

**FILED**  
**Court of Appeals**  
**Division III**  
**State of Washington**  
**6/11/2020 3:39 PM**

**FILED**  
**SUPREME COURT**  
**STATE OF WASHINGTON**  
**6/12/2020**  
**BY SUSAN L. CARLSON**  
**CLERK**

98651-7

COA No. 368220 - III

---

**SUPREME COURT**  
**OF THE STATE OF WASHINGTON**

---

JENS RICHTER, as an individual d/b/a GLOBAL EQUINE SIRES  
and A-1 PERFORMANCE SIRES, Plaintiff/Appellant/Petitioner

vs.

ALLIE HELINSKI and BRENT HELINSKI, individually and the  
marital community thereof,  
Defendants/Respondents

---

**PETITION FOR REVIEW**

---

CHAD FREEBOURN  
WSBA #35624  
ROBERTS | FREEBOURN, PLLC  
1325 W. 1<sup>st</sup> Ave., Suite 303  
Spokane, Washington 99201  
(509) 381-5262  
Attorney for Petitioner

**TABLE OF CONTENTS**

	<u>Page</u>
<u>TABLE OF CONTENTS</u> .....	i
<u>TABLE OF AUTHORITIES</u> .....	ii, iii
I. <u>IDENTITY OF PETITIONER</u> .....	1
II. <u>CITATION TO COURT OF APPEALS DECISION</u> .....	1
III. <u>ISSUES PRESENTED FOR REVIEW</u> .....	1
IV. <u>STATEMENT OF THE CASE</u> .....	2
V. <u>ARGUMENT</u> .....	11
A. Standard of Review.....	11
B. Division III disregards the Supreme Court Test in <i>White v. Holm</i> Requiring a Showing of Inadvertence, Mistake, Surprise or Excusable Neglect to Gain Relief from a Default Judgment.....	12
C. Division III Decision renders the requirement to formally appear and answer meaningless, which is in direct conflict with the Supreme Court’s holding in <u>Morin v. Burris</u> .....	17
VI. <u>CONCLUSION</u> .....	18

## TABLE OF AUTHORITIES

	<u>Page</u>
<u>Akhavuz v. Moody</u> 178 Wash. App. 526, 538-539, 315 P.3d 572 (2013) .....	15
<u>Beckman v. Dep't of Social &amp; Health Servs.</u> 102 Wash. App. 687, 11 P.3d 313 (2000).....	16
<u>Berger v. Dishman Dodge, Inc.</u> 50 Wash. App. 309, 312, 748 P.2d 241 (1987).....	14
<u>Braam v. State</u> 150 Wash.2d 689, 706, 81 P.3d 851 (2003).....	11
<u>Commercial Courier Service, Inc. v. Miller</u> 13 Wash. App. 98, 106, 533 P.2d 852 (1975).....	17
<u>DeCaro v. Spokane County</u> 198 Wash. App. 638, 645, 394 P.3d 1042 (2017).....	15
<u>Griggs v. Averbeck Realty, Inc.,</u> 92 Wash.2d 576, , 582, 599 P.2d 1289 (1979).....	13
<u>Ha v. Signal Ele., Inc.</u> 182 Wash. App. 436, 322 P.3d 991 (2014).....	14
<u>Johnson v. Cash Store</u> 116 Wash. App. 833, 848 (2003).....	15, 16
<u>Little v. King</u> 160 Wash.2d. 696, 703, 161 P.3d 345 (2007).....	13
<u>Morin v. Burris</u> 160 Wash2d 745, 757, 161 P.3d 956 (2007).....	10, 17
<u>Priest v. Am. Bankers Life Assurance Co.</u> 79 Wash. App. 93, 900 P.2d 595 (1995).....	16

<u>Richter v. Helinski</u>	
368220 -III, 2020 WL 2392586 (Wash. Ct. App. May 12, 2020).....	12
<u>Rivers v. Washington State Conference of Mason Contractors</u>	
145 Wash.2d 674, 679, 41 P.3d 1175 (2002) .....	13
<u>Rosander v. Nightrunners Transport, LTD.</u>	
147 Wash.App. 392, 407, 196 P.3d 711 (2008).....	13, 16
<u>Showalter v. Wild Oats</u>	
124 Wash. App. 506, 510, 101 P.3d 867 (2004).....	14
<u>TMT Bear Creek Shopping Ctr., Inc. v. Petco Animal Supplies, Inc.</u>	
140 Wash.App. 191, 212, 165 P.3d 1271 (2007).....	13, 16
<u>White v. Holm</u>	
73 Wash.2d 348, 35-52, 438 P.2d 581 (1968).....	1, 10, 12, 14
<u>Yeck v. Dep't of Labor &amp; Indus.</u>	
27 Wash2d 92, 95, 176 P.2d 359 (1947).....	11

## **I. IDENTITY OF PETITIONER**

The Petitioner is Jens Richter, as an individual d/b/a Global Equine Sires and A-1 Performance Sires. Petitioner is the Plaintiff in the Spokane County Superior Court, and Appellant in Division III Court of Appeals. Petitioner obtained an order of default and a default judgment against the Respondents as a result of the Respondents failing to appear, answer or otherwise defend the lawsuit filed by Petitioner. Respondents were granted relief from the default orders and default judgment by the trial court upon motion of Respondents new counsel. Petitioner appealed the trial court's decision, and Division III upheld the trial court's decision to vacate the default orders and default judgment against Respondents.

## **II. CITATION TO COURT OF APPEAL'S DECISION**

Petitioner seeks review of *Jens Richter, an individual d/b/a Global Equine Sires and A-1 Performance Sires v. Allie Helinski and Brent Helinski*, 36822-0-III, 2020 WL 2392585, May 12, 2020, hereafter "Decision."

## **III. ISSUES PRESENTED FOR REVIEW**

1. Whether Division III disregarded the Supreme Court test in *White v. Holm* requiring a showing of mistake, inadvertence, surprise or excusable neglect to get relief from a default judgment.

2. Whether Division III disregarded the Supreme Court's holding that there is no informal appearance doctrine in Washington State.

#### IV. STATEMENT OF THE CASE

##### A. Background:

Petitioner Jens Richter ("Richter") owns and operates Global Equine Sires ("Global") and A-1 Performance Sires ("A-1"), which is in the business of selling high-end horse semen online to customers. CP 4-6. On June 3, 2016, Richter, who already owned Global, purchased A-1 from Respondent Allie Helinski. CP 48; 55. Per the parties' agreement, Ms. Helinski continued to work as an independent contractor for Richter selling horse semen and would receive 10% from each sale she made. CP 49. After purchasing A-1 from Ms. Helinski, Richter maintained a semen inventory with Ms. Helinski in the State of Washington. CP 48-51.

In August of 2018, Richter was contacted by customers of A-1 who had purchased semen through Ms. Helinski with numerous complaints. CP 5. Richter received complaints from A-1 customers including: (1) the customers were being charged for semen that they did not order; (2) customers were being sent empty straws containing no semen; (3) customers were sent ineffective semen straws; and (4) customers were being charged and were not being sent any semen at all. CP 49. Richter had no knowledge of these transactions being made by

Ms. Helinski, he did not receive the orders, and he did not receive the corresponding payments. CP 5. Ms. Helinski was using Richter's business, A-1, to make these unauthorized sales, was keeping the money, and not providing the corresponding product to the customers. CP 3-11; 48-51; 57-64; 68-70.

