to IRCP 12(b)(5) and IRCP 4(b)(2) for insufficiency of service of process and failure to serve the complaint within six months of filing, as well as Plaintiffs' renewed motion for enlargement of time to serve.¹ Oral argument was held on the motions on September 8, 2017 after which the Court directed the parties to submit supplemental briefing with regard to the elements of good cause and due diligence in attempting to effect service. The Court took the matter under advisement on September 22, 2017.

II. STANDARD

For orders granting or denying a motion pursuant to IRCP 12(b), a district court's findings of fact will be upheld where they are supported by substantial and competent evidence in the record, and the court's application of law to those facts is freely reviewed. *Herrera v. Estay*, 146 Idaho 674, 679, 201 P.3d 647, 652 (2009). Here, since there is no dispute that service was not effected upon Defendants, the question is whether dismissal is proper under IRCP 4(b)(2); that is, whether Plaintiffs had good cause for failing to serve Defendants within six months of filing the complaint. The standard of review for dismissal pursuant to IRCP 4(a)(2) is

¹ Plaintiffs' renewed motion to serve by publication is moot as Defendants were subsequently served through counsel

EV

the same as summary judgment, liberally construing the record in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor. *Elliott v. Verska*, 152 Idaho 280, 285, 271 P.3d 678, 683 (2012). A trial court's decision whether to grant a motion for enlargement is reviewed for abuse of discretion. *In re SRBA*, 149 Idaho 532, 538, 237 P.3d 1, 7 (2010).

III. FACTS

The Complaint in this matter was filed on December 29, 2016. Plaintiffs alleged they were injured when Defendant, Daniel Guthmiller, rear-ended their vehicle while driving Dennis Guthmiller's vehicle. The accident occurred on January 2, 2015.² Plaintiffs assert a claim of negligence against Daniel and a claim for imputed liability against Dennis under § 49-2417(1).

³ On June 29, 2017—exactly six months after filing the Complaint—Plaintiffs filed a motion seeking an extension of time under IRCP 4(b)(2) in which to serve Defendants by publication. In support, Plaintiffs provide affidavits by two individuals—Joy Garrison and Benjamin Storer—who attempted to serve Defendants unsuccessfully at their alleged residence at 2484 North Hickory Way in Meridian. (“Hickory Way address”). According to Garrison, she attempted to serve Defendants at the alleged residence on several occasions and, on her last service attempt, she was met by a woman at the door who informed Garrison that “[h]e has not lived her [sic] for almost two years.” Aff. Garrison, ¶ 3 (June 29, 2017). Storer also unsuccessfully attempted service at the Hickory Way address and opined that the woman at the residence was not telling Garrison the truth because “[a]ll of my searches show that Defendants are still residing there and are avoiding service.” Aff. Storer, ¶ 4 (June 29, 2017).

On July 12, 2017, this Court denied Plaintiffs’ motion on grounds that they did not demonstrate good cause under IRCP 4(b)(2) for failure to serve Defendants within six months after filing the Complaint. The Order stated, in relevant part:

The supporting affidavits do not specify when attempts to serve were made or what efforts were taken to ascertain that the address at which they have been attempting service is the correct address. From the affidavits, it is not reasonable to conclude that Defendants are, in fact, evading service. Further, Plaintiffs have

² If the Complaint is dismissed, Todd and Benjamin Crawford would be barred by the statute of limitations from re-filing but Ethan Crawford, a minor, would be able to re-file. The running of the statute of limitations and the consequent bar to re-filing the action is *not* a factor to be taken into account when determining whether good cause exists. *Sammis v. Magnatek, Inc.*, 130 Idaho 342, 347, 941 P.2d 314, 319 (1997).

not demonstrated good cause for waiting until the six month deadline to file a motion for an extension rather than move for leave to serve by publication earlier.

The Court gave Plaintiffs fourteen days to supply supplemental affidavits demonstrating good cause.

