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**IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LINN**

In the Matter of:	)	
	)	
KYLA MAZHARY-CLARK,	)	Case No. 19DR03123
	)	
Petitioner,	)	
	)	RESPONDENT’S HEARING
and	)	MEMORANDUM RE MOTION
	)	TO SET ASIDE JUDGMENT
JAMIE CLARK,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
KENNETH CLARK,	)	
	)	
Respondent.	)	
_____	)	

**ISSUE TO BE RESOLVED**

Should the Court set aside the Order of Default entered herein on June 25, 2019, and the General Judgment of Psychological Parent Custody (ORS 109.119) entered herein on August 14, 2019?

**FACTUAL BACKGROUND OF CASE**

Sage Clark was born in June 2016, and Sadie Clark was born in July 2017. The children were born to Jamie Clark (Respondent/Mother) and Kenneth Clark. The Clarks stipulated to a

1 General Judgment of Dissolution of Marriage in August of the year 2017, and a judgment was  
2 filed in the Circuit Court of Benton County, Oregon, on August 24, 2017. That judgment  
3 awarded custody of the children to Mother and did not award any parenting time to the children's  
4 father.

5 The children lived in Oregon with Mother until they moved with Mother to Champaign,  
6 Illinois, in January 2018. In the early months of 2017, Mother lived in an apartment with  
7 Petitioner. In April 2017, however, Petitioner moved out of the apartment. Commencing in  
8 January 2018, the children lived with Mother in Illinois for a period of 10 months, until  
9 November 5, 2018. At the end of October 2018, Mother requested the assistance of Petitioner in  
10 helping her move herself and the children back to Oregon. On November 5, 2018, the children  
11 flew to from Illinois to Oregon with Petitioner with the understanding that Mother would follow  
12 to Oregon after packing and having a friend drive her to Oregon with a U-Haul truck. While in  
13 Illinois, and at the insistence of Petitioner, Mother signed a power of attorney (that Petitioner  
14 refers to as "guardianship paperwork"). Petitioner advised Mother the paperwork was necessary  
15 for Petitioner to take the children on the airplane and to allow Petitioner to provide temporary  
16 care for the children.

17 When Mother returned to Oregon, within approximately 10 days of putting the children  
18 on an airplane with Petitioner, Petitioner advised Mother that she had "legal guardianship of the  
19 children" and that Mother would have to follow Petitioner's rules regarding Mother's contact  
20 with the children. Petitioner was a law student and worked for a law firm at that time and told  
21 Mother Petitioner had "legal guardianship" and was then in control of the children. (Exhibit 3 –  
22 Depo. Transcript, p. 33). Petitioner is now an attorney in the state of Oregon. (Exhibit 3 - Depo.  
23 Transcript, p. 4). Mother believed Petitioner when she told her that she had legal guardianship of

1 the children and had control of the children. At the present time, Mother has requested  
2 production from Petitioner of the “guardianship” documents she signed. Petitioner testified,  
3 during depositions in this matter, that she had the documents. Those documents were produced  
4 to my office at 12:34 p.m. today, Friday, the last judicial day before our hearing on Monday  
5 morning.

6 Believing that Petitioner had legal guardianship of Mother’s children, Mother cooperated  
7 with Petitioner in scheduling visits with her own children during the months of December 2018  
8 and January 2019. Petitioner allowed Mother a schedule of what was roughly alternating  
9 weekend visits. Mother complied with the visits Petitioner allowed. Mother did not understand  
10 that the “guardianship” was a simple power of attorney that did not in any way restrict Mother’s  
11 parental rights.

12 Mother became frustrated with the control being exerted by Petitioner and decided to do  
13 some research regarding the legal guardianship Petitioner alleged she held. Mother found there  
14 were no legal proceedings regarding her children pending in Illinois or Oregon. On February 4,  
15 2019, after Mother retrieved the children from Petitioner for a visit, Mother advised Petitioner  
16 that she had deceived her into believing she had legal control of her children and that she would  
17 not be returning the children to Petitioner. (Exhibit 3 – Depo. Transcript, pp. 36 and 37).  
18 Petitioner drove to Mother’s residence, attempted to enter Mother’s residence without  
19 permission, pounded on Mother’s door, and demanded the return of Mother’s children alleging  
20 she had legal guardianship of the children and they would have to be returned. (Exhibit 3 –  
21 Depo. Transcript, pp. 38 and 39). Mother called the Albany Police Department. The police  
22 officer involved advised Petitioner that unless she had legal care of the children she would need  
23 to leave. The police officer finally told Petitioner she was trespassed from Petitioner’s property.

1 (Exhibit 3 – Depo. Transcript, pp. 39 and 40). To protect herself from Petitioner’s manipulative  
2 and aggressive behavior, Mother moved from her residence and hid from Petitioner for  
3 approximately nine months.