Ms. Helinski maintained a cryogenic tank housing a large inventory of frozen straws containing horse semen for Richter on her property in Washington State. CP 49-51. Richter made several requests for Ms. Helinski to return the tank in her possession, and she failed to return the tank to Richter. CP 49-51. The total value of horse semen inventory contained in the tank possessed by Ms. Helinski is \$295,550.00. CP 50; 66.

As a result of the customer complaints as stated above, and because Ms. Helinski refused to return Richter's tank containing his horse semen inventory, Richter filed suit against Ms. Helinski and her husband, Brent Helinski, in Spokane County Superior Court. CP 1-11. Richter's lawsuit seeks damages as well as an injunction for injunctive relief. CP 1-11.

**B. Superior Court Procedural History**

On August 20, 2018, Richter caused a cease and desist letter to be personally served on Ms. Helinski. CP 211-212. On August 29, 2018,

Richter filed a Summons and Complaint against the Respondents in Spokane County Superior Court. CP 1-11. On August 31, 2018, Ms. Helinski was personally served with the Summons and Complaint. CP 13. On September 14, 2018, Richter caused a letter to be sent to Ms. Helinski demanding the return of the tank in her possession containing Richter's horse semen. CP 216. The letter demanding Ms. Helinski return the tank to Richter was sent six days prior to the answer to the lawsuit being due. CP 216. The demand letter also indicated the intent to file for an injunction to prevent further unauthorized sales and that further legal action would be taken to obtain Richter's property from Ms. Helinski if no response was received by the end of business on September 21, 2018. CP 216. Ms. Helinski never responded to Richter's demand letter.

On September 24, 2108, after receiving neither a response to his demand letter, nor a notice of appearance or answer from Ms. Helinski to the lawsuit, Richter caused an order of default to be entered against Ms. Helinski without notice. CP 225-226. On September 26, 2018, Brent Helinski was personally served with a copy of the Summons and Complaint. CP 24. On October 5, 2018, 12-days after the order of default was entered against Ms. Helinski, attorney Robert Sargent left a voicemail for Richter's attorney, Chad Freebourn, indicating he was hired by Ms. Helinski. CP 206; 225-226. Because Mr. Freebourn was busy preparing



for three trials, he never returned Mr. Sargent's voicemail. CP 206. Mr. Freebourn did not intentionally avoid speaking to Mr. Sargent. CP 206.

Unbeknownst to counsel for Richter, on or about September 15, 2018, Ms. Helinski had met with and apparently hired attorney Robert Sargent to defend her against the claims asserted in Richter's lawsuit. CP 142. At no time after Mr. Sargent met with Ms. Helinski did Mr. Sargent ever formally appear, answer or defend the lawsuit. CP 206-207; RP 20, ln. 10-14. On October 17, 2018, after neither Respondents had appeared, answered or otherwise tried to defend the lawsuit, and second order of default was entered against Mr. Helinski. CP 222-223.

Between October 22, 2018, and October 25, 2018, almost a month after the first default order was entered against Ms. Helinski, and after the second default order was entered against Mr. Helinski, Mr. Sargent appeared at the office of Richter's counsel and left a business card. CP 207. On October 26, 2018, attorney Victoria Johnston, co-counsel for Richter, had a telephone discussion with Mr. Sargent regarding the lawsuit wherein Mr. Sargent indicated he was helping a friend. CP 194-195; 199. Ms. Johnston was familiar with Mr. Sargent during her time working as a public defender for Spokane County, and did not have an understanding Mr. Sargent was privately practicing civil law because Mr. Sargent had been a prosecutor. CP 195. Ms. Johnston informed Mr. Sargent that

Richter wanted the tank containing his horse semen inventory in Ms. Helinski's possession returned as soon as possible. CP 195.

After speaking with Mr. Sargent on October 26, 2018, Ms. Johnston was unsure who Mr. Sargent was representing in the lawsuit, therefore she sent Mr. Sargent an email on October 30, 2018. CP 195; 203. In Ms. Johnston's October 30, 2018, email, she requested, "*please clarify who you represent in this matter.*" CP 203. Mr. Sargent replied to Ms. Johnston's email the same day and indicated he would get back to Ms. Johnston later that same day or the next morning. CP 203. After sending this response email, Mr. Sargent never made contact with Richter's counsel again. CP 207. At no time, did Mr. Sargent ever file a notice of appearance, an answer, or provide any indication in writing that he was representing either or both of the Respondents. The record shows that Respondents never inquired as to the status of their case for several months. CP 142.

On January 23, 2019, 85-days after Mr. Sargent's last contact with Richter's counsel, Richter was left with no choice but to file a motion for entry of default judgment and note a reasonableness hearing. CP 37-39; 85-87. On February 22, 2019, a reasonableness hearing was held before the trial court to establish the damages for entry of default judgment. CP 91-96. The trial court minutes from the reasonableness hearing notes the

Respondents were paged, were not present, and were not represented by counsel. CP 96.

At the February 22, 2019, reasonableness hearing, Richter provided the trial court with evidence of the unauthorized sales. CP 57-64; 68; 70. The evidence showed that Ms. Helinski had received money from unauthorized sales, failed to provide the product to customers, and provided fraudulent straws to customers. Id. Richter also provided the trial court with the inventory list still in Ms. Helinski's possession. CP 66. Richter also testified that as a direct result of Ms. Helinski's continued unauthorized sales and customer complaints, Richter was forced to shut down A-1, in an effort to prevent further damage. CP 50.

At the February 22, 2019, reasonableness hearing Richter testified and presented evidence showing damages in the amount of \$373,891.00, which included an award of attorneys' fees and costs of \$9,270.00. CP 48-84. Based on the evidence and testimony presented, the trial court entered a judgment against Ms. Helinski in the amount of \$373,891.00. CP 92-95.

On March 8, 2019, Richter filed an "Application for Writ of Garnishment" and "Application of Garnishment for Financial Institution." CP 97-103. On March 12, 2019, Richter began to execute his judgment, which caused Respondents to appear in this lawsuit for the first time. CP

104-110. On April 25, 2019, Respondents appeared in this action for the first time through new counsel by filing motion to set aside the default orders and have the judgment vacated. CP 111-113. In support of their motion, Respondents submitted a memorandum and declarations. CP 114-168. Richter submitted his response to Respondents' motion, which included a memorandum, declarations, and evidence supporting his judgment. CP 169-231.

On May 10, 2019, a hearing was held before the trial court on Respondents' motion to set aside the default orders and vacate the default judgment. CP 243-244. At the conclusion of the hearing, the trial court issued an order vacating the default orders and judgment. CP 243-244. In making its decision, the trial court found it was undisputed that Mr. Sargent did not file a notice of appearance and did not formally appear in the lawsuit. RP 20, ln. 10-14. The trial court also concluded that Mr. Sargent had not done enough to substantially comply with court rules, such that notice requirements must be met prior to entry of default. RP 23, ln. 6-15.

