


Received
Washington State Supreme Court

NOV - 9 2015

E 
Ronald R. Carpenter
Clerk

THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re Marriage of:
TINA M. CASE, aka Mendoza,
Respondent,
v.
RICHARD A. CASE,
Appellant

APPELLANT'S REPLY TO
RESPONDENT'S ANSWER(S)
[RAP 13.4(d)]

COA no. 7605-1-1

Appellant RICHARD CASE, pro se hereby submits this
REPLY under RAP 13.4(d) in rebuttal to Respondent's Answers made
to appellant's Motion to Waive filing fee, Motion for Ext of Time
and Petition for Review.

A. MOTION TO WAIVE FILING FEE

Respondent continues to argue that Mr Case is not indigent.
Respondent's position remains as mere conjecture & speculation as
Respondent has not yet produced any evidence to prove that Mr.
Case is not indigent.

On the hand, it remains undisputed that Mr Case has been incarcerated since Jan 18, 2003. Mr. Case has submitted financial statements sworn under penalty of perjury that he has no possession, nor access to assets, property or funds that would elevate him above indigent/poverty status.

If the Court determines that there is a question concerning the indigency of Mr Case, then the Court should follow *Jevson v. Marine Ban corporation*, 83 Wn 2d 163 (1973) & *State v. Ashbaugh*, 80 Wn 2d 432 (1978) and remand this matter back to the trial court to determine indigency. See RAP 15.2(f)

However, when an indigency hearing is held, Mr Case would still be unable to appear & participate. Because Mr Case is indigent he is unable to confirm the indigency hearing as required per Snohomish County Superior Court Local Rule (SCLR 7 (9) (A))

The proper resolution as argued by Mr Case is that this Honorable Court exercise its inherent authority and waive the filing fee and proceed on the merits of Mr Case's timely petition for review. (See *Jevson v. Ban corporation*, supra following the principles set forth in *O'Connor v. Matzdorff*, 76 Wn 2d 589 (1969)).

B. MOTION FOR EXTENSION OF TIME

The extension of time needed by Mr Case to file a petition for review is now moot.

On August 4, 2015 this Honorable Court stated, in relevant part that it had received Mr Case's motion for extension of time on Aug 3, 2015 and that by September 3, 2015 Mr Case "... is directed to file in this Court a proposed petition for review..." (Please see record)

Thus, the ext. of time issue is moot. The Court sua sponte set a new due date of Sept. 3, 2015 for upon which Mr Case to file his petition for review. On Sept. 2, 2015 Mr Case mailed his petition for review from prison rendering it timely filed under General Rule 3.1 (a).

Mr Case's petition for review is timely, properly before this Court, and an extension of time is no longer needed.

C. PETITION FOR REVIEW

This entire matter hinges on Mr Case's claim that he was not actually in default in 2001, and the default judgment awarding Mrs Case-Rowley \$70,000.00 in child support is invalid as a matter of fact & law.

Mr Case's claim was to be heard in the trial court on March 6, 2015 on the Superior Court's own order to show cause. (See attached as Exhibit-A)

The trial court struck its own order to hold a show cause hearing because Mr Case is unable to strictly comply with the confirmation requirement in local rule SCLEP 7 (9) (A). (Please see trial court record sub # 133)

This current appeal process is premature until Mr Case's best & strongest claim for relief is properly heard and determined in the trial court first. (See copy of motion to vacate attached as Exhibit-B)

Mr Case has asked this Court to accept review on issues that if relief requested is granted should provide Mr Case the opportunity to have his best & strongest claim for relief heard in the trial court.

Underlying this matter is the dispositive issue as to whether or not the default judgment entered in 2001 is invalid?

"This court has long favored resolution of cases on their merits over default judgments. Thus, we will liberally set aside default judgments pursuant to CR 55(c) and CR 60 and for equitable reasons in the interests of fairness and justice." *Movin v. Burns*, 160 Wn2d 745 (2007).

Moreover, if default judgment is rendered against a party who was not actually in default, the judgment will be set aside as a matter of right. See *Deryea v. Wilson*, 135 Wn App 233 (2006), and *Tiffin v. Handricks*, 44 Wn2d 837, 847 (1957).