4 Petitioner would have the Court believe that she never advised Mother that she had legal  
5 control over Mother’s children, that Mother was always aware the “guardianship” could be  
6 revoked at any moment, and that Mother was allowing Petitioner to have some control over the  
7 children because Mother believed it was best for the children. However, in the Declaration of  
8 Petitioner that Petitioner filed with the Court on June 25, 2021 (*See* Exhibit 1, p. 87-117),  
9 Petitioner attached as "Exhibit 3" (*See* Exhibit 1, p. 102) a text message she sent to Mother on  
10 February 5, 2019, the day Mother took her children back from Petitioner. That text message  
11 states,

12 Here is the paperwork we signed. I have also attached the website (that I  
13 sent you in the past) which explains that, for the type of guardianship I  
14 have, you do not need to go to court. I will see you at 6:00 p.m.  
15

16 Petitioner was clearly intimating that she had the legal right to have the children back in her care  
17 at 6:00 p.m., even though Mother disagreed that she was required to return the children. Mother  
18 responded to Petitioner’s demanding text message with a text message stating,

19 Ok, so you sent that to my old email account the new one is  
20 [Oregon.pixie@gmail.com](mailto:Oregon.pixie@gmail.com) but I’m glad it came through. Aside from the  
21 fact that in Oregon you need filed paperwork to take temporary  
22 guardianship the website you are going off of states that a parent can end  
23 the guardianship at any time so we are done with this conversation. Do  
24 not show up or I will call the police, if you want to continue to attempt to  
25 take my children from me you need to file the paperwork so we have  
26 something to work with . . . otherwise you are not a legal temporary  
27 guardian and need to no contact me again. And as I stated, the paperwork  
28 expires November 4<sup>th</sup> of 2019 if not before then and needs to be filed to be  
29 valid. Have a good night. (*See* Exhibit 1, p. 104).  
30

1 During Petitioner’s deposition, on April 28, 2022, Petitioner admitted that she and Mother were  
2 in a dispute about whether the “guardianship” was enforceable against her. (Exhibit 3 – Depo.  
3 Transcript, pp. 108 and 109). In that dispute, of course, Petitioner was telling Mother the  
4 “guardianship” was enforceable against her.

5 Ten days after being trespassed by a police officer from Mother’s residence, on February  
6 14, 2019, Petitioner filed a petition with the Linn County Circuit Court requesting psychological  
7 parent custody of the children pursuant to ORS 109.119. (Exhibit 3 – Depo. Transcript, p. 40).  
8 Together with her petition, Petitioner filed a Motion for Temporary Protective Order of Restraint  
9 (Ex-Parte). Petitioner falsely reported in her Petition for Psychological Parent Custody and  
10 Affidavit in Support of Application and Temporary Protective Order of Restraint that the  
11 children had lived with her from November 4, 2018, to the date of filing the paperwork. She  
12 failed to advise the Court that the children had lived with Mother from February 4, 2019, until  
13 she filed her paperwork with the Court on February 14, 2019. (Exhibit 3 – Depo. Transcript, p.  
14 24, 25, 26, 40, 41 and 56). In her Affidavit in Support of Application and Temporary Protective  
15 Order of Restraint, Petitioner advised the Court that she provided care to the children throughout  
16 2017. Petitioner and Mother did live together in the early months of 2017. However, in April  
17 2017, Petitioner moved out of the apartment. Petitioner did not have care of the children again  
18 until she assisted Mother in returning with the children to Oregon, on November 5, 2018.

19 In her Affidavit in Support of Application and Temporary Protective Order of Restraint,  
20 Petitioner advised the Court that she taught the children sign language. The children are not deaf  
21 and do not use sign language. (Exhibit 3 – Depo. Transcript, pp. 90 and 91). As with most  
22 young children, Mother taught the children a few phrases by sign language to help them

1 communicate. The children were age 1 and 2, when Petitioner filed the petition. (Exhibit 3 –  
2 Depo. Transcript, pp. 88-90).

3 In her Affidavit in Support of Application and Temporary Protective Order of Restraint,  
4 Petitioner advised the Court that before the children were in her care the children bounced  
5 around to different addresses with their Mother and were placed in foster care for a period of  
6 time. The children were not “bounced around” and the children were never in foster care.

7 In her Affidavit in Support of Application and Temporary Protective Order of Restraint,  
8 Petitioner advised the Court that Mother had to leave Illinois because she was being evicted from  
9 an apartment. Mother was not being evicted from an apartment.

10 In her Affidavit in Support of Application and Temporary Protective Order of Restraint,  
11 Petitioner advised the Court that since Mother returned to Oregon Mother had exercised sporadic  
12 parenting time, that she was disinterested in the children, and that Petitioner had regularly  
13 attempted to facilitate time between Mother and the children by having the minor children  
14 regularly call Mother and offer parenting time to Mother. Mother had been led to believe  
15 Petitioner had legal guardianship of her children, Petitioner had controlled Mother’s time with  
16 her own children, and when Mother realized what was happening, she took the children back.  
17 Prior to realizing that she was not subject to Petitioner’s control, Mother had exercised regular  
18 parenting time with the children as allowed by Petitioner and was never disinterested in the  
19 children. (Exhibit 3 – Depo. Transcript, pp. 44 and 45). During her deposition on April 28,  
20 2022, Petitioner testified that she has notes of the parenting time exercised by Mother. Mother  
21 requested production of the notes and they have not been produced, unless they are in the  
22 hundreds of pages I received at 12:34 p.m. today, Friday, the last judicial day before the hearing  
23 on Monday morning.

PAGE 6 RESPONDENT’S HEARING MEMORANDUM

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1 In provision 5 of her Petition for Psychological Parent Custody, Petitioner advised the  
2 Court that she acquired “guardianship of the minor children in November 2018,” and that since  
3 November 2018 she had been the children’s “sole care provider.” Petitioner, however, did not  
4 have guardianship of the children in the legal sense. Petitioner had been given a simple  
5 unnotarized power of attorney that was subject to Mother’s legal authority. (Exhibit 3 – Depo.  
6 Transcript, pp. 42 and 43).

7 In provision 5 of her Petition for Psychological Parent Custody, Petitioner advised the  
8 Court that she was the “aunt to the minor children.” Petitioner and Mother have the same last  
9 name “Clark,” but that is purely by coincidence. They are not related. Petitioner is not the  
10 children’s aunt. (Exhibit 3 – Depo. Transcript, p. 43).