The trial court then applied the White factors to determine whether the judgment should be vacated. RP 23. With regard to the first White factor, whether there is at least a prima facie defense, the trial court found there was at least a prima facie defense to the lawsuit based solely upon

the self-serving statements provided by Ms. Helinski in her declaration. RP 24-25. Examining the second White factor, whether there was a mistake, inadvertence, surprise, or excusable neglect, the trial court concluded the Respondents could not meet this factor because Mr. Sargent did not comply with the court rules and do what he was obligated to do as a lawyer. RP 25, ln. 3-10. The trial court never specifically found the Respondents satisfied the second White factor. RP 24-26. The trial court ultimately concluded that based on the preferred policy of having a case decided on the merits as opposed to a default, the default orders and judgment should be vacated. RP 25-26.

As a result of the trial court's decision to set aside the default orders and vacate the default judgment, Richter appealed the trial court's decision to the Court of Appeals, Division III.

**C. Division III Decision.**

On May 12, 2020, Division III issued a decision upholding the trial court's decision to set aside the default orders and vacate the default judgment. To justify the trial court's decision, Division III disregarded the Respondents' failure to show the failure to appear and defend was the result of a mistake or misunderstanding, and only consider the fact Ms. Helinski had met with Mr. Sargent prior to the answer to the lawsuit being due. Division III never considered whether the Respondents had managed

to inquire as to the status of their lawsuit in the six months between the default order and the default judgment being obtained by Richter. Division III came to the conclusion that Ms. Helinski was blameless and that was all that was necessary to justify relief from the default judgement.

By upholding the trial court's decision, Division III has disregarded the test set forth in the Supreme Court's decision in White v. Holm, 73 Wash.2d 348 (1968), requiring that a party show mistake, inadvertence, surprise, or excusable neglect to get relief from a default judgment. White v. Holm, 73 Wash.2d 348, 352 (1968). The Decision has created a new standard where despite a party failing to show mistake, inadvertence, surprise, or excusable neglect, a party may be granted relief from a default judgment by simply showing their attorney or insurer was responsible for the failure to appear. This is not the correct standard, and under this ruling there will be no occasion where a default judgment would be proper where a defendant shows a lawyer was hired.

Division III's Decision also renders the requirement to formally appear and answer meaningless, which is in direct conflict with the Supreme Court's holding in Morin v. Burris, 160 Wash.2d 745, 161 P.3d 956 (2007). Division III's ruling stands for the proposition that so long as a defendant hires a lawyer and does nothing more, a default judgment may be vacated in the event none of the formal rules of procedure requiring an

appearance and answer are followed. Prior case law granting relief to a defendant required a showing of at least mistake or some sort misunderstanding by a representative, agent or lawyer to justify relief from the default judgment. In this case, there are no facts or evidence in the record showing the failure to appear and defend the lawsuit was the result of a mistake or misunderstanding. The facts and evidence in the record show nothing more than neglect or a willful disregard for court rules and procedure.

Because Division III's Decision is in direct conflict with prior Supreme Court decisions and decisions of other Appellate Court, which affect the public interest, the Washington Supreme Court should accept review.

## V. ARGUMENT

### A. Standard of Review.

A trial court's decision to vacate a default judgment is reviewed for abuse of discretion. Yeck v. Dep't of Labor & Indus., 27 Wash.2d 92, 95, 176 P.2d 359 (1947). A trial court abuses its discretion if it makes a decision based on untenable ground or for untenable reasons. Braam v. State, 150 Wash.2d 689, 706, 81 P.3d 851 (2003).

**B. The Decision Disregards the Supreme Court Test in *White v. Holm* Requiring a Showing of Inadvertence, Mistake, Surprise or Excusable Neglect to Gain Relief from a Default Judgment.**

The Decision recognizes that the trial court did not find the failure to appear, answer or otherwise defend the lawsuit was the result of a mistake, inadvertence, surprise or excusable neglect. Richter v. Helinski, 2020 WL 2392586 \* 3-4. In fact, the Decision recognizes the trial court found to the contrary. Id. As stated in the Decision, “*The trial court ruled that, assuming we look only to the behavior of Robert Sargent, Allie Helinski did not show mistake, inadvertence, surprise or excusable neglect.*” Id. at \*7. Further, there was no evidence or argument presented by Respondents that Mr. Sargent’s failure to appear, answer or defend the lawsuit was the result of some sort of mistake or misunderstanding regarding the defense of the case.

Rather than applying the established case law, Division III focused on Allie Helinski’s conduct individually and completely ignored the conduct of her lawyer Mr. Sargent. Id. at \*8. Focusing solely on the conduct of Ms. Helinski, Division III found she was without fault and affirmed the trial court’s decision to vacate Richter’s default judgment. Id. Division III supported its decision by citing to case law, largely focusing on the failure of an insurer to establish a legal defense for its insured because of a mistake or misunderstanding. Id. “*Therefore we*



*discern no reason to differentiate between a blameless defendant receiving relief from the inexcusable neglect of her insurance company and the faultless defendant getting relief from the inexcusable neglect of her attorney.” Id.*

The Decision seems to recognize an innocent insured doctrine as a general rule to grant relief from a default judgment, which does not exist in the State of Washington. 178 Wash. App. 526, 534-535, 315 P.3d 572, 576 (2013). “*What is just and proper must be determined by the facts of each case, not by hard and fast rule application to all situations regardless of the outcome.*” *Id.*, citing Little v. King, 160 Wash.2d 696, 703, 161 P.3d 345 (2007); Griggs v. Averbek Realty, Inc., 92 Wash.2d 576, , 582, 599 P.2d 1289 (1979).

Division III ignores the longstanding principle of law that the sins of a lawyer are visited on the client. Rivers v. Washington State Conference of Mason Contractors, 145 Wash.2d 674, 679, 41 P.3d 1175 (2002). There is no such law imputing the sins of an insurance carrier personally to its insured. Division III rejected Richter’s precedent showing relief from a default judgment will not be granted where the failure to appear, answer or defend was the result of a breakdown on internal procedures. Rosander v. Nightrunners Transport, LTD, 147 Wash. App. 392, 407, 196 P.3d 711 (2008), citing TMT Bear Creek

Shopping Ctr. Inc. v. Petco Animal Supplies, Inc., 140 Wash. App. 191, 212, 165 P.3d 1271 (2007). Division III in this regard ignores Mr. Sargent's ethical duty as a licensed attorney in the State of Washington, and instead applies a standard for insurance companies.

