

RECEIVED

MAY 29 2012

DAVIS, WRIGHT, TREMAINE

IN THE CIRCUIT COURT OF THE STATE OF OREGON
COUNTY OF DESCHUTES

In the Matter of the Marriage of

SAM S. IMEL,

Petitioner,

and

VICKI LYNN IMEL,

Respondent.

Case No. 11DS0724

ORDER RE SUFFICIENCY OF SERVICE
BY PUBLICATION

This matter came before the Court on May 11, 2012 regarding the sufficiency of Petitioner's service of summons by publication in *The Source Weekly*. Petitioner was represented by Fred Kowolowski. Intervenor Lay It Out, Inc., dba *The Source Weekly* ("Source" hereafter) was represented by Anna Helton. Intervenor Western Communications, Inc., dba *The Bulletin* ("Bulletin" hereafter) was represented by Duane A. Bosworth. Respondent has not made an appearance.

1 Petitioner was granted a court order that directed summons be served on
2 Respondent by publication in a newspaper published in Deschutes County, Oregon.
3 ORCP 7D(6)(c) provides that "[a]n order for publication shall direct publication to be
4 made in a newspaper of general circulation in the county where the action is
5 commenced or, if there is no such newspaper, then in a newspaper to be designated as
6 most likely to give notice to the person to be served." ORS 193.020(1) further provides
7 that any public notice of any description shall be published in a newspaper as defined in
8 ORS 193.010. Petitioner filed proof of publication in the Source. The Court *sua sponte*
9 questioned the sufficiency of the publication and allowed the Source and Bulletin to
10 intervene.
11

12 The publication of legal notices in newspapers is governed by ORS 193.010 *et*
13 *seq.* ORS 193.010 defines "newspaper" as follows:

14 "(2) "Newspaper" means a newspaper of general circulation,
15 published in the English language for the dissemination of local or
16 transmitted news or for the dissemination of legal news, made up of at
17 least four pages of at least five columns each, with type matter of a depth
18 of at least 14 inches, or, if small pages, then comprising an equivalent
19 amount of type matter, which has bona fide subscribers representing more
20 than half of the total distribution of copies circulated, or distribution verified
21 by an independent circulation auditing firm, and regularly and
22 uninterrupted published at least once a week during a period of at least
23 12 consecutive months immediately preceding the first publication of the
24 public notice."

25 A "bona fide subscriber" is a paid subscriber for twelve uninterrupted months with no
more than six months in arrears. ORS 193.010(1).

 The crux of this matter is the phrase within ORS 193.010(2) as follows:

 ". . . a newspaper of general circulation . . . which has bona fide
subscribers representing more than half of the total distribution of copies
circulated, or distribution verified by an independent circulation auditing
firm . . ."

1 The Bulletin's position is that a newspaper must have paid subscribers representing
2 more than half of the total distribution, and the paid subscribers are quantified in one of
3 two ways. The first part of the clause which precedes ", or" allows for confirmation via a
4 paid subscription statement. The second clause following the comma allows for
5 confirmation via an independent circulation audit.

6 The Source argues that there are two separate and distinct ways to be
7 considered a newspaper eligible to publish legal notices. It must either (1) distribute
8 more than half of every issue to paying subscribers¹ or (2) have its distribution verified
9 by an independent circulation auditing firm.

10 When there are several provisions or particulars in a statute, ORS 174.010
11 requires the court to adopt such construction as will give effect to all. Interpreting the
12 relevant language in the manner proposed by the Source would result in a clause that is
13 incomplete and has no effect. The first clause adequately sets forth a standard that can
14 be quantified, *i.e.* does the newspaper have bona fide (paid) subscribers representing
15 more than half of the total distribution of copies circulated. The second portion,
16 however, does not similarly set a quantifiable measure to determine if a standard has
17 been met. This phrase requires only that distribution is verified by an independent
18 auditing firm. It does not include any type of measure to evaluate the sufficiency of the
19 distribution or a minimum number or percentage of distribution. The only measure
20 contained in the statute is in the first portion of the clause which references "half" of
21 "bona fide subscribers." This Court has no authority to insert what may have been
22 omitted in the second portion of the clause. ORS 174.010.

23
24
25 ¹ The Source Weekly is a free publication with no paying subscribers.

1 This statutory construction is consistent with the purpose of the statute. ORCP
2 7D(1) requires service of summons in a manner "reasonably calculated . . . to apprise
3 the defendant of the existence and pendency of the action and to afford a reasonable
4 opportunity to appear and defend." ORS 193.020 further exemplifies this intent by
5 requiring, when there is more than one option, that legal notice be published in the
6 newspaper considered "the most effective for providing actual notice." ORS 193.020(4).
7 The existence of a certain percentage of paid subscribers increases the likelihood that
8 legal notices are read by as many affected people as possible.

9 This Court did not find it necessary to consider the legislative history to make a
10 decision on this matter. The historical documents provided by intervenors were
11 addressed in legal arguments and summarily reviewed by the Court. The decision in
12 this case is consistent with the apparent legislative intent to add the second clause to
13 allow verification of paid subscribers by audit.

14 This Court finds that the Source does not meet the definition of "newspaper" for
15 purposes of publication of legal notices. ORS 193.010(2); ORS 193.020. The service
16 of summons in this case is legally insufficient.

17 DATED this 24 day of May, 2012.

18
19 
20 Alta J. Brady
21 Circuit Court Judge
22
23
24
25

STATE OF OREGON)
) ss. CERTIFICATE OF MAILING
COUNTY OF DESCHUTES)

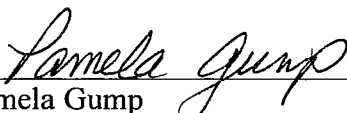
I, Pamela Gump, Judicial Assistant to Alta J. Brady, Judge of the Circuit Court, Bend, Oregon, hereby certify that I mailed copies of the foregoing ORDER RE SUFFICIENCY OF SERVICE BY PUBLICATION to the parties hereinbelow named, by placing such copies in an envelope, with postage thereon fully prepaid, addressed to said parties at their respective addresses, and depositing said envelopes in the United States mail at Bend, Oregon, this 24th day of May, 2012, said parties being:

Fred Kowoloski
Attorney for Petitioner
PO Box 667
Redmond OR 97756

Ann Helton
Attorney for Intervenor, Lay It Out, Inc
360 SW Bond Street, Suite 400
Bend OR 97702

Duane Bosworth
Attorney for Intervenor, Western Communications, Inc.
1300 SW Fifth Avenue, Suite 2300
Portland OR 97201

Dated at Bend, Oregon, this 24th day of May, 2012.



Pamela Gump
Judicial Assistant to Alta J. Brady