11 Mother continued to have custody and care of the children after February 4, 2019, when  
12 she had obtained them with the assistance of the Albany Police Department. In November 2019,  
13 9 months after Mother had resecured the care of her children, Petitioner contacted Mother  
14 through a friend. Petitioner apologized for what had happened and convinced Mother that she  
15 truly was sorry and wanted to be friends.

16 In December 2019, Mother agreed to allow Petitioner to have the children for two months  
17 (January and February 2020) while she dealt with a situation involving a stalker. When asked  
18 how Mother could trust Petitioner, Petitioner assured Mother that Mother had not signed  
19 anything this time so there was no way she could keep the children from her. Petitioner did not  
20 tell Mother that she had obtained custody of her children and Mother did not know that Petitioner  
21 had obtained custody of her children. (Exhibit 3 – Depo. Transcript, p. 49). When Mother  
22 attempted to retrieve the children from Petitioner, Petitioner refused to respond to telephone  
23 calls, text messages, or Mother knocking at her door. Mother called the police and they

1 responded. Petitioner showed the police the judgment she had obtained in this proceeding. That  
2 was the first time Mother was aware any paperwork had been filed by Petitioner.

3 Mother felt helpless to obtain the return of her children and did not have the financial  
4 means to obtain counsel to advise her regarding her rights. On June 11, 2021, Mother filed a  
5 Motion for Order to Vacate Order of Default herein. Mother is not an attorney and did not know  
6 of the requirement to file a Response to the Petition filed by Petitioner. ORCP 71 does not make  
7 this requirement altogether clear, stating “A motion for reasons (a), (b), and (c) shall be  
8 accompanied by a pleading or motion under Rule 21 A which contains an assertion of a claim or  
9 defense.” On October 2, 2021, Mother filed a second Motion for Order to Vacate Order of  
10 Default. Again, Mother failed to file a Response to the Petition filed by Petitioner.

11 Petitioner failed to accomplish service of process on Respondent. ORCP 7D(3) states  
12 that service is to be made upon “an individual defendant, by personal delivery of true copies of  
13 the summons and the complaint to the defendant or other person authorized by appointment or  
14 law to receive service of summons on behalf of the defendant, by substituted service, or by office  
15 service.” If the person is neither a minor nor incapacitated person, service can also be made by  
16 mailing by first class mail together with mailing by any of the following: certified, registered, or  
17 express mail with return receipt requested provided the defendant signs a receipt for the certified,  
18 registered, or express mailing. ORCP 7D(3) and ORCP 7D(2)(d)(i).

19 The above-listed methods are to be used for service on an individual unless the Court  
20 allows service by other method pursuant to ORCP 7D(6). ORCP 7D(6) allows alternative means  
21 of service “[w]hen it appears that service is not possible under any method otherwise specified in  
22 these rules or other rule or statute.” The party must file with the court a motion supported by an  
23 affidavit or declaration to request a discretionary court order to allow alternative service by any



1 method or combination of methods that, under the circumstances, is most reasonably calculated  
2 to apprise the defendant of the existence and pendency of the action. If the plaintiff knows or  
3 with reasonable diligence can ascertain the defendant's current address, the plaintiff must mail  
4 true copies of the summons and the complaint to the defendant at that address by first class mail  
5 and any of the following: certified, registered, or express mail, return receipt requested. If the  
6 plaintiff does not know, and with reasonable diligence cannot ascertain, the current address of  
7 any defendant, the plaintiff must mail true copies of the summons and the complaint by the  
8 methods specified above to the defendant at the defendant's last known address. If the plaintiff  
9 does not know, and with reasonable diligence cannot ascertain, the defendant's current and last  
10 known address, a mailing of copies of the summons and complaint is not required.

11 Certainly, posting copies of the summons and petition on a board in the Linn County  
12 Courthouse is not the means of service, under the circumstances, that was most reasonably  
13 calculated to apprise Mother of the existence and pendency of this action. Petitioner made no  
14 effort in the affidavit she filed with the Court on April 23, 2019, to explain why posting was the  
15 method most reasonably calculated to apprise Mother of the existence and pendency of this  
16 action, except to state, "I am attempting to serve both Respondents in this matter and I am unable  
17 to afford the cost to publish the summons in a newspaper in both Linn and Lane County."  
18 During her deposition on April 28, 2022, Petitioner testified the cost of publishing in a  
19 newspaper was approximately \$200.00. (Exhibit 3 – Depo. Transcript, p. 64). This is not much  
20 more, and I expect in many cases less than the cost charged by a process server. Petitioner's lack  
21 of ability to afford publication in a newspaper does not have anything to do with whether posting  
22 is the method most reasonably calculated to apprise Mother of the existence and pendency of this  
23 action. The cost of publication is irrelevant. The Court should also note that Petitioner

PAGE 9 RESPONDENT'S HEARING MEMORANDUM

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1 apparently believed publication would be necessary in Linn and Lane County and failed to  
2 advise the Court of the cost of publication. During her deposition, on April 28, 2022, Petitioner  
3 agreed that if she couldn't serve Mother personally, the next best means of service would be to  
4 tell mother on the telephone and that posting on social media platforms would also be a good  
5 means of service. (Exhibit 3 – Depo. Transcript, p. 61).