Division III uses the caselaw showing a blameless insured may be granted relief from a default judgment as a result of the conduct of their insurer, but fails to recognize that in those cases there was also a showing of a mistake or misunderstanding in failing to appear or otherwise answer the lawsuit. See, White v. Holm, 73 Wash.2d 348, 438 P.2d 581 (1968) (holding default was properly vacated where there was a misunderstanding whether insurance would provide defense to lawsuit); Berger v. Dishman Dodge, Inc., 50 Wash. App. 309, 312, 748 P.2d 241 (1987) (holding default properly vacated where misunderstanding between insured and insurer as to who was responsible to answer the lawsuit); Ha v. Signal Electric, Inc., 182 Wash. App. 436, 332 P.3d 991 (2014) (holding default properly vacated where lawsuit was served on bankruptcy attorney, who provided lawsuit to financial advisor for company, who inadvertently provided lawsuit to wrong insurance carrier); Showalter v. Wild Oats, 124 Wash. App. 506, 101 P.3d 867 (2004) (holding default properly vacated where lawsuit was mistakenly not provided to counsel due to a request outside normal business

practices). Washington case law consistently requires a showing of mistake or misunderstanding in justifying relief from a default judgment when an insured/defendant is otherwise blameless.

At the heart of the White factors is whether the party seeking relief from the judgment intentionally ignored the obligation to respond. DeCaro v. Spokane County, 198 Wash. App. 638, 645, 394 P.3d 1042 (2017). Ms. Helinski states in her declaration that she never checked on the status of the lawsuit for several months. CP 142. Richter did not immediately seek a default judgment after a default order was entered against Ms. Helinski, but instead waited six months until February 22, 2019 to enter the default judgment. This is a significant fact because Ms. Helinski failed to inquire as to the status of the lawsuit. CP 142. Mr. Sargent's willful disregard for court rules and the Respondents failure to show interest in their defense completely halted the adversary process, leaving Richter no choice but to enter a default judgment. Johnson v. Cash Store, 116 Wash. App. 833, 848 (2003). Where there is no showing of a mistake or misunderstanding in failing to appear by counsel, and no showing Respondents inquired about the lawsuit, the negligence of Mr. Sargent is attributable to Respondents; making them not blameless for the resulting default judgment. Akhavuz v. Moody, 178 Wash. App. 526, 538-539, 315 P.3d 572 (2013).

Prior decisions “*have repeatedly held that, if a company’s failure to respond to a properly served summons and complaint was due to a break-down of internal office procedure, the failure was not excusable.*” Rosander v. Nightrunners Transport, LTD, 147 Wash. App. 392, 407, 196 P.3d 711 (2008), citing TMT Bear Creek Shopping Ctr. Inc. v. Petco Animal Supplies, Inc., 140 Wash. App. 191, 212, 165 P.3d 1271 (2007). Where the failure to appear or answer is the result of neglect, such as here, vacating a default is improper. See, Johnson v. Cash Store, 116 Wash. App. 833, 848-849, 68 P.3d 1099 (2003) (holding default is proper where an employee’s unexplained failure to forward summons and complaint to counsel resulted in a default); TMT Bear Creek Shopping Center, Inc. v. Petco Animal Supplies, Inc. 140 Wash. App. 191, 165 P.3d 1271 (2007) (default was proper where deadline to respond to lawsuit was not properly calendared and failure to enact policies to ensure counsel received notice of lawsuit); Beckman v. Dep’t of Social & Health Servs., 102 Wash. App. 687, 11 P.3d 313 (2000) (neglect in failing to institute office management procedures to catch administrative errors was inexcusable); Priest v. Am. Bankers Life Assurance Co., 79 Wash. App. 93, 900 P.2d 595 (1995) (neglect inexcusable when summons and complaint were mislaid while general counsel was out of town). Washington courts will not relieve a defendant from a judgment due to a

willful disregard of process, or due to inattention or neglect in a case. Commercial Courier Service, Inc. v. Miller, 13 Wash. App. 98, 106, 533 P.2d 852 (1975).

There are no facts or evidence in the record showing Mr. Sargent's failure to appear, answer or defend the lawsuit was the result of a mistake or misunderstanding. The only facts and evidence presented showed either neglect, a breakdown in procedure, or a willful disregard for the court rules. The Supreme Court should accept review to correct the error committed by Division III.

**C. Division III's Decision also Renders the Requirement to Formally Appear and Answer Meaningless, which is in Direct Conflict with the Supreme Court's Holding in *Morin v. Burris*.**

In Morin v. Burris, 160 Wash.2d 745, 757, 161 P.3d 956 (2007), the Supreme Court expressly rejected adopting the informal appearance doctrine in the State of Washington. In rejecting the adoption of the informal appearance doctrine, the Supreme Court stated:

*The informal appearance doctrine urged by the Respondents would permit any party to a dispute, or any claims representative to a potential dispute, to simply write a letter expressing intent to contest litigation, then ignore the summons and complaint or other formal process and wait for the notice of default judgment before deciding whether a defense is worth pursuing.*

Id. at 757. The Decision renders the requirement for formal appearance meaningless, because the Respondents in this case did exactly what the

Supreme Court feared would happen if an informal appearance doctrine was adopted.

The facts show the Respondents were properly served with the lawsuit, and at no time appeared, answered or otherwise defended the lawsuit. CP 13; CP 225-226. The Respondents did not even inquire as to the status of the lawsuit, despite receiving multiple letters threatening immediate action and being served with a lawsuit. CP 142. The only time the Respondents appeared to defend the lawsuit was after the default judgment was obtained, and Richter began to execute the default judgment.

The Decision ratifies the exact conduct the Supreme Court rejected and makes formal appearance meaningless. All the Respondents had to show was that they met with and hired a lawyer after they were served with the lawsuit to gain relief from the default judgment. There was no showing of mistake or misunderstanding, and Mr. Sargent did not even respond to the direct request asking him who he represented. CP 203; CP 207.

The Supreme Court should accept review to correct Division III's misapplication of the law, and disregard for the requirement to formally appear and defend a legal claim.

## **VI. CONCLUSION**

Because the Decision directly conflicts with the prior decisions and precedent established by the Supreme Court, Richter asks that the Supreme Court accept review of the Division III Decision upholding the trial court's decision to vacate the default orders and judgment.

DATED this 11 day of June, 2020.

ROBERTS | FREEBOURN, PLLC

*s/ Chad Freebourn*

---

CHAD FREEBOURN, WSBA #35624  
Attorney for Jens Richter d/b/a Global  
Equine Sires and A-1 Performance Sires

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 11 day of June, 2020, I caused to be served via the Washington State Appellate Courts' Portal filing system a true and correct copy of the foregoing document to the following:

Paukert & Troppmann, PLLC  
522 W. Riverside Avenue #560  
Spokane, WA 99201  
[kpaukert@pt-law.com](mailto:kpaukert@pt-law.com)  
[aasan@pt-law.com](mailto:aasan@pt-law.com)  
[mpaukert@pt-law.com](mailto:mpaukert@pt-law.com)

*s/ Chad Freebourn*  
CHAD FREEBOURN



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

JENS RICHTER, an individual d/b/a	)	
GLOBAL EQUINE SIRES and A-1	)	No. 36822-0-III
PERFORMANCE SIRES,	)	
	)	
Appellant,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
ALLIE HELINSKI an individual and	)	
BRENT HELINSKI, an individual and as	)	
husband and wife, and the marital	)	
community thereof,	)	
	)	
Respondents.	)	

FEARING, J. — We affirm the trial court’s vacation of default orders and a default judgment entered against defendants Allie and Brent Helinski. The trial did not abuse its discretion when applying equity to vacate the orders and judgment.

