

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

IN THE MATTER OF
KYL A MAZHARY-CLARK

Petitioner,

and

JAMIE CLARK,

Respondent,

and

KENNETH CLARK,

Respondent.

Case No.: 19DR03123

ORDER DENYING RESPONDENT’S
MOTION TO SET ASIDE GENERAL
JUDGMENT OF PSYCHOLOGICAL
PARENT CUSTODY

1.

On the 23rd day May, 2022, Respondent’s Third Motion to Set Aside General Judgment of Psychological Parent Custody came for hearing before the Honorable Rafael A. Caso.

Petitioner was represented by Andrew D. Ivers and personally appeared. Respondent Jamie Clark was represented by Lance Youd and personally appeared. Respondent Kenneth Clark has not made an appearance in this case and was not present for the hearing. The Court having heard the arguments made at said hearing, and being otherwise fully advised, makes the following

FINDINGS OF FACT:

2.

(2)(a) Respondent Jamie Clark was aware of the judgment by March 18th, 2020

(2)(b) Respondent Jamie Clark filed her first motion to vacate on June 24th, 2021.

ORDER DENYING RESPONDENT’S MOTION TO SET ASIDE GENERAL JUDGMENT OF
PSYCHOLOGICAL PARENT CUSTODY - 1

1 (2)(c) Respondent was outside of the one-year limitations of ORCP 71B when she filed
2 her first motion to vacate and subsequent motions to vacate.

3 (2)(d) Petitioner filed with the court the appropriate documentations to allow a court, in
4 its discretion, to review and grant, if appropriate, service by posting.

5 (2)(e) A court reviewed that application with accompanying documentation and granted
6 the motion.

7 (2)(f) Petitioner posted summons and related documents at the Linn County Courthouse
8 pursuant to Judicial Order.

9 (2)(g) A court has reviewed this case two times previously in efforts to vacate the
10 judgment.

11 (2)(h) Respondent Jamie Clark’s current claims for relief have already been litigated.

12 (2)(i) Attached hereto and labeled, “Exhibit 1,” is a copy of Judge Caso’s opinion letter
13 that is incorporated herein by reference as it more fully sets forth.

14 3.

15 Now, therefore, IT IS HEREBY ORDDERED that:

16 (3)(a) Respondent’s Third Motion to Set Aside General Judgment of Psychological
17 Parent Custody is denied.

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20 Rafael A. Caso, Circuit Court Judge

21 ORDER DENYING RESPONDENT’S MOTION TO SET ASIDE GENERAL JUDGMENT OF
22 PSYCHOLOGICAL PARENT CUSTODY - 2

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CERTIFICATE OF READINESS (UTCR 5.100)

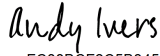
I hereby certify the proposed order is ready for judicial signature because:

- () Each opposing party affected by this order has **stipulated** to or **approved** the order, as shown by the signatures on the order, or by written confirmation sent to me.
- () Service is not required under UTCR 5.100(1)(a)(c) because this order is submitted **ex parte** as allowed by statute or rule; or this order is being submitted in **open court** with all parties present.
- (X) I have served a copy of this order on all parties entitled to service and:
 - () No objection has been served on me.
 - () I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.
 - () After conferring about objections, _____ has agreed to file any remaining objections with the Court.

I certify the proposed order was served on the Respondent’s attorney, Lance Youd, by electronic email, and by mail, on the 6th day of June, 2022, and again on the 9th day of June with Mr. Youd’s edits made.

6/10/2022

DATED this ____ day of June, 2022.

DocuSigned by:

 FC88BCE2C5B345B

Andrew D. Ivers, OSB #050664
 Attorney for Petitioner
 andy@ivers.law

Submitted by:
 Andrew D. Ivers, OSB #050664
 Attorney for Petitioner
 andy@ivers.law

ORDER DENYING RESPONDENT’S MOTION TO SET ASIDE GENERAL JUDGMENT OF PSYCHOLOGICAL PARENT CUSTODY - 3

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CERTIFICATE OF E-SERVICE

STATE OF OREGON)
) ss.
County of Linn)

I, Andrew D. Ivers, hereby certify that I am one of the attorneys for the Petitioner that I served the within ***ORDER DENYING RESPONDEN’S THIRD MOTION TO SET ASIDE GENERAL JUDGMENT OF PSYCHOLOGICAL PARENT CUSTODY*** on Respondent by E-Service to Lance Youd, attorney of record for Respondent, at his email address as recorded on the date of service in the eFiling system.

6/10/2022

DATED this ____ day of June, 2021.

DocuSigned by:
Andy Ivers
FC88BCF2C5B345B...

Andrew D. Ivers, OSB #050664
Attorney for Petitioner
andy@ivers.law



**THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE TWELFTH JUDICIAL DISTRICT**

Rafael A. Caso
Circuit Court Judge

Polk County Courthouse, Room 301
850 Main Street, Dallas, OR 97338-3178

PHONE – (503) 623-3154
FAX – (503) 623-6614

June 2, 2022

Andrew D. Ivers
Law Office of Ivers & Miller
317 W 1st Ave Ste 302
PO Box 1033
Albany, OR 97321

Lance D. Youd
1596 Liberty St. SE
Salem, OR 97302

RE: In the Matter of Mazhary-Clark and Clark; Linn County Case # 19DR03123

Messrs. Ivers and Youd:

This matter came before the court on May 23, 2022, for hearing on a Respondent’s Motion to Set Aside General Judgment of Psychological Parent Custody; and in the alternative Motion for Order to Show Cause Re Modification of Judgment. Prior to the hearing, both Petitioner and Respondent filed hearing memoranda. At the hearing, Petitioner was represented by Andrew Ivers and Respondent, Jamie Clark (herein after “Respondent”) was represented by Lance Youd, Respondent Kenneth Clark has not made an appearance in this case and was not present for the hearing. At the hearing, the court received exhibits, testimony, and heard argument from the Petitioner and Respondent.