6 It is apparent from the Affidavit of Attempted Service signed by Shawn W. Blehm that  
7 Mr. Blehm was able to make contact with Mother. Mr. Blehm's affidavit states, "I attempted to  
8 call Ms. Clark to attempt to meet her in person but she would not disclose her location or agree  
9 to meet." Mr. Blehm did not state whether he advised Mother that he intended to serve her with  
10 legal paperwork regarding the custody of her children. Neither did Mr. Blehm state whether he  
11 texted Mother regarding his intention to serve her with legal paperwork regarding the custody of  
12 her children. Petitioner also was able to make contact with Mother. Petitioner's affidavit states,  
13 "I have attempted to contact Ms. Clark, and her fiancé, Kayla Turvey, but have received no  
14 response besides 'Stop contacting me.'" Petitioner did not state whether she advised Mother that  
15 she intended to serve her with legal paperwork regarding the custody of her children. Neither  
16 did Petitioner state whether she texted Mother regarding her intention to serve her with legal  
17 paperwork regarding the custody of her children. During her deposition on April 28, 2022,  
18 Petitioner admitted that she did not, and did not have any other person call Mother, text Mother,  
19 or post to Mother's social media sites notice of her having filed a petition for custody of  
20 Mother's children or requesting Mother's address. (Exhibit 3 – Depo. Transcript, pp. 56-58, 64  
21 and 65). Neither did Petitioner, nor did she have any other person on her behalf call Mother's  
22 significant other, text Mother's significant other, or post to Mother's significant other's social  
23 media sites notice of having filed a petition for custody of Mother's children or requesting

1 Mother's address. (Exhibit 3 – Depo. Transcript, p. 59 and 65). Neither did Petitioner or Mr.  
2 Blehm state whether they had texted a copy of a Summons and the Petition filed in these  
3 proceedings. That is because they had not done so. Neither did Petitioner or Mr. Blehm state  
4 whether they had posted a copy of a Summons and the Petition filed in these proceedings on  
5 Mother's social media sites. That is because they had not done so. Neither did Petitioner put on  
6 any evidence of her efforts to contact Mother through family or friends, or through the normal  
7 methods of contacting telephone and utility providers. (Exhibit 3 – Depo. Transcript, pp. 58).

8 Having obtained the Court's permission to serve Mother by alternative means, Petitioner  
9 then failed to complete service on Mother. Petitioner failed to mail a Summons and the Petition  
10 to Mother at her last known address by first class mail and by either certified, registered, or  
11 express mail with return receipt requested. (Exhibit 3 – Depo. Transcript, pp. 66 and 67).

12 The relief granted in the default General Judgment language varies significantly from the  
13 relief requested in the Petition filed herein. Paragraph 6 of the Petition for Psychological Parent  
14 Custody filed by Petitioner states that Mother should be awarded "parenting time with the  
15 children as is reasonable under the circumstances." It appears a judgment was filed with the  
16 Court not allowing for any parenting time with Mother: The Court sent Petitioner a Notice of  
17 Problems with Documents on August 8, 2019, stating "A motion for judgment in lieu of hearing  
18 and a declaration stating why no parenting time for the mother is reasonable under the  
19 circumstances needs to be submitted."

20 In response to the Court's notice, Petitioner filed a Motion for Entry of Judgment  
21 Without a Hearing and a Declaration of Petitioner. Without any evidence to support her  
22 allegations and without serving Mother with the paperwork making the allegations, Petitioner  
23 states,

1 Respondent Jamie Clark has mental health issues which are not currently  
2 being treated and which limit her ability to safely care for Sage and  
3 Sadie. Prior to me obtaining guardianship of Sage and Sadie, the children  
4 were previously put in foster care in Illinois based on Jamie Clark's  
5 mental health issues, abuse and neglect of the children and inability to  
6 protect the children from abuse and neglect from her romantic partners.  
7 Additionally, there is an open DHS investigation regarding Jamie's  
8 ability to safely parent Sage and Sadie. Jamie Clark has failed to remedy  
9 factors which placed the children in danger. I do not believe Jamie Clark  
10 should have parenting time with Sage and Sadie until such time as she  
11 undergoes an independent psychiatric or psychological evaluation to  
12 determine if she is suicidal, homicidal, or has any diagnosable mental  
13 health, psychological, or psychiatric issues that could impair her ability to  
14 parent or have supervised parenting time with Sage and Sadie.  
15

16 None of the above-stated allegations are true, including, but not limited to the allegations  
17 that Respondent had mental health issues that were not being treated, that the children had been  
18 in foster care in Illinois, and that Mother needs a psychological evaluation to determine whether  
19 she is suicidal, homicidal, or has other mental health issues. (Exhibit 3 – Depo. Transcript, pp.  
20 68). The “open DHS investigation” appears to have been Petitioner's interpretation of her  
21 having called DHS to report concerns regarding the minor children. (Exhibit 3 – Depo.  
22 Transcript, pp. 74 and 75.

23 In the Declaration of Petitioner that Petitioner filed with the Court in support of her  
24 proposed form of General Judgment, Petitioner did not advise the Court that she had not seen the  
25 children in six months. During her deposition, on April 28, 2022, when asked why she did not so  
26 advise the Court, Petitioner responded, “I don't know.” (Exhibit 3 – Depo. Transcript, p. 76).  
27 Petitioner did not think it would have been an important thing to advise the Court. (Exhibit 3 –  
28 Depo. Transcript, p. 77). Petitioner had no valid information, at the time she filed her  
29 Declaration of Petitioner in support of her Proposed form of General Judgment, that Mother was  
30 suicidal or homicidal. During her deposition, on April 28, 2022, Petitioner testified that she

1 included that language because “[i]t’s part of the standard language” of cases she had viewed  
2 “[o]n eCourt.” (Exhibit 3 – Depo. Transcript, p. 78).