Mr Case raised the following 5 grounds for relief under CR 60(b) in the trial court:

GROUND 1 - Mr Case was not in default in the first place because the 2001 court failed to make a sufficient record as required under *Bernet v. Spokane Co. Ambulance*, 131 Wn2d 484 (1997) to support entry of default order/judgment against Mr C as a discovery sanction. Pursuant to *Marina Carlo Homeowners Assn. v. Stratford*, 161 WnApp 299 (2011) & *Rivers v. Wash. State Conference of Mason Contractors*, 145 Wn2d 674 (2002) the 2001 default order/judgment is invalid and must be vacated as void under CR 60(b)(5). Mr C is entitled to have the 2001 default order/judgment vacated as a matter of right. See *Duryea v Wilson*, 135 WnApp 233 (2006)

GROUND 2 - Mr C was not in default in the first place. The default judgment entered after striking Mr C's answer as punishment for his alleged contempt in refusing to obey an order of the court is void under CR 60(b)(5) & *Lawson v. Black Diamond Coal Mining Co.*, 44 Wash. 2d (1906) for want of due process of law. Accord, *Mitchell v. Watson*, 58 Wn2d 206 (1961) & *Srediger v. Hockelson*, 53 WnApp 476 (1989). (Srediger I) Mr C is entitled to have the 2001 default order/judgment vacated as a matter of right. See *Duryea v Wilson*, supra.

GROUND 3 - Mr C was not in default in the first place. Under CR 60(b)(1) & pursuant to *Caouette v. Martinez*, 71 WnApp 69 (1993) the default order & judgment must be vacated because the original petition to modify lacks a sufficient factual basis to support the relief requested. Accord, *Kaye v. Lowe's, et al Inc.*, 158 WnApp 320 (2010). Mr C is entitled to have the default judgment vacated as a matter of right. See *Duryea*.

GROUND 4 - The 2001 court lacked inherent power to impose on \$117450 per month child support obligation against Mr C. The court did not comply with the Washington State Child Support Schedule (WSCSS), rendering the default order/judgment void under CR 60(b)(5). The court awarded relief that Mrs C-R was not entitled to receive under the WSCSS. Mr C is entitled to have the 2001 default judgment vacated as a matter of right. See *Dryca*.

GROUND 5 - The 2001 default order/judgment must be vacated under CR 60(b)(4) because Mrs C-R improperly obtained the money judgment amount of \$117450 per month through the use of fraud by misrepresenting & withholding material facts regarding her income, assets and marital community. Mr C is entitled to have the 2001 default order/judgment vacated as a matter of right. See *Dryca*.

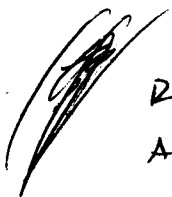
The record and the case law is clear. The trial court failed to comply w/ *Barnet & Lawson* and thus, had no authority under CR 37 to find Mr C in default.

Further, the defective worksheets and the courts failure to comply with the WSCSS rendered the court w/o authority to impose child support against Mr C.

Mr C did not receive due process when the default judgment was entered, and has not received due process in getting the above grounds 1-5 heard and determined in the court that entered default.

This Court should enforce the holding & principles established in Tiffin v. Hendricks requiring the trial court to determine whether Mr C was actually in default in 2001. If not, Mr C is entitled to have the default set aside as a matter of right.

Respectfully submitted this 5th day of November, 2015.



RICHARD CASE
Appellant/Petitioner - Pro Se

CERTIFICATE OF FILING / MAILING
[GENERAL RULE 3.1 (a)]

I, RICHARD CASE, #896282 hereby certify that on Oct. 22, 2015 I received the Answers from Respondent and have filed my REPLY per GR 3.1 (a) on Nov. 5th, 2015 vouching it timely filed as within 15 days of receipt as required under RAP 13.4 (d).

Prison LEGAL MAIL log # 22221, dated Nov. 5, 2015

Mailed via US Postal Service to:

Washington State Supreme Court
Olympia, WA

Mr Mark T. Patterson II
Atty for Respondent
P.O. Box 79
Everett, WA 98206

Greenleaf this 5th day of November, 2015 @ Arroyo Haykos, WA.



RICHARD CASE, #896282
Appellant/Petitioner - Pro Se

ATTACHMENT _____

Exhibit A

FILED

2015 FEB 11 PM 12:44

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

(Form 1)

Superior Court of Washington
County of Snohomish

In re: Marriage of:

TINA M. CASE, nka Rowley Petitioner,

and

RICHARD A. CASE, Respondent.

No. 85-3-02405-4

Order to Show Cause
(ORTSC)

Clerk's Action Required

The court does find: that the record lacks written findings as required under
Burnet, the record lacks proof as required under Lawson the discovery sought
was material; incomplete WSCSS worksheets render the petition w/o a sufficient
factual basis, and the record lacks findings & verification as required under
the WSCSS.