History of the Proceedings

Due to the nature of the arguments at hearing, it is important to outline a history of this case leading to its current posture. The Petition for Psychological Parent Custody was filed in Linn County on February 14, 2019. (Ex. 101, pp 1-7). Petitioner filed a Motion for Service by Posting was filed on April 25, 2019. (Ex. 101, pp 18-25) and was GRANTED for both Respondents on the same day. (Ex. 101, pp 34-37). Petitioner filed a Motion for Order of Default against both Kenneth Clark and



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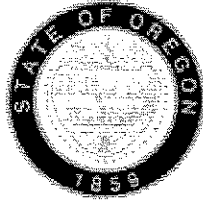
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Respondent on June 24, 2019. (Ex. 101, pp 39-44). Default was GRANTED on June 25, 2019. (Ex. 101, pp 45-50). Proof of Posting was filed on July 18, 2019. (Ex. 101, p 52). On August 9, 2019, Petitioner filed a Motion for Entry of Judgment Without Hearing. (Ex. 101, pp 54-56). The court entered a General Judgment on August 15, 2019. (Ex. 101, p 57). Respondent filed her first Motion for Order to Vacate Order of Default on June 24, 2021. (Ex. 101, pp 58-83). Petitioner Objected on June 25, 2021. (Ex. 101, pp 84-119). The Honorable Judge Kane DENIED Respondent's Motion to Vacate Order of Default without explanation on June 25, 2021. (Ex. 101, pp 120-121). On October 2, 2021, Respondent filed her second (2nd) Motion to Vacate Order of Default. (Ex. 101, pp 122-152). Petitioner Objected to the Respondent's second Motion to Vacate Order of Default on October 14, 2021. (Ex. 101, pp 153-191). The Honorable Judge McHill DENIED Respondent's second Motion to Vacate Default without explanation on October 14, 2021. (Ex. 101, pp 192-193). On January 5, 2022, Respondent filed her third (3rd) motion to vacate the default judge in its current form: Motion to Set Aside General Judgment of Psychological Parent Custody; and in the alternative Motion for Order to Show Cause Re Modification of Judgment.

ORCP 71B

Provisions within ORCP 71B require a challenging party to file a motion to vacate due to, among other allegations, fraud within a reasonable time but no more than one (1) year from the judgment. In the instant case the General Judgment was entered on Aug 15, 2019. Without doubt, Respondent was aware of the judgment by March 18, 2020. Respondent filed her first motion to vacate on June 24, 2021. Respondent was outside the one-year limitation when she filed her first motion to vacate and all subsequent motions to vacate.



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ORCP 71C

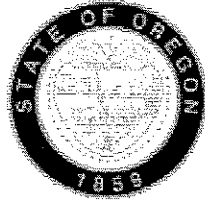
Provisions within ORCP 71C provide “This rule does not limit the inherent power of a court to modify a judgment within a reasonable time, of the power of a court to entertain an independent action to relieve a party from a judgment, or the power of a court to grant relief to a defendant under Rule 7D(6)(d), or the power of a court to set aside a judgment for fraud upon the court.”

Void

There is no timeliness requirement for moving to set aside a void judgment. *Hutchins v. Fargo*, 188 Or App 462 (2003). Even though courts have sometimes described a default judgment entered without personal jurisdiction or proper service as “void” they have long recognized that a party may be estopped from seeking to set the judgment aside. *Shriners Hospital for Children v. Cox*, 364 Or 394, 402 (2019) (citing *Restatement (Second) of Judgments* § 66). Petitioner filed with the court the appropriate documentation to allow a court, in its discretion, to review and grant if appropriate service by posting. A court reviewed that application with accompanying documentation and granted the motion. Petitioner posted the Summons and related documents at the Linn County Circuit Court Courthouse pursuant to Judicial Order. The incident case differs from others, in that a court previously reviewed the request for service by posting. Subsequent to that ruling, a court has reviewed this case two (2) times previously in efforts to vacate the judgment.

Under the *law of the case doctrine*, it would be inappropriate for this court to sit in review of another judge’s decision regarding the appropriateness of the motion for alternate form of service. Respondent filed two (2) prior motions to set aside the default judgment before filing the current motion.

Respondent’s current claims for relief have already been litigated, all be it without the assistance of



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counsel. Under the *law of the case doctrine*, it would be equally inappropriate for this court to till the field of this argument a third time.

For the above reasons, this court DENIES Respondent's third (3rd) Motion to Set Aside General Judgment of Psychological Parent Custody. Mr. Ivers, please prepare an Order denying Respondent's motion.

Sincerely,

Rafael A. Caso
Circuit Court Judge