3 Petitioner went on to set forth further findings of fact in the General Judgment that did  
4 not match the language of the Petition:

- 5 • Paragraph (2)(g)(3) states “Respondent Jamie Clark has unreasonably denied contact  
6 between Petitioner and the minor children since the filing of this action.” **Mother did  
7 not even know about the filing of this action and was protecting her children from  
8 the manipulative behavior or Petitioner in lying to her about the effect of the  
9 unnotarized “guardianship” documents she had signed.**
- 10 • Paragraph (2)(g)(4) states “Petitioner has fostered and encouraged a relationship between  
11 the minor children and Respondent Jamie Clark when appropriate and safe for the minor  
12 children.” **Petitioner was not in a position to foster and encourage a relationship  
13 between the minor children and Mother. Petitioner had no legal authority over  
14 Mother at any time prior to filing her petition herein and had not had any contact  
15 with Mother between the filing of the petition and the filing of the General  
16 Judgment.**
- 17 • Paragraph (2)(g)(6) states “Respondent Jamie Clark has placed the children in imminent  
18 danger of physical or emotional harm.” **This was information not placed in the  
19 Petition and that Petitioner claims she gleaned from contact with Mother’s  
20 significant other (which puts into question again why Petitioner did not obtain from  
21 Mother’s significant other Mother’s whereabouts for purposes of service) and from  
22 following Mother’s social media postings (which puts into question again why  
23 Petitioner did not notify Mother of the pending lawsuit through social media  
24 postings.**

25 The General Judgment did not award Mother any parenting time, while the Petition  
26 clearly stated Mother should be awarded parenting time until undergoing an independent  
27 psychological evaluation to determine if she is suicidal, homicidal or has any diagnosable mental  
28 health, psychological, or psychiatric issues that could impair her ability to parent or have

1 supervised parenting time with the minor children. See paragraph (3)(b) of the General  
2 Judgment. Paragraphs (3)(c), (3)(d), (3)(e), and (3)(g) of the General Judgment further order  
3 requirements surrounding the psychological evaluation for which Petitioner did not pray in the  
4 Petition and which require all types of mental health and medical disclosures, and simply not  
5 called for. Paragraph (3)(f) of the General Judgment further orders Mother to participate in a  
6 parenting class.

7 Petitioner has taken ownership of Mother's children. She refers to the children as her  
8 children. (Exhibit 3 – Depo. Transcript, pp. 6 and 11). She lists herself as the children's mother  
9 on their school and medical records. (Exhibit 3 – Depo. Transcript, pp. 22 and 23). She believes  
10 she is the children's mother. (Exhibit 3 – Depo. Transcript, p. 23).

11 Mother now has another child that lives with her and the child's father on a full-time  
12 basis. No office of protective services has taken that child from Mother's care. (Exhibit 3 –  
13 Depo. Transcript, p. 95).

14

15

## ARGUMENT

### ORCP 71C and Lack of Jurisdiction

17 Mother's motion to set aside the Default Order and General Judgment are based upon  
18 ORCP 71C because of the "extraordinary circumstances" of the case. *See, Condif v. Priest*, 82  
19 Or.App 115, 727 P.2d 175 (1986). "Extraordinary circumstances typically involve some type of  
20 fraud or overreaching by one of the parties." *Blue Horse v. Sisters of Providence*, 113 Or.App.  
21 82, 86-87, 830 P.2d 611, *rev. den.*, 413 Or. 727, 843 P.2d 454 (1992).

22 Mother's motion is also based upon the argument that the Court lacked jurisdiction to  
23 enter a Default Order and General Judgment herein, because Mother was not served with the

1 documents. A motion alleging a lack of jurisdiction can be raised at any time in a proceeding.  
2 *See MBNA America Bank, N.A. v. Garcia*, 227 Or.App. 202, 203 P.3d 53 (2009); and *Daly and*  
3 *Daly*, 228 Or.App. 134, 206 P.3d 1189 (2009).

4

5 **Petitioner failed to accomplish service of process on Mother, making the Default Order and**  
6 **General Judgment void for lack of jurisdiction; and the Court should dismiss the Default**  
7 **Order and General Judgment.**

8

9 Petitioner failed to accomplish service of process on Mother. Without Mother having  
10 been served with a summons and the pleadings herein, the court did not have jurisdiction over  
11 mother and the Default Order and General Judgment are void. Pursuant to ORCP 71C the  
12 Default Order and General Judgment should be dismissed. *See, Shriners Hospitals for Children*  
13 *v. Cox*, 364 Or. 394, 434 P.3d 422 (2019).

14 ORCP 7D(3) states that service is to be made upon “an individual defendant, by personal  
15 delivery of true copies of the summons and the complaint to the defendant or other person  
16 authorized by appointment or law to receive service of summons on behalf of the defendant, by  
17 substituted service, or by office service.” If the person is neither a minor nor incapacitated  
18 person, service can also be made by mailing by first class mail together with mailing by any of  
19 the following: certified, registered, or express mail with return receipt requested provided the  
20 defendant signs a receipt for the certified, registered, or express mailing. ORCP 7D(3) and  
21 ORCP 7D(2)(d)(i). The above-listed methods are to be used for service on an individual unless  
22 the Court allows service by other method pursuant to ORCP 7D(6).