Therefore, it is Ordered:

That Mrs Rowley, or Atty of record [Name] shall appear in person before this
court at the place and time below and show cause why the relief requested in the motion

to Show Cause & Vacate Default Judgment / Ord'r(s) [Name of motion] should not
be granted.

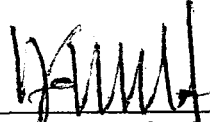
Date: March 6, 2015 Time: ~~10:30~~ 10:30 ~~a.m.~~ a.m.

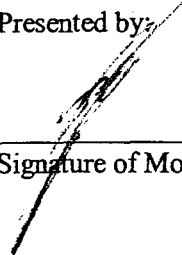
Place: Snohomish County Superior Court Room/Department: ~~306, as assigned~~

DEPT A

1 If you disagree with any part of the motion, you must respond to the motion in writing before the
2 hearing and by the deadline for your county. At the hearing, the court will consider *Written* sworn
3 affidavits or declarations. Oral testimony may *Not* be allowed. To respond, you must: (1) file your
4 documents with the court; (2) provide a copy of those documents to the judge or commissioner's staff;
5 (3) serve the other party's attorney with copies of your documents (or have the other party served if
6 that party does not have an attorney); and (4) complete your filing and service of documents within
7 the time period required by the local court rules in effect in your county. If you need more
8 information, you are advised to consult an attorney or a courthouse facilitator.

9 *If you fail to appear in person, the court may grant the relief requested in the motion.*

10 Dated: FEB 11 2015 
11 Judge/Commissioner

12 Presented by:  RICHARD CASE, Pro Se
13 Signature of Moving Party or Lawyer/WSBA No. Print or Type Name

FILED

2015 FEB 11 PM 12:44

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

(Form 3)

Superior Court of Washington
County of SNOHOMISH

In re: Marriage of

TINA M. CASE, nka Rowley
Petitioner(s),

and

RICHARD A. CASE,
Respondent(s).

No. 85-3-02405-4

Declaration of

RICHARD CASE

[Name]

(Optional Use)

(DCLR)

This declaration is made by:

Name: RICHARD CASE, (Mr. C)

Age: 52

Relationship to the parties in this action:

Ex-husband to TINA ROWLEY

I Declare:

On Dec 21, 2011 this Honorable Court heard Mrs CR's motion for default & to strike Mr C's Response. (sub # 43 & 35) The court granted the motion (# 46), but did no written findings were entered to show that the court performed the sanction analysis as required by Burnett. The record is insufficient to support the entry of default under Rule 37.

The court also ordered that Mr C's Response be stricken from the record. (sub # 46) However, Mrs CR offered no evidence to prove that the discovery

1 sought would contradict the income/unemployment facts submitted by Mr C.
2 (#35) The court erred by relying upon an unsubstantiated presumption of fact
3 to sanction Mr C, & strike his pleading. (#40) The court did not find that the
4 discovery sought by Mrs CR was material as required by Lawson before imposing
5 sanctions).


6 The petition to modify submitted by Mrs C-R (sub #31) relied upon WSCSS
7 worksheets (Ex-A #31) as the factual basis in support of requested relief
8 (1174⁵⁰ per month) &c. The worksheets are factually incomplete lacking relevant
9 income & asset / marital community info. Also, there is no proof in the record to
10 verify the ~~total~~ education expense in worksheet. Mrs CR's factual basis is
11 insufficient under the WSCSS to support requested relief of ^{1174⁵⁰} per month support.

12 The record includes no written findings to demonstrate that the court followed
13 the WSCSS to impute income to Mr C, to verify education expense, or to deviate
14 from the standard calculation. The courts order violates the WSCSS. (Sub #47)

15 Mrs C-R failed to disclose required income/asset info. Mrs C-R used fraud,
16 (Attach Additional Pages if Necessary and Number Them.) (Please see MEMO & Declaration)

17 I declare under penalty of perjury under the laws of the state of Washington that the foregoing is
18 true and correct.

19 Signed at Army Heights, [City] Wn [State] on Jan. 15, 2015 [Date].

20 
21 Pro Se

22 RICHARD CASE
23 Print or Type Name

24 Do not attach financial records, personal health care records or confidential reports to this
25 declaration. Such records should be served on the other party and filed with the court using one
of these cover sheets:

- 1) Sealed Financial Source Documents (WPF DRPSCU 09.0220) for financial records
- 2) Sealed Personal Health Care Records (WPF DRPSCU 09.0260) for health records
- 3) Sealed Confidential Report (WPF DRPSCU 09.270) for confidential reports

If filed separately using a cover sheet, the records will be sealed to protect your privacy (although
they will be available to all parties in the case, their attorneys, court personnel and certain state
agencies and boards.) See GR 22(C)(2).