Subsequently, Plaintiffs submitted additional affidavits from Garrison and Storer. Garrison asserted that she did searches on "several address search sites" prior to giving the Summons and Complaint to the process server, each of which showed Defendants residing at the Hickory Way address. 2nd Aff. Garrison, ¶ 5 (July 25, 2017). She attached copies of her search results, which revealed searches on three websites: whitepages.com, publicwhitepages.com and familytreehow.com *Id.*, Exhs. 1-4. Armed with this information, Storer attempted service at the Hickory Way address once per week between February 7 and March 5, 2017 between the hours of 5:00 pm and 7:20 pm, but was unable to find anyone home during those visits. 2nd Aff. Storer, ¶ 2 (July 25, 2017). Garrison then attempted to personally serve Defendants at the same address on six occasions between April 13 and June 24. 2nd Aff. Garrison, ¶¶ 2-3. Based on these two supplemental affidavits, Plaintiffs renewed their motion to serve by publication and to enlarge the time within which to serve.

On July 31, 2017, Defendants made a special appearance seeking dismissal of Plaintiffs' Complaint pursuant to IRCP 12(b)(5) and IRCP 4(b)(2). Submitted in support was an affidavit from Dennis Guthmiller averring that he and his family moved away from the Hickory Way address in October of 2015. According to defense counsel, a simple Westlaw public records search of "Guthmiller, Dennis" performed on July 25, 2017 showed that he did not reside at the Hickory Way address and, additionally, an Ada County tax assessor search for the Hickory Way address did not list Dennis Guthmiller as the owner of the property. Decl. Fouser, ¶¶ 2-3 (July 31, 2017).

III. ANALYSIS

Service of process is the due process mechanism that vests a court with jurisdiction over a person, with the power to require such person to comply with the court's orders. *Herrera*, 146 Idaho at 681, 201 P.3d at 654. The applicable rule governing service in this case provides, in relevant part, that Defendants must be served by "(A) delivering a copy of the summons and the complaint to the individual personally; [or] (B) by leaving a copy of each at the individual's

dwelling house or usual place of abode with someone at least 18 years old who resides there[.]”

IRCP 4(d)(2). According to IRCP 4(b)(2):

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.

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

The parties do not dispute that Defendants were not properly served within the six month period prescribed by IRCP 4(b)(2). As such, the issue before the Court is whether good cause exists under IRCP 4(b)(2) to extend the six month time period for service of the complaint and summons. Plaintiffs carry the burden of demonstrating good cause and if unable to do so, dismissal under the rule is mandatory. *Elliot*, 152 Idaho at 288, 271 P.3d at 686. In *Elliot*, the Court summarized the good cause standard to wit:

The determination of whether good cause exists is a factual one. The burden is on the party who failed to effect timely service to demonstrate good cause. When deciding whether there was good cause, the court must, considering the totality of the circumstances, 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. Courts look to factors outside of the plaintiff's control including sudden illness, natural catastrophe, or evasion of service of process. In deciding whether there were circumstances beyond the plaintiff's control that justified the failure to serve the summons and complaint within the six-month period, the court must consider whether the plaintiff made diligent efforts to comply with the time restraints imposed by Rule 4(a)(2).

Id. at 290, 271 P.3d at 688, internal cites and quotes omitted.

Plaintiffs contend that good cause is present based on: 1) searches of three different websites showing that Dennis resided at the Hickory Way address; 2) service attempts on ten different occasions between February and June of 2017, and; 3) Defendants' insurer knew of the filing of the action in January of 2017. Defendants dispute that this constitutes good cause.

For purposes of determining if good cause exists, the Court has held that several factors are “irrelevant” to the determination, including defendant's actual knowledge of the pending litigation. *Elliot*, 152 Idaho at 288-89, 271 P.3d at 686-87. Therefore, this Court will not consider

knowledge by Defendants' insurer as a factor here. Rather, the focus is on whether Plaintiffs made diligent efforts to effect service within the six months after the complaint. *Id.* at 291, 271 P.3d at 689. To this end, the Court must consider efforts made "to locate the [defendants] and to ascertain how ... [to] serve them." *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 347, 941 P.2d 314, 319 (1997).

