

**SUMMARY STATEMENT**  
*Daun Brereton v. Brandon Marian*  
Docket No. 49174

In this case arising out of Kootenai County, the Court of Appeals vacated a judgment dismissing Daun Brereton’s complaint for personal injury and remanded for further proceedings. Brereton’s process server attempted service on Brandon Marian at an address listed on a collision report. On the fifth attempt, the process server was informed that Marian owned the home but did not reside there. Among other efforts, the process server attempted service at three other addresses on seven occasions. Ultimately, Marian was served 222 days after the complaint was filed.

Marian moved to dismiss Brereton’s complaint based on untimely service. Marian averred that he had resided at the address where the process server initially attempted service. Marian also averred that one of his co-residents said she recalled answering the door and informing a person that Marian “may be at [his] parents’ house” and “to just come back later.” Brereton asserted that there was good cause for the delay and that Marian was estopped from asserting untimely service. At the hearing on the motion, Brereton moved to strike the co-resident’s statements regarding what she said to the person at the door. The district court granted the motion to dismiss. Brereton moved for reconsideration and renewed his motion to strike. The district court denied Brereton’s motion for reconsideration and entered a judgment dismissing his complaint. Brereton appealed.

On appeal, Brereton argued that the district court erred by failing to strike the co-resident’s hearsay statements. Brereton also argued there was good cause for his failure to timely serve Marian and that he should be estopped from asserting untimely service. The Court of Appeals held that Brereton failed to obtain an adverse ruling on his motion to strike and, thus, the issue was not preserved for appeal. The Court of Appeals also held that the district court erred in granting the motion to dismiss because, construing all the disputed facts and inferences in Brereton’s favor, there was a genuine issue of material fact regarding whether there was good cause for the untimely service. The Court of Appeals further held that neither equitable estoppel nor quasi-estoppel barred Marian from asserting untimely service.

*This summary constitutes no part of the opinion of the Court, but has been prepared  
by court staff for the convenience of the public.*