23 ORCP 7D(6) allows alternative means of service “[w]hen it appears that service is not  
24 possibly under any method otherwise specified in these rules or other rule or statute.” The party  
25 must file with the court a motion supported by an affidavit or declaration to request a court order

1 to allow alternative service by any method or combination of methods that, under the  
2 circumstances, is most reasonably calculated to apprise the defendant of the existence and  
3 pendency of the action. If the plaintiff knows or with reasonable diligence can ascertain the  
4 defendant's current address, the plaintiff must mail true copies of the summons and the  
5 complaint to the defendant at that address by first class mail and any of the following: certified,  
6 registered, or express mail, return receipt requested. If the plaintiff does not know, and with  
7 reasonable diligence cannot ascertain, the current address of any defendant, the plaintiff must  
8 mail true copies of the summons and the complaint by the methods specified above to the  
9 defendant at the defendant's last known address. If the plaintiff does not know, and with  
10 reasonable diligence cannot ascertain, the defendant's current and last known address, a mailing  
11 of copies of the summons and complaint is not required.

12 Service by posting on a board in the Linn County Courthouse should have never been  
13 approved. Certainly, posting copies of the summons and petition on a board in the Linn County  
14 Courthouse is not the means of service, under the circumstances, that was most reasonably  
15 calculated to apprise Mother of the existence and pendency of this action. As set forth above,  
16 Petitioner admitted, during her deposition, that the most reasonable means would have been to  
17 tell Mother on the telephone, followed by posting on Mother's social media platforms.

18 Petitioner made no effort in the affidavit she filed with the Court on April 23, 2019, to  
19 explain why posting, as opposed to publication, was the method most reasonably calculated to  
20 apprise Mother of the existence and pendency of this action, except to state, "I am attempting to  
21 serve both Respondents in this matter and I am unable to afford the cost to publish the summons  
22 in a newspaper in both Linn and Lane County." Petitioner's lack of ability to afford publication  
23 in a newspaper does not have anything to do with whether posting is the method most reasonably



1 calculated to apprise Mother of the existence and pendency of this action. The cost of  
2 publication is irrelevant. During her deposition, Petitioner alleged the cost would have been  
3 approximately \$200.00. Petitioner could not recall which newspapers she had contacted in Linn  
4 and Lane Counties to determine the cost. \$200.00 is, in fact, a modest cost to accomplish service  
5 of documents by publication. Process servers often cost much more than \$200.00 to accomplish  
6 personal service. The Court should also note that Petitioner apparently believed publication  
7 would be necessary in Linn and Lane County and failed to advise the Court of the cost of  
8 publication.

9         Petitioner did not make sufficient efforts to obtain Mother's address for purposes of  
10 accomplishing personal service on Mother. It is apparent from the Affidavit of Attempted  
11 Service signed by Shawn W. Blehm that Mr. Blehm was able to make contact with Mother. Mr.  
12 Blehm's affidavit states, "I attempted to call Ms. Clark to attempt to meet her in person but she  
13 would not disclose her location or agree to meet." Mr. Blehm did not advise Mother that he  
14 intended to serve her with legal paperwork regarding the custody of her children. Neither did  
15 Mr. Blehm text Mother regarding his intention to serve her with legal paperwork regarding the  
16 custody of her children. Petitioner also was able to make contact with Mother. Petitioner's  
17 affidavit states, "I have attempted to contact Ms. Clark, and her fiancé, Kayla Turvey, but have  
18 received no response besides 'Stop contacting me.'" Petitioner did not advise Mother that she  
19 intended to serve her with legal paperwork regarding the custody of her children. Neither did  
20 Petitioner text Mother regarding her intention to serve her with legal paperwork regarding the  
21 custody of her children. Petitioner did not try to locate Mother through family or friends, or  
22 through the standard methods of contacting telephone and utility providers.

1           Neither did Petitioner, Mr. Blehm, or any other person text, email, or post on Mother's  
2 social media platforms a copy of a Summons and the Petition filed in these proceedings. Being  
3 blocked from seeing Mother's or her finance's profiles on social media platforms does not mean  
4 that she is blocked from posting a Summons and copy of the Petition. Neither are other persons  
5 acting on behalf of Petitioner blocked from posting a Summons and copy of the Petition on  
6 Mother's social media platforms.

7           Having obtained the Court's permission to serve Mother by alternative means, Petitioner  
8 then failed to complete service on Mother. Petitioner failed to mail a Summons and the Petition  
9 to Mother at her last known address by first class mail and by either certified, registered, or  
10 express mail with return receipt requested. ORCP 7D(6) states that the mailings "must" be  
11 made. The purposes of the two mailings are to make sure Mother has a chance to receive notice  
12 of the proceeding through forwarded mail, to prove whether or not the mailings were received,  
13 and to perhaps receive a forwarding address back from the US Postal Service.

14           The cases addressing whether a party has been served, even though the party serving the  
15 documents failed to accomplish service pursuant to a method prescribed by ORCP 7, are all  
16 dissimilar to the present case. These cases are considered under what is called the *Baker* analysis  
17 established in the case of *Baker v. Foy*, 310 Or. 221, 797 P.2d 349 (1990). Under *Baker*, the  
18 court must answer two questions. First was the method of service used to serve the defendant  
19 one of the methods identified in ORCP 7D(2) and was it one authorized under ORCP 7D(3) to be  
20 used with the particular type of defendant? *Baker*, 310 Or. At 228, 797 P.2d 349. If so, service  
21 is "presumptively effective." *Id.* at 228-29, 797 P.2d 349. Second, if presumptively adequate  
22 service is rebutted or not accomplished, then the court must determine whether the method of  
23 service was "reasonably calculated, under all the circumstances, to apprise the defendant of the