The accident at issue occurred on January 2, 2015. Plaintiffs waited until the nearly the last possible moment to file the action prior to the statute of limitations running, at least as to the adult plaintiffs. By doing so, Plaintiffs assumed the risk of entirely forfeiting their cause of action if they failed to effect service of process in the six month period. Faced with this circumstance, one would think Plaintiffs would be especially diligent in attempting timely service. *See, Tuke v. United States*, 76 F.3d 155, 156 (7th Cir. 1996) ("An attorney who files suit when the statute of limitations is about to expire must take special care to achieve timely service of process, because a slip-up is fatal.")³

To be sure, Plaintiffs' initial efforts to effect service were diligent. They consulted with public records websites to obtain what they believed to be Defendants' current address and attempted service once per week over a month's time during the evening hours. However, with four unsuccessful attempts, no sign that Defendants were evading service,⁴ due diligence required that Plaintiffs revisit their efforts. *Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1307 (3d Cir. 1995) (affirming denial of extension of time, stating that "[a] prudent attorney exercising reasonable care and diligence would have inquired further into the matter when it was obvious that the acknowledgment form [included with plaintiff's attempted service of complaint] was not forthcoming.")

³ Because IRCP 4(d)(2) is nearly identical to its federal counterpart, FRCP 4(m), federal case law on the issue of good cause is instructive. *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 941 P.2d 314 (1997) (relying on federal case law to interpret IRCP 4(a)(2)).

⁴ While Mr. Storer opined in his affidavit that he thought Defendants were evading service, his belief was not supported by any objective evidence besides the fact that no one was home on the four occasions he went to the address. This is not sufficient. Indeed, as it turns out, Plaintiffs were simply looking in the wrong place. *See, e.g., Beasley v. United States*, 162 F.R.D. 700, 702 (M.D. Ala. 1995) (conclusory statements made in the affidavit submitted by the plaintiffs that defendant was avoiding service coupled with the process server's failed attempts to perfect service upon him are insufficient to establish that defendant was indeed evading service).

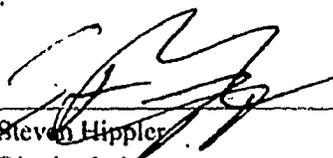
Instead of taking steps to confirm that Defendants indeed resided at the Hickory Way address, such as consulting public records websites that draw from government records, Plaintiffs persisted in their fruitless efforts to serve at the Hickory Way address, this time assigning Garrison to the task. While Garrison was diligent in her task, having visited the Hickory Way home six times between April 13 and June 24, Plaintiffs should have recognized after her first or second visit that it was a fool's errand. At that point—after several unsuccessful attempts, only a handful of weeks to effect service, and having failed to expand their research of Defendants' residence—it was incumbent upon Plaintiffs, had they been exercising due diligence, to—at a minimum—seek assistance with this Court through a motion for additional time to serve or a motion for leave to serve through publication. Despite the fact that their claim would forever expire without effecting service, Plaintiffs did neither, instead waiting until the eve of the deadline to take any substantive action.

The plaintiff “who seeks to rely on the good cause provision [of FRCP 4(m)] must show meticulous efforts to comply with the rule.” *In re Kirkland*, 86 F.3d 172, 176 (10th Cir.1996). “[H]alf-hearted efforts” at service simply do not suffice. *Petrucelli*, 46 F.3d at 1307. This record of action—and lack thereof—does not portray Plaintiffs as intent on diligently seeking to effect service of process on Defendants in order to ensure the viability of their case. To establish “good cause” under IRCP 4(b)(2), far more was required. Consequently, the Court will decline to extend the deadline to serve and will dismiss Plaintiffs' claims without prejudice.

IV. ORDER

Based on the foregoing, Plaintiffs' motion for an extension of time to serve is DENIED and Defendants' motion to dismiss is GRANTED.
IT IS SO ORDERED.