FACTS

Jens Richter owns and operates Global Equine Sires (Global), which sells horse semen. Allie Helinski formerly owned A-1 Performance Sires (A-1), which also sold horse semen.

On June 3, 2016, Jens Richter purchased “the Business A-1 Performance Sires” from Allie Helinski for \$7,000 cash and \$7,000 in semen. A one page contract listed the

assets sold as cryo-storage tanks, shipping containers, customer lists, business license, website, media, and financial records. Paragraph 3 of the sales contract declared:

Not included is current A-1 Performance Sire Semen inventory. A list that has been signed by both parties will be attached to that contract.

Clerk's Papers (CP) at 55. Under the sale agreement, Allie Helinski promised to work for A-1 after the sale. Her duties would include sales for A-1, expanding Jens Richter's business, and packing and shipping product of Global and A-1.

Cryo-storage tanks and shipping containers of A-1 sold to Jens Richter remained in the possession of Allie Helinski so that she could ship semen to customers of Jens Richter. Allie Helinski kept in her possession semen, over which she retained ownership, and semen owned by Jens Richter under the business names of Global and A-1. Richter owned horse semen valued at \$295,550 in a container in Allie's possession. After the sale of A-1 to Richter, Helinski sold both her product and Richter's product.

On April 28, 2018, Jens Richter traveled from his residence in California to Otis Orchards to retrieve A-1's five cryo-storage tanks, shipping containers, and stock of horse semen. Two of the shipping containers failed. The failure resulted in loss of a significant amount of semen, causing anger in Richter. An old cryo-storage tank also failed. Allie Helinski insists that the containers and the tank failed not because of any fault on her behalf.

For some unknown reason, Allie Helinski did not inform Jens Richter, on his arrival in Washington State, of the failure of the cryo-storage tank. While Richter remained in Washington State, the two divided their respective inventories of semen. Richter left one pile of semen for Helinski to sell on his behalf. Helinski insists that she packaged and shipped the final inventory of semen Richter left with her. Helinski ended her work for Richter on May 29, 2018.

Jens Richter later requested that Allie Helinski forward the semen straws from the failed cryo-storage tank. The seller of horse semen delivers the product in semen straws. Richter claims Helinski denied her request. Helinski admits that she never sent to Richter the semen from the failed tank, but rejects any obligation to have forwarded the semen to Richter because of its lack of viability.

According to Jens Richter, he received concerns from customers regarding semen straw deliveries. Customers of A-1 complained to Richter that they received ineffective semen or empty semen straws. Richter concluded that Allie used the A-1's business to rid herself of empty semen straws, ineffective straws, or no straws and to pocket the profits. In Richter's declaration in support of default judgment, he testified:

I have compiled receipts from the customers who contacted me. The receipts are attached as Exhibit B. I have personal knowledge that the following list of customers paid Allie Helinski.

CP at 49. Richter attached a typed list of seven semen straws that included dates of sale and sales totaling \$24,650. Richter also attached five invoices for seven of the straws.

On August 29, 2018, Jens Richter filed a summons and complaint against Allie Helinski and her husband, Brent. Richter sued Helinski for breach of contract, tortious interference with a business expectancy, fraud, conversion, unjust enrichment, and violation of the Consumer Protection Act, chapter 19.86 RCW, stemming from Helinski's alleged unauthorized selling of semen straws to A-1 costumers. Richter alleged that Helinski had received payments and taken orders on behalf of A-1, but never fulfilled the orders. Richter also alleged that Helinski made unauthorized sales of product, knowingly sold defective product, and sold product that misprinted the name of the stallion donor. In addition to seeking damages, the complaint requested an injunction. On August 31, 2018, Allie was served the summons and complaint.

On September 15, 2018, Allie Helinski met with attorney Robert Sargent and paid a \$1,500 retainer for Sargent to represent her. Helinski delivered Sargent a copy of the summons and complaint.

On September 18, 2018, Allie Helinski received a letter from Jens Richter's counsel, Chad Freebourn, requesting the return of the semen purportedly stored in the tank remaining in Helinski's possession. Helinski notified Sargent of the letter, and he told her that he had contacted Richter's attorney and would handle the matter.

In a declaration, Robert Sargent states:

Shortly after my retention, I called Plaintiff's counsel, Roberts Freebourn, PLLC, to discuss the Helinski case. I called multiple times. Each time I called, I left a voice message identifying myself and the case

and requesting a call back in order [to] discuss the matter. I did not receive any calls back.

After not receiving any return calls, I went in person to Roberts Freebourn, PLLC, at 1325 W. 1<sup>st</sup> Ave., Ste. 303 in Spokane, Washington. I went [to] the Roberts Freebourn office twice to speak with an attorney about the Helinski matter. Each time I went in person to the law firm, I was met by a secretary, Lauren, who took my business card and the reason for my visit.

CP at 152.

As of September 24, 2018, Robert Sargent had yet to speak with Chad Freebourn.

On that date, Jens Richter obtained an order of default judgment against Allie Helinski.

On September 26, 2018, Brent Helinski was served the summons and complaint.

According to Chad Freebourn, he received a voicemail message from Robert Sargent, on October 5, 2018, reporting his representation of Allie Helinski. Freebourn never returned Sargent's call. On October 17, 2018, Jens Richter obtained an order of default against Brent Helinski. Between October 22 and October 25, according to Freebourn, Sargent arrived at his office and left his business card with Freebourn's assistant, but Freebourn was unavailable to speak with him.

On October 26, 2018, Victoria Johnston, an attorney at Roberts | Freebourn, PLLC telephoned Robert Sargent. The attorneys discussed the lawsuit claims, potential settlement, and the status of semen inventory. Johnston did not mention the earlier orders of default.

On October 30, 2018, Victoria Johnston sent an e-mail to Robert Sargent:

We talked at the end of last week about Allie turning over any and all remaining semen that she has that belongs to our client Jens Richter aka Global Equine. You indicated that Allie said that all of the inventory was spoiled because of a power outage but at the very least she could give us the spoiled inventory. You were checking to see if there was any viable inventory left. You also mentioned that you might have a settlement offer. I have not heard anything back from you. Please advise as to what you found out and please clarify who you represent in this matter.

CP at 156. Robert Sargent replied to the e-mail that same day and wrote that he would respond to Johnston by the following morning. The record does not show that Sargent responded.

On January 23, 2019, Jens Richter filed a motion for entry of default judgment against Allie and Brent Helinski. On February 22, the superior court conducted a reasonableness hearing to establish the amount of damages to be awarded Richter against the Helinskis. The court awarded damages of \$373,891 and entered judgment against Allie and Brent Helinski for the amount. Neither the Helinskis, nor their counsel, received notice of the hearing.

On March 9, 2019, Brent Helinski noticed his bank account drained of all funds. His bank informed him of a garnishment.