1 existence and pendency of the action and to afford a reasonable opportunity to appear and  
2 defend.” If the answer to the second question is “yes,” then the service requirement in ORCP  
3 7D(1) is satisfied. *Id.* In each Oregon case decided by the Oregon Court of Appeals or Supreme  
4 Court of Oregon using the *Baker* analysis, there is some evidence that the defendant actually  
5 received notice of the claim or was, at least, likely to receive notice of the claim. *See, River I v.*  
6 *Boesflug*, 312 Or. App. 558, 494 P.3d (980) (2021); *Hoeck v. Schwabe, Williamson & Wyatt*, 945  
7 P.2d 534, 149 Or.App. 607 (1997); *Duber v. Zeitler*, 118 Or.App. 597, 848 P.2d 642 (1993); and  
8 *Callogly v. Calhoon*, 126 Or.App. 366, 869 P.2d 346 (1994). There is no evidence in the present  
9 case that that Mother received notice of the petition filed by Petitioner or was even likely to have  
10 received notice of the petition. The notice was posted on a board in the Linn County  
11 Courthouse. That is all that was done by way of serving Mother. A copy of the Summons and  
12 Petition was not mailed to Mother’s last known address by first class mail and any of the  
13 following: certified, registered, or express mail, return receipt requested. This was required by  
14 ORCP 7D(6) and was not accomplished. Mother or her significant other were not called on the  
15 telephone to be advised of the pending case. Mother or her significant other were not texted or  
16 emailed to be advised of the pending case. Mother or her significant other did not receive a  
17 posting on their social media platforms advising them of the pending case.

18 Mother has done what she could, without the assistance of an attorney, to try to get the  
19 Default Order and General Judgment set aside. She, however, did not realize that she was  
20 required to file a responsive pleading with her motion to set the order and judgment aside. She  
21 also did not understand how to plead and raise the issue that she had not been legally served with  
22 the documents. As soon as Mother could get the money together to hire an attorney, she hired  
23 that attorney and filed the motion to dismiss that is now being heard by the Court.

1 The Order of Default and General Judgment entered herein should be dismissed.

2 **The Court lacked jurisdiction over the children, making the Default Order and General**  
3 **Judgment void for lack of jurisdiction; and the Court should dismiss the Default Order**  
4 **and General Judgment.**  
5

6 At the time Petitioner filed the Petition herein, the Court did not have jurisdiction over  
7 the children pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act. ORS  
8 109.741 (Initial child custody jurisdiction) states,

9 (1) Except as otherwise provided in ORS 109.751 (Temporary emergency jurisdiction), a  
10 court of this state has jurisdiction to make an initial child custody determination only if:

11 (a) This state is the home state of the child on the date of the commencement of  
12 the proceeding, or was the home state of the child within six months before the commencement  
13 of the proceeding and the child is absent from this state but a parent or person acting as a parent  
14 continues to live in this state;

15 (b) A court of another state does not have jurisdiction under subsection (1)(a) of  
16 this section, or a court of the home state of the child has declined to exercise jurisdiction on the  
17 ground that this state is the more appropriate forum under ORS 109.761 (Inconvenient forum) or  
18 109.764 (Jurisdiction declined by reason of conduct), and:

19 (A) The child and the child's parents, or the child and at least one parent or  
20 a person acting as a parent, have a significant connection with this state other than mere physical  
21 presence; and

22 (B) Substantial evidence is available in this state concerning the child's  
23 care, protection, training and personal relationships;

24 (c) All courts having jurisdiction under subsection (1)(a) or (b) of this section  
25 have declined to exercise jurisdiction on the ground that a court of this state is the more

1 appropriate forum to determine the custody of the child under ORS 109.761 (Inconvenient  
2 forum) or 109.764 (Jurisdiction declined by reason of conduct); or

3 (d) No court of any other state would have jurisdiction under the criteria specified  
4 in subsection (1)(a), (b) or (c) of this section.

5 (2) Subsection (1) of this section is the exclusive jurisdictional basis for making a child  
6 custody determination by a court of this state.

7 (3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary  
8 or sufficient to make a child custody determination. [1999 c.649 §13]

9 Sage Clark was born on June 2016 and Sadie Clark was born in July 2017. The children  
10 lived in Oregon, until they moved with Mother to Champaign, Illinois, in January 2018. The  
11 children then lived with Mother in Illinois for a period of 10 months, until November 5, 2018.  
12 On November 5, 2018, the children flew to Oregon with Petitioner with the understanding that  
13 Mother would follow to Oregon after packing and having a friend drive her to Oregon with a U-  
14 Haul truck. Petitioner filed her Petition herein on February 14, 2019, only three months after the  
15 children returned to Oregon. At the time this proceeding was filed, Illinois continued to be the  
16 “home state” of the children and the court did not have jurisdiction to make an initial custody  
17 determination in this state.

18  
19 **The relief granted in the default judgment varies significantly from the relief requested in**  
20 **the petition.**

21  
22 The relief granted in the default General Judgment language varies significantly from the  
23 relief requested in the Petition filed herein. Paragraph 6 of the Petition for Psychological Parent  
24 Custody filed by Petitioner states that Mother should be awarded “parenting time with the  
25 children as is reasonable under the circumstances.” It appears that a proposed form of judgment

1 was filed with the Court not allowing for any parenting time with Mother: The Court sent  
2 Petitioner a Notice of Problems with Documents on August 8, 2019, stating “A motion for  
3 judgment in lieu of hearing and a declaration stating why no parenting time for the mother is  
4 reasonable under the circumstances needs to be submitted.”