Dated this 15th day of October, 2017.



Steven Hippler
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 18 day of October, 2017, I emailed (served) a true and correct copy of the within instrument to:

Matt Steen
Attorney at Law
storerli@gmail.com

Trudy Fouser
Attorney at Law
gfcases@gfidaholaw.com

CHRISTOPHER D. RICH
Clerk of the District Court

By: *S. Chubb*
Deputy Court Clerk

CERTIFICATE OF MAILING

000110

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

OCT 18 2017
CHRISTOPHER D. RICH, Clerk
By EMILY CHILD
DEPUTY

TODD CRAWFORD, individually; BENJAMIN CRAWFORD, individually; ETHAN CRAWFORD, individually.

Plaintiffs.

Case No. CV01-16-23543

v.

JUDGMENT

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually.

Defendants.

JUDGMENT IS ENTERED AS FOLLOWS:

Plaintiffs' claims are dismissed without prejudice.

IT IS SO ORDERED.

Dated this 15th day of October, 2017.


Steven Hippler
District Judge

EL

CERTIFICATE OF MAILING

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Trudy Houser
Attorney at Law
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CHRISTOPHER D. RICH
Clerk of the District Court

By: E. Child
Deputy Court Clerk

CERTIFICATE OF MAILING

000112

Trudy Hanson Fouser, ISB No. 2794

tfouser@gfidaholaw.com

Taylor H. M. Fouser, ISB No. 9540

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Boise, Idaho 83702

Telephone: 208.336.9777

Facsimile: 208.336.9177

E-service: gfcases@gfidaholaw.com

Special Appearing Attorneys for Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs/Appellant,

v.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMILLER, individually,

Defendants/Respondents.

Case No. CV01-16-23543

**REQUEST FOR ADDITIONAL
CLERK'S RECORD**

**TO: THE ABOVE NAMED APPELLANTS AND THE PARTYS' ATTORNEY AND
THE CLERK OF THE ABOVE ENTITLED COURT**

NOTICE IS HEREBY GIVEN, that the Respondents in the above entitled proceeding hereby requests pursuant to Rule 19, I.A.R., the inclusion of the following material in the clerk's record in addition to that required to be included by the I.A.R. and the notice of appeal. Respondents hereby requests the additions to the Clerk's Record:

1. Complaint and Demand for Jury Trial, filed December 29, 2016.

2. Plaintiffs' Motion for Order for Service by Publication and Extension of Time Pursuant to I.R.C.P. 4(a), dated June 29, 2017.

3. Affidavit of Benjamin Storer in Support of Motion for Order for Service by Publication and Extension of Time Pursuant to I.R.C.P. 4(a), dated June 29, 2017.

4. Affidavit of Joy Garrison in Support of Motion for Order for Service by Publication and Extension of Time Pursuant to I.R.C.P. 4(a), dated June 29, 2017.

5. Court's Order Denying Motion for Order for Service by Publication and Extension of Time to Serve, filed July 12, 2017.

6. Plaintiff's Amended Motion for Order for Service by Publication and Extension of Time to Serve, dated July 24, 2017.

7. Second Affidavit of Benjamin Storer in Support of Motion for Order for Service by Publication and Extension of Time to Serve, dated July 24, 2017.

8. Second Affidavit of Joy Garrison in Support of Motion for Order for Service by Publication and Extension of Time to Serve, dated July 24, 2017.

9. Notice of Special Appearance on Behalf of Defendants, filed July 31, 2017.

10. Declaration of Counsel in Support of Motion to Dismiss Plaintiffs' Complaint Pursuant to I.R.C.P. 12(b)(5), dated July 31, 2017.

11. Affidavit of Dennis Guthmiller in Support of Motion to Dismiss Plaintiffs' Complaint Pursuant to I.R.C.P. 12(b)(5), dated July 31, 2017.