On March 9, Allie Helinski discovered an envelope containing a copy of the default orders, the default judgment, a notice and writ of garnishment, and an exemption claim form. Helinski immediately contacted Robert Sargent about the paperwork and the emptied bank account. Sargent told Allie Helinski that he would go to Roberts |

Freebourn the following Monday morning, March 10, 2019, and get the judgment overturned. On March 10, Allie Helinski received no phone call, and so she called Sargent. Sargent told her that he does not handle her type of case, that she needed to hire a different attorney, and he would refund the retainer.

Allie Helinski met with attorneys at the law office of Paukert & Troppmann, PLLC on March 12, 2019. During the consultation, Helinski retained the firm to represent them in this suit.

#### PROCEDURE

Allie and Brent Helinski filed a motion to vacate the two default orders and the judgment. The Helinskis argued that they were entitled to notice of the default proceedings because Robert Sargent substantially complied with the notice of appearance requirements. According to the Helinskis, because they lacked notice, the court should vacate the orders and judgment. The Helinskis also argued that, assuming Sargent made no appearance, the default orders and judgment should be vacated under subsections (1), (4), and (11) of CR 60(b).

In an oral ruling, the trial court concluded that no dispute existed as to whether Allie Helinski contacted Robert Sargent on September 15, yet Sargent had never entered a notice of appearance. Otherwise, factual disputes of other events, such as when Robert Sargent attempted to contact Chad Freebourn, existed. Regardless, the trial court

concluded that Robert Sargent did not substantially comply with notice of appearance requirements before entry of the default orders and default judgment.

Because the parties on appeal dispute the substance of other rulings by the trial court, we quote portions of the oral ruling:

And that is really where I come back to, applying the *White* factors, because I don't know that I have sufficient facts to say that there was substantial compliance prior to those defaults being taken.

....

I'm winding around to my review of the *White* factors, and obviously the parties are clearly opposed diametrically with regards to interpretation of those factors, whether there is a defense being made. The information outlined by Ms. Allie Helinski is there was no semen to return, it was all dead. . . .

....

The declaration provided by Allie Helinski states the semen wasn't converted, it was not viable, and why those things weren't addressed when the plaintiff was here in Spokane, I don't know. That's not addressed with the declaration. So is there at least a prima facie defense to the issues, at least, as it appears to this Court, there is.

Then evidence of mistake, inadvertence, surprise, and excusable neglect, that also gives me a bit of a pause because Mr. Sargent is the Helinskis. They've done what they need to. He— by "he" I mean Mr. Sargent—did not. Mr. Sargent is the one responsible for filing the notice of appearance, frankly, as soon as practical, at least in my experience. . . .

But that factor addresses whether there is one of those bases to move forward and overset the default under these circumstances. I analyze that by looking at this case from the perspective of coming back to the purpose of and the overall liberal application of setting aside defaults, and the purpose that really is to go to resolution of cases on their merits versus defaults.

The last two factors in *White* really are due diligence. I don't think there's any issue with regards to due diligence and prejudice as it is outlined. What is argued by the plaintiffs is this matter is resolved and we don't want to deal with it again. That is not sufficient for a substantial prejudice basis.



So as I analyze this, I don't come to the conclusion that is argued by the defendant that Mr. Sargent substantially complied by the time the defaults are taken. There are no facts that establish that, at least for Allie Helinski. It's possible substantial compliance applies for Brent Helinski, based upon the message left, based upon cards, based upon visits. Those facts make my determination a little bit more difficult. Taking all of the facts into consideration regarding the factors, I am going to grant the request to set aside the default under this set of circumstances.

. . . Again, I want to make sure the record is very clear that I have contemplated the facts in this case, as well as the law that has been provided by counsel, to reach my decision to grant the motion to vacate the two defaults, as well as the default judgment.

Report of Proceedings at 23-26. The trial court entered an an order vacating the two default orders and the default judgment.

#### LAW AND ANALYSIS

Jens Richter appeals the orders vacating the two default orders and the default judgment. The orders of vacation are not final orders in the sense of terminating litigation below. Instead the orders opened the case to further litigation. Nevertheless, under RAP 2.2(a)(10), a party may appeal from an order granting or denying a motion to vacate a judgment.

Although Jens Richter frames his assignments of error in terms that the trial court erred in vacating the judgment against both Allie and Brent Helinski, Richter, in his argument, focuses only on the default order and default judgment against Allie. Richter never discusses the disparate facts concerning the service on Brent Helinski and the fact that Robert Sargent contacted Richter's counsel and announced his representation of the

Helinskis before entry of the default order against Brent. For this reason alone, we affirm the vacation of the default order and judgment against Brent Helinski. The analysis we perform concerning the vacations in favor of Allie Helinski would also apply to Brent, however.

Jens Richter asserts that the trial court committed two errors when vacating the default orders and default judgment. First, the trial court erred when ruling that Allie Helinski showed a prima facie defense to the complaint. Second, the trial court failed to make a finding that Allie Helinski's failure to timely appear and answer the complaint was due to mistake, inadvertence, surprise, or excusable neglect in conformance with CR 60(b)(1).

On appeal, Allie Helinski does not expressly argue that Robert Sargent entered a notice of appearance before the entry of either order of default or the default judgment. Nor does she present any analysis that Sargent made an appearance by contact with Jens Richter's counsel. So we do not address whether Jens Richter needed to give advance notice to Helinski or her counsel of the entry of the defaults.

In their respective briefing, neither party distinguishes between vacating an order of default and a default judgment. Instead, both conflate the rules that apply to each. CR 55 controls vacating a default order, and CR 60 controls vacating a default judgment. Different rules apply. *Sellers v. Longview Orthopedic Associates, PLLC*, 11 Wn. App. 2d 515, 519, 455 P.3d 166 (2019) *review denied*, No. 98120-5 (Wash. Apr. 29, 2020); *Seek*

*Systems, Inc. v. Lincoln Moving/Global Van Lines, Inc.*, 63 Wn. App. 266, 271, 818 P.2d 618 (1991). In another case, the difference in rules between vacating a default order and vacating a default judgment might control the outcome. This is not the case in Jens Richter's appeal.

### Vacation of Default Judgment

CR 60(b) addresses vacation of a default judgment. Allie Helinski relies on three subsections of CR 60(b). We quote the opening sentence of CR 60(b) and the relevant subsections:

Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

.....

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

.....

(11) Any other reason justifying relief from the operation of the judgment.

(Boldface omitted.) The trial court relied on subsection (1), and so do we.

We review a trial court's decision to vacate a default judgment for abuse of discretion. *Morin v. Burris*, 160 Wn.2d 745, 753, 161 P.3d 956 (2007). The trial court abuses its discretion only when it bases its order on untenable grounds or untenable reasons. *Morin v. Burris*, 160 Wn.2d at 753.