5 In response to the Court’s notice, Petitioner filed a Motion for Entry of Judgment  
6 Without a Hearing and a Declaration of Petitioner. Without any evidence to support her  
7 allegations and without serving Mother with the paperwork making the allegations, Petitioner  
8 states,

9 Respondent Jamie Clark has mental health issues which are not currently  
10 being treated and which limit her ability to safely care for Sage and Sadie.  
11 Prior to me obtaining guardianship of Sage and Sadie, the children were  
12 previously put in foster care in Illinois based on Jamie Clark’s mental  
13 health issues, abuse and neglect of the children and inability to protect the  
14 children from abuse and neglect from her romantic partners. Additionally,  
15 there is an open DHS investigation regarding Jamie’s ability to safely  
16 parent Sage and Sadie. Jamie Clark has failed to remedy factors which  
17 placed the children in danger. I do not believe Jamie Clark should have  
18 parenting time with Safe and Sadie until such time as she undergoes an  
19 independent psychiatric or psychological evaluation to determine if she is  
20 suicidal, homicidal, or has any diagnosable mental health, psychological,  
21 or psychiatric issues that could impair her ability to parent or have  
22 supervised parenting time with Sage and Sadie.  
23

24 None of the above-stated allegations are true, including, but not limited to the allegations  
25 that Respondent had mental health issues that were not being treated, that the children had been  
26 in foster care in Illinois, and that Mother needs a psychological evaluation to determine whether  
27 she is suicidal, homicidal, or has other mental health issues.

28 Petitioner went on to set forth further findings of fact in the General Judgment that did  
29 not match the language of the Petition:

- 30 • Paragraph (2)(g)(3) states “Respondent Jamie Clark has unreasonably denied contact  
31 between Petitioner and the minor children since the filing of this action.”

- 1 • Paragraph (2)(g)(4) states “Petitioner has fostered and encouraged a relationship between  
2 the minor children and Respondent Jamie Clark when appropriate and safe for the minor  
3 children.”
- 4 • Paragraph (2)(g)(6) states “Respondent Jamie Clark has placed the children in imminent  
5 danger of physical or emotional harm.”

6 The General Judgment did not award Mother any parenting time, while the Petition  
7 clearly stated Mother should be awarded parenting time. The General Judgment awarded no  
8 parenting time until undergoing an independent psychological evaluation to determine if she is  
9 suicidal, homicidal or has any diagnosable mental health, psychological, or psychiatric issues  
10 that could impair her ability to parent or have supervised parenting time with the minor children.  
11 See paragraph (3)(b) of the General Judgment. Paragraphs (3)(c), (3)(d), (3)(e), and (3)(g) of the  
12 General Judgment further order requirements surrounding the psychological evaluation for which  
13 Petitioner did not pray in the Petition and which require all types of mental health and medical  
14 disclosures, and simply not called for. Paragraph (3)(f) of the General Judgment further orders  
15 Mother to participate in a parenting class.

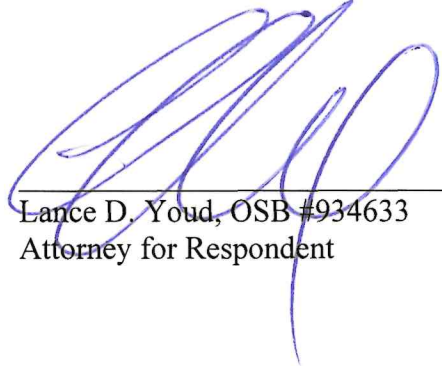
16 Assuming, arguendo, that the Court had jurisdiction over the children pursuant to the  
17 UCCJEA and over the case because of adequate service, the language of the General Judgment  
18 was not reasonably within the language of the Petition filed in the case.

## 19 20 CONCLUSION

21 Petitioner overreached and manipulated Petitioner and this Court throughout the process  
22 of obtaining a Default Order and General Judgment against Mother. This is a case where there  
23 exist “extraordinary circumstances,” pursuant to ORCP 71C, including fraud and overreaching

1 by Petitioner. Mother respectfully requests that the Court set the Default Order and General  
2 Judgment aside, and that the Court award Mother her attorney fees and costs incurred herein,  
3 pursuant to ORS 107.119.

4 Dated this 20<sup>th</sup> day of May 2022.  
5  
6  
7  
8  
9  
10



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Lance D. Youd, OSB #934633  
Attorney for Respondent



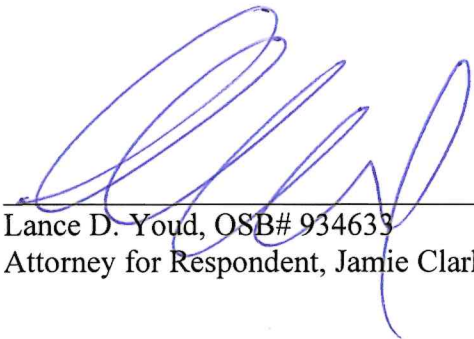
1 CERTIFICATE OF MAILING AND EMAILING  
2 Case No. 19DR03123  
3

4 I hereby certify that I served a true copy of the foregoing "Respondent's Hearing  
5 Memorandum" on the following parties or their agents or their attorneys on the 20<sup>th</sup> day of May  
6 2022, by mailing and emailing to each a true copy thereof, which I hereby certify as such,  
7 addressed to parties or their agents or their attorneys at the last-known address of each shown  
8 below and deposited in the U.S. Post Office on said day at Salem, Oregon.  
9

10 Andrew D. Ivers  
11 Attorney at Law  
12 PO Box 1033  
13 Albany, OR 97321  
14

15 andy@ivers.law  
16

17  
18 Dated this 20th day of May 2022.  
19

20  
21  
22  
23   
24 Lance D. Youd, OSB# 934633  
25 Attorney for Respondent, Jamie Clark  
26  
27