12. Defendants' Motion to Dismiss Plaintiffs' Complaint Pursuant to I.R.C.P. 12(b)(5), dated July 31, 2017.

13. Defendants' Reply in Support of Motion to Dismiss Plaintiffs' Complaint Pursuant to I.R.C.P. 12(b)(5), dated September 5, 2017.

14. Reporter's transcript for Hearing Re: Motion to Dismiss Plaintiffs' Complaint Pursuant to I.R.C.P. 12(b)(5), held on September 8, 2017 at 2:00 pm.

I certify that a copy of this request was served upon the clerk of the district court and upon all parties required to be served pursuant to Rule 20.

DATED this 12th day of December, 2017.

GJORDING FOUSER, PLLC

By /s/ Taylor H. M. Fouser
Trudy Hanson Fouser – Of the Firm
Taylor H. M. Fouser – Of the Firm
Special Appearing Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of December, 2017, a true and correct copy of the foregoing was served on the following by the manner indicated:

Matt Sheen
STORER & ASSOCIATES, PLLC
4850 N. Rosepoint Way, Ste. 104
Boise, ID 83713

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile: (208) 323-9730
- Email: storerlit@gmail.com
- iCourt E-File

/s/ Taylor H. M. Fouser
Trudy Hanson Fouser
Taylor H. M. Fouser

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs-Appellants

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMULLER, individually,

Defendants-Respondents.

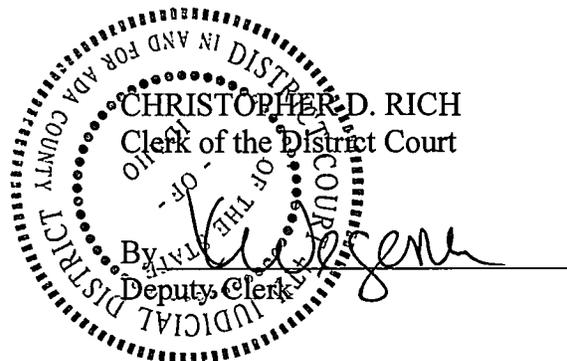
Supreme Court Case No. 45613

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 1st day of February, 2018.



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs-Appellants

vs.

DANIEL GUTHMILLER, individually;
DENNIS GUTHMULLER, individually,

Defendants-Respondents.

Supreme Court Case No. 45613

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

MATT K. STEEN

ATTORNEY FOR APPELLANT

BOISE, IDAHO

TRUDY HANSON FOUSER
TAYLOR H.M. FOUSER

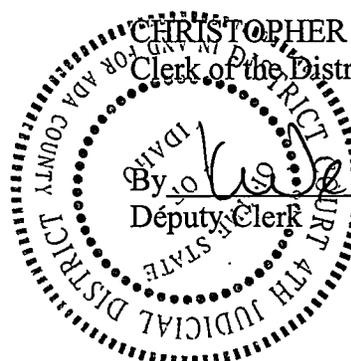
ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Date of Service: FEB 01 2018

CHRISTOPHER D. RICH
Clerk of the District Court

By: 
Deputy Clerk



CERTIFICATE OF SERVICE

000117

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

TODD CRAWFORD, individually;
BENJAMIN CRAWFORD, individually;
ETHAN CRAWFORD, individually,

Plaintiffs-Appellants

vs.

DANIEL GUTHMILLER, individually;
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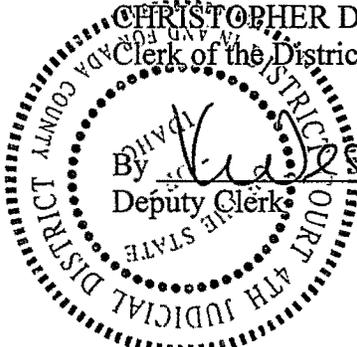
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 29th day of November, 2017.

CHRISTOPHER D. RICH
Clerk of the District Court

By 
Deputy Clerk



DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE OF IDAHO, COUNTY OF ADA

CERTIFICATE TO RECORD

000118