

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF OREGON

Talitha Lacey Combs, aka Talitha Lacey Randall, an individual,
Plaintiff-Appellant,
Petitioner on Review,

v.

The Hartford Insurance, a corporation,
Defendant,

and

Urban Restaurant Group, a corporation; Gordon Hotel Restaurant, LLC, aka Gordon Tavern, a limited liability company; Mark Byrum, an individual, in his official capacity as Chief Executive Officer of Urban Restaurant Group; Shayla Swanson, an individual, in her capacity as General Manager of Gordon Tavern; and Jacob Hinrichs, an individual, in his official capacity as Lead Chef of the Gordon Tavern,
Defendants-Respondents,
Respondents on Review.

Oregon Court of Appeals
A182807

S071914

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.



Meagan A. Flynn
Chief Justice, Supreme Court
July 03, 2025

c: Talitha Lacey Combs

Randall P Sutton

Garrett T Urrutia

ORDER DENYING REVIEW

Appellate Court Administrator, Appellate Court Records Section

1163 State Street, Salem, Oregon 97301-2563

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APPENDIX B

FILED: March 12, 2025

This is a nonprecedential memorandum opinion pursuant to ORAP 10.30 and may not be cited except as provided in ORAP 10.30(1).

IN THE COURT OF APPEALS OF THE STATE OF OREGON

TALITHA LACEY COMBS, aka Talitha Lacey Randall, an individual,
Plaintiff-Appellant,

v.

THE HARTFORD INSURANCE, a corporation,
Defendant,

and

URBAN RESTAURANT GROUP, a corporation; GORDAN HOTEL RESTAURANT,
LLC, aka Gordon Tavern, a limited liability company; MARK BYRUM, an individual, in
his official capacity as Chief Executive Officer of Urban Restaurant Group; SHAYLA
SWANSON, an individual, in her capacity as General Manager of Gordon Tavern; and
JACOB HINRICHES, an individual, in his official capacity as Lead Chef of
the Gordon Tavern,
Defendants-Respondents.

Lane County Circuit Court
23CV23520

A182807

Michelle P. Bassi, Judge.

Submitted on October 18, 2024.

Talitha L. Combs filed the briefs *pro se*.

Garrett T. Urrutia, Daniel S. Reynolds, Randall P. Sutton, and Saalfeld Griggs, PC, filed
the brief for respondents.

Before Shorr, Presiding Judge, Powers, Judge, and Pagán, Judge.

SHORR, P. J.

Affirmed.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondents

No costs allowed.
 Costs allowed, payable by Appellant.

1 SHORR, P. J.

2 Plaintiff, appearing self-represented at all relevant times, appeals from a
3 trial court judgment that dismissed for insufficient service of process her complaint
4 against multiple defendants. In a single assignment of error, plaintiff argues that the trial
5 court erred in dismissing her complaint because service was adequate under ORCP 7
6 D(1). She contends that service was reasonably calculated, under the totality of the
7 circumstances, to apprise defendants of the action. We disagree, and therefore affirm.

8 We recount only the undisputed facts necessary to give context to our
9 decision. Plaintiff filed a complaint on June 13, 2023, against Urban Restaurant Group,
10 Gordon Hotel Restaurant, LLC, Mark Byrum, Shayla Swanson, and Jacob Hinrichs
11 (collectively, defendants).¹ In the days before filing the complaint, plaintiff left a
12 handwritten notice of intent to sue and a "true copy of the original complaint" with the
13 bartender on duty at the Gordon Hotel. After filing the complaint, plaintiff filed
14 certificates of service claiming to have made various attempts at service on defendants
15 via email, first-class mail, and "snail mail."² According to the certificates of service,
16 several of those attempts were for service of only a summons without a complaint.

17 On July 17, 2023, plaintiff filed a motion for order of default against all

¹ Plaintiff filed an amended complaint on June 29, 2023, which added Hartford Insurance as a defendant. The trial court dismissed all claims against Hartford Insurance, and plaintiff does not appeal that judgment.

² Plaintiff's certificates of service often referred to "snail mail," which we assume is a colloquial reference to traditional United States Post Office first-class mail.

1 defendants for failure to appear, which the trial court denied, finding that plaintiff "ha[d]
2 failed to serve any Defendants." On July 28, 2023, plaintiff received a response via email
3 from Michael Gottlieb, informing her that defendants had retained defense counsel to
4 defend against her claims. On August 7, 2023, plaintiff moved the court to allow service
5 by email on all defendants. The court denied the motion, noting that plaintiff "fail[ed] to
6 establish why service is not possible under any method pursuant to ORCP 7 and how the
7 proposed alternative method of service is reasonably calculated to apprise defendants of
8 the action." On August 15, 2023, plaintiff filed a notice of intent to move again for order
9 of default, for the same reason as her first motion. In response, on August 25, 2023,
10 defendants filed a motion to dismiss for insufficiency of service, pursuant to ORCP 21
11 A(1)(e), alleging that, as of the date of the motion, plaintiff had not properly served any
12 of the defendants. The trial court held a hearing on defendants' motion on October 9,
13 2023. Subsequently, the court granted by order defendants' motion to dismiss and
14 entered a judgment dismissing plaintiff's complaint, which, notably, was marked "without
15 prejudice." Plaintiff appeals.