Exhibit B

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2 (Form 2)

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7 **Superior Court of Washington**
County of SNOHOMISH

8 In re: Marriage of:
9 TINA M. CASE, aka Rowley Petitioner(s),
10 and
11 RICHARD A. CASE Respondent(s).

No. 85-3-02405-4
**Motion for Order to Show
Cause and Order to Vacate
Judgment/Order
(MT)**

12 **I. Relief Requested**

13 Respondent, RICHARD CASE, pro se [You name] respectfully moves the court for the
14 following: (1) an Order to Show cause requiring Mrs Rowley [Opposing Party's name] to
15 appear and show cause why the court should not grant Respondent's Motion to Vacate Judgment/Order
16 and (2) an Order vacating the Judgment/Order(s) dated 12-21-2001 [insert date of Order].

17 **II. Statement of Facts/Statement of Grounds**

18 [Clearly and briefly state the facts upon which you base your case. Print or type.]

19 I am asking the Court to vacate the following Order(s) or parts of Order(s):

- 20 ORDER STRIKING READINGS AND ORDER OF DEFAULT (sub # 46)
- 21 ORDER ON MODIFICATION OF CHILD SUPPORT (sub # 47)
- 22 ORDER FOR SUPPORT & SETTING ATTY FEES (sub # 48)
- 23 JUDGMENT (sub # 48) (Please see court file)

1 The Order(s) to be vacated were entered on Dec. 21, 2001. The Order(s) should be vacated
2 because (state facts relevant to you motion):

3 **GROUND 1 -**

4 Respect to Marina & Rivers the 2001 default judgment/orders are invalid & must
5 be vacated as void, because the record & order granting default shows that the 2001
6 court failed to make a sufficient record as required under Bernet to support
7 entry of default as discovery sanction under Rule 37;

8 **GROUND 2 -**

9 Respect to Lawson the 2001 default order is void because the record lacks
10 any evidence that Mrs CR provided proof that the discovery sought was
11 material. Failure to comply w/Bernet & Lawson renders the entry of default
12 made in violation of due process of law;

13 **GROUND 3 -**

14 Respect to Coquette & Kaye the 2001 default judgment/order must be vacated
15 because the action lacks a sufficient factual basis to support the relief
16 requested. The incomplete worksheet, and no verification in the record to prove
17 education expense fails to state a claim under the WSCSS;

18 **GROUND 4 -**


19 The 2001 court did not comply with the WSCSS rendering court without
20 power to order Mr C to pay child support under the WSCSS;

21 **GROUND 5 -**

22 Mrs. CR improperly obtained the money judgment through the use of fraud
23 by misrepresenting & withholding material facts regarding her income, assets and
24 marital community. (Please see MEMORANDUM & Declaration incorporated by
25 reference herein)

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Arroway Heights, [City] WA [State] on Jan 14, 2015 [Date].


Signature of Moving Party or Lawyer/WSBA No.

RICHARD A. CASE
Print or Type Name

III. Statement of Issues

1 [Clearly and briefly state the legal issues you want the court to decide. Print or type.]

2 Should the Court Vacate the Judgment/Order(s) Under Civil Rule 60 [state specific basis under the
3 rule]?

4 [If you are seeking to vacate on more than one ground under the Civil Rule, state each issue separately]

5 Did the court comply w/Barnet?; Does the record include any proof as required
6 under Larson to support a presumption that the discovery was material?

7 Does incomplete work sheets & lack of verification in record to support alleged
8 education expenses leave an action w/o sufficient factual basis to support
9 the relief requested? Did the court comply with the WSCSS?

10 Did Mrs C-2 commit fraud, or misconduct, or negligent misrepresentation?

11 IV. Evidence Relied Upon

12 [Clearly identify the evidence you want the judge to consider with your motion. Print or type.]

- 13 1. Records and Pleadings in the Court file
14 2. Declaration by: M/C - BILHARD CASE [writer's name]
15 3. Declaration by: [writer's name]

16 V. Legal Authority/Argument

17 [Cite the legal authority you rely upon. Print or type.]