Two important policies behind America's civil justice system clash in the context of a motion to vacate a default judgment. On the one hand, we prefer that courts resolve disputes on the merits. *Akhavuz v. Moody*, 178 Wn. App. 526, 532, 315 P.3d 572 (2013). On the other hand, we value an organized, responsive, and responsible judicial system wherein litigants acknowledge the jurisdiction of the court to decide cases and litigants comply with rules. *Little v. King*, 160 Wn.2d 696, 703, 161 P.3d 345 (2007). When balancing these competing interests, the overriding concern is to execute justice. *Griggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 582, 599 P.2d 1289 (1979); *DeCaro v. Spokane County*, 198 Wn. App. 638, 643, 394 P.3d 1042 (2017). Because of the strong policy of resolving disputes on the merits, Washington law disfavors default judgments. *Little v. King*, 160 Wn.2d at 703. The trial court should exercise its authority to vacate a judgment liberally. *Morin v. Burris*, 160 Wn.2d at 754 (2007); *Ha v. Signal Electric, Inc.*, 182 Wn. App. 436, 449, 332 P.3d 991 (2014).

Since 1968, Washington courts, when addressing a motion to vacate under CR 60(b)(1), have followed a four-part test found in *White v. Holm*, 73 Wn.2d 348, 352 (1968):

These factors are: (1) that there is substantial evidence extant to support, at least prima facie, a defense to the claim asserted by the opposing party; (2) that the moving party's failure to timely appear in the action, and answer the opponent's claim, was occasioned by mistake, inadvertence, surprise or excusable neglect; (3) that the moving party acted with due diligence after notice of entry of the default judgment; and (4) that no substantial hardship will result to the opposing party.

On the one hand, the *White v. Holm* test prevents those who purposely do not contest a default or do not timely do so from benefitting from their actions. *DeCaro v. Spokane County*, 198 Wn. App. 638, 645 (2017). On the other hand, the rule allows second chances for those who promptly assert their interest and show an ability to successfully contest the case. *DeCaro v. Spokane County*, 198 Wn. App. 638, 645 (2017).

#### Defense of Allie Helinski

The first step in the *White v. Holm* factors directs the court to consider whether the moving defendant possesses a prima facie defense to the plaintiff's claim. If the movant lacks a prima facie defense, the court will automatically deny the motion. *Griggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 583 (1979); *DeCaro v. Spokane County*, 198 Wn. App. 638, 645 (2017). If the defendant shows a prima facie defense, the court engages in a review of the defaulted defendant's reason for failing to timely appear in the action. *White v. Holm*, 73 Wn.2d 348, 353-54 (1968); *Akhavuz v. Moody*, 178 Wn. App. 526, 534 (2013).

In determining whether evidence supports a prima facie defense, the trial court must take the evidence, and the reasonable inferences therefrom, in the light most favorable to the movant. *TMT Bear Creek Shopping Ctr., Inc. v. Petco Animal Supplies, Inc.*, 140 Wn. App. 191, 202, 165 P.3d 1271 (2007). In other words, the defendant

satisfies its burden of demonstrating the existence of a prima facie defense if it produces evidence which, if later believed by the trier of fact, would constitute a defense to the claims presented. *TMT Bear Creek Shopping Ctr., Inc. v. Petco Animal Supplies, Inc.*, 140 Wn. App. at 202. To establish a prima facie defense, affidavits supporting motions to vacate default judgments must set out the facts constituting a defense and cannot merely state allegations and conclusions. *Ha v. Signal Electric, Inc.*, 182 Wn. App. at 449 (2014).

Jens Richter argues that Allie and Brent Helinski fail to present substantial evidence to show a prima facie defense to his claims. Richter argues that the only evidence of a defense put forward by the Helinskis, the declaration of Allie, presents only self-serving statements which are insufficient to support a defense. The Helinskis respond that they have put forth evidence of a sufficient defense to liability, causation, and damages. We conclude that Helinski presented a prima facie defense for all factual allegations that comprise the various causes of action asserted by Jens Richter.

We assume that, since the movant cannot rest on mere allegations and speculation in presenting her defense, the non-moving party must also present admissible underlying facts in support of his claims. Jens Richter's declaration in support of his motion for default is weak on details. He testified to two categories of fault on the part of Allie Helinski and damage to him: (1) Helinski's converting the semen in the cryo-storage tank; and (2) Helinski's selling defective product to customers and pocketing the money.

He asserted without any supporting inventory that the semen in the tank was worth \$295,550.

In his declaration, Jens Richter provided no statements from any customers who complained of product delivered or the details of the complaints. He attached to his declaration receipts from customers, but he did not expressly testify that he did not receive the payments from those customers or that Helinski failed to forward the payments to him. Most receipts lack a name of the customer. Richter indicated that he needed to shut down A-1's website to the loss of \$44,421 because of the fraud of Allie Helinski, but he did not explain why he could not sell as much semen by other means, including continuing with the website and stating Helinski no longer worked for the business. He did not identify any lost sales or customers. We recognize that Jens Richter prepared his declaration in support of his motion for a default judgment when the facts were not in dispute, but he could have prepared an additional declaration in opposition to the motion to vacate in order to supply important facts controverting Allie Helinski's declaration.

In her declaration in support of the motion to vacate, Allie Helinski averred that the loss of the semen in the cryo-storage tank was not her fault because the tank failed. She also denied that she pocketed any money from sales on behalf of either A-1 or Global.

Jens Richter argues that Allie Helinski's declaration only refers to the conversion of the semen inventory and not to the other claims including the fraudulent sales, receipt of money from unauthorized sales, and fault for causing the tank to fail. As already stated, Helinski's declaration denied pocketing any of Richter's money. Richter may contend that the \$295,550 in lost inventory is inventory that was never in the failed cryo-storage tank, but, if he does, the facts are confusing and we must take the facts in the light favorable to Helinski. Richter provided no evidence that Helinski was responsible for the failure of the cryo-storage tank.

Jens Richter criticizes the evidence presented by Allie Helinski as arising from a self-serving affidavit. We know of no rule that bars introduction of self-serving testimony in support of a motion to vacate a default judgment, let alone in support of one's position in any proceedings. Jens Richter's controverting evidence is equally self-serving.

#### Mistake, Inadvertence, Surprise or Excusable Neglect

On the one hand, Jens Richter asserts that the trial court never found that Robert Sargent's failure to appear, answer, or otherwise defend the lawsuit was the result of mistake, inadvertence, surprise, or excusable neglect. Richter further argues that the trial court affirmatively found to the contrary. On the other hand, Allie Helinski contends that the trial court found evidence of mistake, inadvertence, surprise, and excusable neglect because the court commented that Helinski took all proper steps.



Both parties are partly correct. The trial court ruled that, assuming we look only to the behavior of Robert Sargent, Allie Helinski did not show mistake, inadvertence, surprise or excusable neglect. Although the trial court did not expressly state that, if we look only to the conduct of Allie Helinski, mistake, inadvertence, surprise or excusable neglect would be present, the court's ruling inevitably leads to this conclusion and the undisputed facts support such a conclusion. On being served with lawsuit papers, Helinski quickly contacted an attorney. She paid the attorney a retainer. When she received another letter from Jens Richter's counsel, she promptly contacted the same attorney. She also quickly contacted the attorney when Richter garnished her husband's account. Jens Richter does not contend that Helinski failed to act promptly or properly.

Jens Richter argues that Robert Sargent, as the representative of Allie Helinski, failed to timely appear without excuse and a party may not escape liability simply by arguing they hired a lawyer. Richter relies on many Washington decisions when a corporate defendant, through a failure of internal procedures, failed to timely appear and answer. Richter fails to recognize that his defendant, Allie Helinski, is without blame.