16 "Whether service was sufficient presents a question of law." *Hoeck v.*
17 *Schwabe, Williamson & Wyatt*, 149 Or App 607, 615, 945 P2d 534 (1997). We assess
18 the adequacy of service following a two-step methodology. *Davis Wright Tremaine, LLP*
19 *v. Menken*, 181 Or App 332, 337, 45 P3d 983 (2002). First, if service was made
20 according to one of the methods described in ORCP 7 D(2) and permitted for use upon
21 the particular defendant by ORCP 7 D(3), then "service is presumptively adequate." *Id.*

1 If service is not presumptively adequate, the court moves to the second step of the
2 analysis and considers whether the manner of service employed by plaintiff satisfies the
3 reasonable notice standard set forth in ORCP 7 D(1). *Id.* ORCP 7 D(1) provides that
4 summons "shall be served * * * in any manner reasonably calculated, under all the
5 circumstances, to apprise the defendant of the existence and pendency of the action and
6 to afford a reasonable opportunity to appear and defend." ORCP 7 D(1). "ORCP 7 D(1)
7 focuses not on the defendant's subjective notice but, instead, on whether the plaintiff's
8 conduct was objectively, reasonably calculated to achieve the necessary end." *Davis*
9 *Wright Tremaine*, 181 Or App at 339.

10 Plaintiff's attempts at service consisted of (1) personal delivery, before
11 filing suit, of various documents to the bartender at the Gordon Hotel, (2) service via
12 email; and (3) service via mail to some of the defendants. Plaintiff concedes that she did
13 not effectuate presumptively adequate service. Therefore, the only issue is whether
14 plaintiff's attempts at service were reasonably calculated under the totality of the
15 circumstances to apprise defendants of the action. For the following reasons, we
16 conclude that they were not.

17 With respect to plaintiff's hand-delivery of documents to the bartender prior
18 to filing suit, plaintiff cites no legal authority suggesting that attempted service prior to
19 filing a lawsuit can constitute reasonable notice. Indeed, there can be no summons until
20 after the action is commenced. *See* ORCP 7 B (stating that at any time "after the action is
21 commenced," a plaintiff may issue and deliver the summons). Plaintiff also does not

1 contend that the documents she attempted to serve were a true copy of both the summons
2 and complaint. *See* ORCP 7 D(1), (2) (requiring service of both the summons and
3 complaint). Furthermore, plaintiff asserted no reliable indication, other than her own
4 subjective belief, that the bartender was authorized to accept service or would deliver the
5 documents to defendants. *See* ORCP 7 D(1) (authorizing service either upon a defendant
6 or on an agent authorized to receive service for the defendant); *Stull v. Hoke*, 153 Or App
7 261, 271, 957 P2d 173, *rev den*, 327 Or 621 (1998) (service was not "reasonably
8 calculated" to apprise the defendant of the action where the plaintiff left the complaint
9 and summons with an unauthorized person at the defendant's office without any inquiry
10 into or assurance of delivery).

11 Plaintiff's attempted service on defendants via email, first-class mail, and
12 "snail mail" similarly fail to meet the standard articulated in ORCP 7 D(1). In several of
13 those attempts, plaintiff neglected to include a true copy of both the summons and
14 complaint. *See* ORCP 7 D(1), (2) (requiring service of both). With respect to email
15 service, plaintiff states no legal basis in support of her argument that such service is
16 reasonably calculated to apprise defendants of the action. With respect to mail service,
17 plaintiff acknowledges that she did not attempt to serve defendants via "certified,
18 registered, or express mail with return receipt requested." ORCP 7 D(2)(d)(i). We have
19 previously held that, "as a general rule, service by mail on an individual must be by
20 restricted delivery--*i.e.*, only the person being served can either accept or refuse the
21 mailing--to satisfy the reasonable notice standard of ORCP 7 D(1)." *Davis Wright*

1 *Tremaine*, 181 Or App at 341. Outside of that general rule, plaintiff fails to establish that
2 any of her service methods provided "some more particularized assurance or
3 confirmation of delivery to the defendant * * * sufficient to satisfy ORCP 7 D(1)." *Id.* at
4 343. Nor does any eventual response by defendant suffice to establish adequate service.
5 *Id.* at 338-39 ("[L]egally, under Oregon's sufficiency of service rules and related
6 jurisprudence, actual notice is, essentially, irrelevant."). In sum, we conclude that
7 plaintiff's various efforts at service, whether viewed individually or in combination, were
8 not reasonably calculated to apprise defendants of the action against them.

9 Finally, we reject plaintiff's argument that, under ORCP 7 G, we must
10 disregard any error in service because any such error did not materially prejudice
11 defendants' substantive rights.³ ORCP 7 G provides that a court shall disregard errors in
12 service "[i]f service is made in any manner complying with [ORCP 7] D(1)." ORCP 7 G.
13 "[A]pplication of Rule 7 G is dependent on there first being adequate service." *Pham v.*
14 *Faber*, 152 Or App 634, 641, 955 P2d 257, *rev den*, 327 Or 484 (1998). Here, service
15 was not reasonably calculated to apprise defendant of the action, and therefore ORCP 7 G
16 is inapplicable. *Murphy v. Price*, 131 Or App 693, 699, 886 P2d 1047 (1994), *rev den*,

³ ORCP 7 G provides in relevant part:

"The court shall disregard any error in the content of a summons that does not materially prejudice the substantive rights of the party against whom the summons was issued. If service is made in any manner complying with subsection D(1) of this rule, the court shall also disregard any error in the service of a summons that does not violate the due process rights of the party against whom the summons was issued."

1 321 Or 137 (1995). We conclude that the trial court did not err when it dismissed
2 plaintiff's claims against defendants.

3 Affirmed.

**Additional material
from this filing is
available in the
Clerk's Office.**