

FILED \_\_\_\_\_

AT \_\_\_\_\_ O'Clock \_\_\_\_\_ M  
CLERK OF DISTRICT COURT

\_\_\_\_\_  
Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF BONNER**

**TERRY-LEE, *sui juris*, a Sovereign Being )  
by Forced Attendance Damaged )  
Sovereign, )**

*Plaintiffs,* )

**JOHN A. FINNEY and his Clients, )**

vs. )

**ALL AND A CANDID WORLD, EVERYONE )  
IN BONNER COUNTY AND THE WORLD )  
THAT IS COMPETENT TO RESPOND. )**

*Defendants(Respondents).* )

Case No. **s CV 2009 1344**

**MEMORANDUM DECISION AND  
ORDER GRANTING MOTION TO  
DISMISS PURSUANT TO SPECIAL  
APPEARANCE**

**I. PROCEDURAL HISTORY AND BACKGROUND.**

On August 3, 2009, plaintiff Terry-Lee (Terry-Lee) filed his “Petition for Acknowledgment of the True Correct, Complete, Certain and Gramericlly [sic] Correctly Spelled Names of the Property Known as Bonner County Tax Parcel #'s RPR 28250000010A, 28250000020A, 28250000030A, 28250000040A, 28250000050A”, and appears to bring suit against “all and a candid world” (presumably all residents of Bonner County) “to bring forward the truth and to correct the false and erroneous claims that are being made by one John A. Finney...acting as an Attorney in case # CV 2009 000198”. Motion for Immediate Summary Judgment, p. 2, ¶ 1. . Terry-Lee appears to seek a declaratory judgment and/or a quiet title action regarding ownership of certain property in Priest River, Idaho. *Id.*, ¶ 2. Terry-Lee appears to have attempted service

upon defendants via publication in the Bonner County Bee on August 8, 15, 22, and 29, 2009. *Id.*, ¶ 4; Exhibit to Affidavit of Sterling Barkley. On January 7, 2010, defendants David Reynolds as Trustee, and Thomas and Erlene Pope appeared specially pursuant to I.R.C.P. 4(i)(2) and filed motions to dismiss. These defendants seek dismissal of this action under Rule 12(b)(2), (4) and/or (5). On March 1, 2010, Terry-Lee filed his Motion for Immediate Summary Judgment, and filed a notice of hearing.

On March 24, 2010, this Court heard oral argument on defendants' Motion to Dismiss Pursuant to I.R.C.P. 12(b)(2), (4) and (6) and on Terry-Lee's Motion for Immediate Summary Judgment.

## **II. STANDARD OF REVIEW.**

Whether a Court properly dismissed a claim for lack of personal jurisdiction pursuant to I.R.C.P. 12(b) is a question of law which Appellate Courts freely review. *Owsley v. Idaho Industrial Commission*, 141 Idaho 129, 133, 106 P.3d 455, 459 (2005). In motions to dismiss, the Court is to look only at the pleadings and view all inferences in favor of the non-moving party. *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002) (regarding 12(b)(6) motions); *Osborn v. United States*, 918 F.2d 724, 729 n. 6 (8<sup>th</sup> Cir. 1990) (regarding 12(b)(1) motions raising facial challenges to jurisdiction); *Serv. Emp. Intern. V. Idaho Department of Health and Welfare*, 106 Idaho 756, 758, 683 P.2d 404, 406 (1984 (regarding 12(b) challenges generally). Complaints should not be dismissed under Rule 12(b) unless the plaintiff can prove no set of facts which would entitle him to relief. *Dumas v. Ropp*, 98 Idaho 61, 62, 558 P.2d 632, 633 (1977). And any doubts must be resolved in favor of the survival of the complaint. *Gardner v. Hollifield*, 96 Idaho 609, 610-11, 533 P.2d 730, 731-32 (1975).

The Idaho Supreme Court, in *Herrera v. Estay*, 146 Idaho 674, 201 P.3d 647

(2009), analyzed the standard applicable to decisions made under Rule 12(b)(4) and 12(b)(5). The Court turned to federal authority given the “virtual identity” between the Idaho and federal rules and the lack of Idaho case law on point. 146 Idaho 674, 678, 201 P.3d 647, 651. “In federal courts, the standard of review for dismissal for insufficient service of process involves application of a *de novo* standard to legal questions and a clear error standard to findings of fact.” *Id.*, citing *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11<sup>th</sup> Cir. 2007) (citing *Prewitt Enters., Inc. v. Org. of Petroleum Exporting Countries*, 353 F.3d 916, 920 (11<sup>th</sup> Cir., 2003)).

### **III. ANALYSIS.**

#### **A. Dismissal Pursuant to I.R.C.P. 12(b)(2) (“lack of jurisdiction over the person”)**

Presumably, it is defendants’ contention that Terry-Lee has asserted no facts which would entitle him to relief. Terry-Lee has filed an initial pleading he has entitled “Petition for Acknowledgement of the True Correct, Complete, Certain and Grammatically Correct Spelled Name of 5 Bonner County Properties.” This “petition” appears to seek only that the property names be spelled correctly. At oral argument, both sides made clear that the corrected names revolves around an earlier filed lawsuit, Bonner County Case No. CV 09 0198. It remains unclear why Terry-Lee sought relief from the District Court in this regard, because the Recorder’s Office in Bonner County would have been in the best position to assist him. *See Lincoln County v. Twin Falls North Side Land & Water Co.*, 23 Idaho 433, 130 P. 788 (1913). Thereafter, Terry-Lee filed a “Motion for an Order for Acknowledgement and Adjudged as to the True and Correct Owner(s) of Tax Parcel #'s\_\_\_\_\_).” No Notice of Hearing appears in the record for this motion. To the extent Terry-Lee’s Motion for Immediate Summary Judgment is in response to defendants’ motions to dismiss, it nevertheless does not set forth any

facts which would entitle him to the relief he seeks. Terry-Lee has not replied to defendants' motions in regards to the Court lacking personal jurisdiction over defendants, the process being insufficient or the service of process having been insufficient.