Many recent Washington decisions address negligence of an insurance company that led to a failure of an attorney to appear on behalf of the insured defendant. In this context when reviewing a motion to vacate a default judgment, Washington courts focus on whether the defendant, not the insurer, acted with excusable neglect. *Sellers v. Longview Orthopedic Associates, PLLC*, 11 Wn. App. 2d at 522 (2019). An insurer's

No. 36822-0-III  
*Richter v. Helinski*

culpable neglect should not be imputed to a blameless defendant. *White v. Holm*, 73 Wn.2d 348, 354 (1968); *VanderStoep v. Guthrie*, 200 Wn. App. 507, 528, 402 P.3d 883 (2017); *Sellers v. Longview Orthopedic Associates, PLLC*, 11 Wn. App. 2d at 522. When a defendant properly notifies its insurer that a complaint has been served and the insurer fails to arrange for a timely appearance or answer without a legitimate excuse, the insurer's inexcusable neglect should not be imputed to the blameless defendant, except when the insured defendant fails to follow up with the insurer or fails to cooperate with the insurer. *VanderStoep v. Guthrie*, 200 Wn. App. at 530-32.

We note that, as a general rule, the sins of the lawyer are visited on the client. *Rivers v. Washington State Conference of Mason Contractors*, 145 Wn.2d 674, 679, 41 P.3d 1175 (2002). But this general rule contradicts the principle that default judgment is disfavored and conflicts with the goal of trying cases on the merits and doing what is just and proper under the circumstances of each case. *Ha v. Signal Electric, Inc.*, 182 Wn. App. 436, 452-53 (2014). Therefore, we discern no reason to differentiate between a blameless defendant receiving relief from the inexcusable neglect of her insurance company and a faultless defendant getting relief from the inexcusable inadvertence of her attorney.

One Washington Supreme Court decision supports a conclusion that the defendant should not be punished for the inexcusable neglect of her attorney. In *Agriculture & Live Stock Credit Corp. v. McKenzie*, 157 Wash. 597 (1930), Augusta Kalanquin was served

with an amended complaint in a livestock mortgage foreclosure suit and promptly submitted the pleading to her attorney, Husted. Husted departed the state and left an agister lien with attorney Richards, who Kalanquin eventually hired. Husted failed to inform Richards of the mortgage foreclosure or deliver Richards the foreclosure suit papers. Before Husted delivered the lien to Roberts, Kalanquin suffered an order of default and decree of foreclosure of her lien. The Supreme Court later affirmed the trial court's vacation of the order and decree on the ground of excusable neglect on the part of Kalanquin. Kalanquin relied on her attorney, and, through no fault of her own, the attorney departed Washington State. When Roberts later discovered the entry of the default, Roberts swiftly moved to vacate.

In *VanderStoep v. Guthrie*, 200 Wn. App. 507 (2017), the plaintiffs obtained a default judgment against the insured defendant because of the inexcusable neglect of the insurer. On appeal, the plaintiffs argued that, if the default judgment stands, the insurer, not the insured defendant, will have to pay the full judgment. Therefore, the insured suffers no harm and instead justice is served against the neglectful insurer. This court rejected the argument because in the meantime a large judgment remained against the insureds and because no case law supported the proposition that the identity of the payee of a default judgment is relevant to the second *White* factor.


One might argue that Allie Helinski suffers no harm by the pending default judgment, because Robert Sargent's malpractice carrier will eventually pay the judgment.

But, in the meantime, Helinski is subject to a large judgment and any malpractice suit may be fraught with delays and pitfalls.

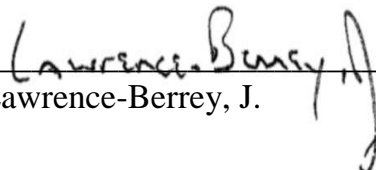
CONCLUSION


Justice is not served with hurried defaults. *Showalter v. Wild Oats*, 124 Wn. App. 506, 510-11, 101 P.3d 867 (2004). The trial court did not abuse its discretion when vacating the default orders and default judgment against Allie and Brent Helinski.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
\_\_\_\_\_  
Fearing, J.

WE CONCUR:

  
\_\_\_\_\_  
Lawrence-Berrey, J.

  
\_\_\_\_\_  
Pennell, C.J.

Renee S. Townsley  
Clerk/Administrator

(509) 456-3082  
TDD #1-800-833-6388

*The Court of Appeals  
of the  
State of Washington  
Division III*



May 12, 2020

500 N Cedar ST  
Spokane, WA 99201-1905

Fax (509) 456-4288  
<http://www.courts.wa.gov/courts>

Victoria M Johnston  
Roberts | Freebourn PLLC  
1325 W 1st Ave Ste 303  
Spokane, WA 99201-4600  
victoria@robertsfreebourn.com

Andrea Lynn Asan  
Paukert & Troppmann, PLLC  
522 W Riverside Ave Ste 560  
Spokane, WA 99201-0519  
aasan@pt-law.com

Michael John Paukert  
Paukert & Troppmann PLLC  
522 W Riverside Ave Ste 560  
Spokane, WA 99201-0519  
mpaukert@pt-law.com

Kathleen Heather Paukert  
Paukert & Troppmann, PLLC  
522 W Riverside Ave Ste 560  
Spokane, WA 99201-0519  
kpaukert@pt-law.com

Chad Harrison Freebourn  
Roberts | Freeborn, PLLC  
1325 W 1st Ave Ste 303  
Spokane, WA 99201-4600  
chad@robertsfreebourn.com

CASE # 368220  
Jens Richter, DBA et al v. Allie Helinski, et ux  
SPOKANE COUNTY SUPERIOR COURT No. 182037829

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or if in paper format, only the original need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

A handwritten signature in cursive script that reads "Renee S. Townsley".

Renee S. Townsley  
Clerk/Administrator

RST:sh  
Enclosure  
c: **E-mail** Honorable Julie McKay

# ROBERTS FREEBOURN

June 11, 2020 - 3:39 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 36822-0  
**Appellate Court Case Title:** Jens Richter, DBA et al v. Allie Helinski, et ux  
**Superior Court Case Number:** 18-2-03782-9

### The following documents have been uploaded:

- 368220\_Petition\_for\_Review\_20200611153748D3527878\_2950.pdf  
This File Contains:  
Petition for Review  
*The Original File Name was Petition for Review.pdf*

### A copy of the uploaded files will be sent to:

- aasan@pt-law.com
- heather@robertsfreebourn.com
- kpaukert@pt-law.com
- mpaukert@pt-law.com
- victoria@robertsfreebourn.com

### Comments:

---

Sender Name: Annie Spradley - Email: annie@robertsfreebourn.com

**Filing on Behalf of:** Chad Harrison Freebourn - Email: chad@robertsfreebourn.com (Alternate Email: )

Address:  
1325 W. 1st Ave.  
Ste. 303  
Spokane, WA, 99201  
Phone: (509) 381-5262

**Note: The Filing Id is 20200611153748D3527878**