**B. Dismissal Pursuant to I.R.C.P. 12(b)(4) (“insufficiency of process”) and I.R.C.P. 12(b)(5) (“insufficiency of service of process”).**

The Supreme Court in *Herrera* wrote:

An objection under Rule 12(b)(4) concerns the form of the process rather than the manner or method of its service. Technically, therefore, a Rule 12(b)(4) motion is proper only to challenge noncompliance with the provisions of Rule 4(b) or any applicable provision incorporated by Rule 4(b) that deals specifically with the content of the summons. A Rule 12(b)(5) motion is the proper vehicle for challenging the mode of delivery of the summons and complaint.

146 Idaho 674, 679, 201 P.3d 647, 652 quoting *U.S. v. Hafner*, 421 F.Supp.2d 1220, 1223 n. 3. (Dist.N.D. 2006) (quoting 5A WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE, § 1353, pp. 334-35 (3d ed. 2004)); *Richardson v. Alliance Tire & Rubber Co., Ltd.*, 158 F.R.D. 475, 477 (Dist.Kan. 1994)). Service of process is the due process mechanism vesting a court with jurisdiction over a person. *McGlooin v. Gwynn*, 140 Idaho 727, 730, 100 P.3d 621, 624 (2004). “Process constructively served by way of publication in a local newspaper is not, by itself, a reliable method of advising interested parties that their rights are before the courts.” *Herrera*, 146 Idaho 674, 681, 201 P.3d 647, 654. In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652 (1950), the Court wrote:

Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the reach of the newspaper’s normal circulation the odds that the information will never reach him are large indeed.

339 U.S. 306, 315 70 S.Ct. 652, 657. In Idaho, service by publication is available where

the requirements of I.R.C.P. 4(b)(3) and 4(e)(1) are met. Service by publication requires that the person sought to be served: reside outside Idaho, departed from Idaho, cannot be found in Idaho after due diligence, conceal themselves from service, are a foreign corporation with no agent in Idaho, or are unknown to the plaintiff. I.C. § 5-508. Where:

such facts appear by affidavit to the satisfaction of the court in which the suit is pending, and it also appears by the verified complaint on file that a cause of action exists against defendant in respect to whom the service is to be made, and that he is a necessary or proper party to the action, the court may make an order for the publication of the summons personal service is impossible or impracticable.

I.C. § 5-508. Here, there is no ROA indicating that a summons has been issued. There is no motion or affidavit in the file, nor is the complaint in this matter a verified complaint. As such, there is no Order of this Court permitting service by publication at all, much less permitting Terry-Lee to serve defendants in a newspaper designated to be most likely to give notice to defendants. I.C. § 5-509. It appears that Terry-Lee simply decided to publish a summons in the Bonner County Bee without following the procedures listed in I.R.C.P. 4 or I.C. § 5-508.

Clearly, because Terry-Lee did not have the summon issued appropriately by the Bonner County Clerk, the form of the process was improper pursuant to I.R.C.P. 4 and dismissal under Rule 12(b)(4) is proper. Additionally, Terry-Lee did not seek an Order of this Court to serve defendants by publication pursuant to I.C. §§ 5-508, 509. And finally, no evidence is before the Court that Terry-Lee mailed a copy of the complaint and summons (which, in turn would be impossible since no summons was issued) to the last known address of defendants most likely to provide them notice pursuant to I.R.C.P. 4(e)(1). Thus, dismissal under Rule 12(b)(5) would also be proper.

As counsel for defendants correctly pointed out at oral argument, Terry-Lee could

have brought a compulsory counterclaim in Bonner County Case No. CV 2009-0198 to rectify the name issue, but he did not. In any event, it is Terry-Lee's failure to follow I.R.C.P. 4 or I.C. § 5-508 which results in this Court granting defendant's motion to dismiss.

**IV. CONCLUSION AND ORDER.**

For the reasons stated above, this Court must grant defendants motion to dismiss and deny Terry-Lee's motion for immediate summary judgment.

IT IS HEREBY ORDERED defendants' Motion to Dismiss Pursuant to I.R.C.P. 12(b) is GRANTED, and Terry-Lee's Motion for Immediate Summary Judgment is DENIED.

Entered this 24<sup>th</sup> day of March, 2010.

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John T. Mitchell, District Judge

**Certificate of Service**

I certify that on the \_\_\_\_\_ day of March, 2010, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

**Lawyer**  
John Finney

**Fax #**  
208 263-8211

**Lawyer**  
Terry-Lee  
c/o [box 1084]  
Loon-Lake, non-domestic  
Washington state, dejure  
(address certified at oral argument by Terry-Lee  
would result in delivery to Terry-Lee)

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Jeanne Clausen, Deputy Clerk