18 Motion to Vacate Judgment Order(s) is made pursuant to one or more of the following:

- 19 Civil Rule 60(a): Clerical mistake(s) in the Judgment, Order, or other parts of the record;
20 Civil Rule 60(b)(1): Mistake, inadvertence, surprise, excusable neglect or irregularity in obtaining the
21 Judgment/Order;
22 Civil Rule 60(b)(2): Erroneous proceedings against a minor or person of unsound mind and the
23 condition of the defendant/respondent did not appear in the record nor was the error discovered
24 during proceedings;

- 1 Civil Rule 60(b)(3): Newly discovered evidence which by due diligence could not have been
- 2 discovered in time to move for a new trial under CR 59(b);
- 3 Civil Rule 60(b)(4): Fraud, misrepresentation or other misconduct of an adverse party;
- 4 Civil Rule 60(b)(5): The Judgment/Order is void;
- 5 Civil Rule 60(b)(6): The judgment has been satisfied, released, or discharged, or a prior judgment
- 6 upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the
- 7 judgment should have prospective application;
- 8 Civil Rule 60(b)(7): If the defendant was served by publication, relief may be granted as prescribed in
- 9 RCW 4.28.200;
- 10 Civil Rule 60(b)(8): Death of one of the parties before the Judgment in the action;
- 11 Civil Rule 60(b)(9): Unavoidable casualty or misfortune preventing the party from prosecuting or
- 12 defending;
- 13 Civil Rule 60(b)(10): Error in judgment shown by a minor, within 12 months after arriving at full age;
- 14 Civil Rule 60(b)(11): Any other reason justifying relief from the operation of the judgment;
- 15 [Any other relevant legal authority: specify]

16 *Please see MEMORANDUM OF LAW - Attached*

23 **VI. Proposed Order**


24 [X] A proposed Order accompanies this motion.
25 *Motion for Order (MT) - Page 4 of 5
To Show Cause and To Vacate Judgment/Order*

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Respectfully Submitted,

Date: January 14, 2015

Notice to party: You may list an address that is not your residential address where you agree to accept legal documents. Any time this address changes while this action is pending, you must notify the opposing parties in writing and file an updated Confidential Information Form (WPF DRPSCU 09.0200) with the court clerk.

 Pro Se
Signature of Moving Party or Lawyer/WSBA No.

RICHARD CASE, #876282
Print or type name

Airway Heights Condominiums Center
Address P.O. Box 2049/MA-47L
Airway Heights, WA 99001-2049

Received
Washington State Supreme Court

NOV - 9 2015

Ronald R. Carpenter
Clerk

(Form 3)

Superior Court of Washington
County of SNOHOMISH

In re: Marriage of:

TINA M. CASE, vka Rowley
Petitioner(s),

and

RICHARD A. CASE,
Respondent(s).

No. 85-3-02405-4

Declaration of

RICHARD CASE
[Name]
(Optional Use)
(DCLR)

This declaration is made by:

Name: RICHARD CASE, (MRC)

Age: 52

Relationship to the parties in this action:

Ex-husband to TINA ROWLEY

I Declare:

On Dec. 21, 2001 this Honorable Court heard Mrs CR's motion for default &
to strike MRC Response. (sub # 43 & 35) The court granted the motion (#46)
but no written findings were entered to show that the court performed the
sanction analysis as required by Burnett. The record is insufficient to support
the entry of default under Rule 37.

The court ordered that Mr. C's Response be stricken from the record. (sub #46)
However, Mrs CR offered no evidence to prove that the discovery sought


1 would contradict the ~~incomplete~~ ^{income} unemployment facts submitted by Mr. C.
2 (#35) The court erred by relying upon an unsubstantiated presumption of fact
3 to sanction Mr. C, & strike his pleading. (#46) The court did not find that the
4 discovery sought by Mrs C-R was material as required by lawson before
5 imposing sanction(s).

6 The petition to modify submitted by Mrs C-R (sub#31) relied upon WSCSS
7 worksheets (Ex-A, #31) as the factual basis in support of requested relief
8 (117⁵⁰ per month) ~~pd.~~ The worksheets are factually incomplete (lacking relevant income &
9 assets/ marital community info. Also, there is no proof in the record to verify the
10 \$16,667 education expense in worksheet. Mrs C-R's factual basis is insufficient under the
11 WSCSS to support requested relief of 117⁵⁰ per month support. The record includes no
12 written findings to demonstrate that the court followed the WSCSS to impute income
13 to Mr C, to verify education expense, or to deviate from the standard calculation.
14 The court's order violates the WSCSS. (sub#47) Mrs C-R failed to disclose required
15 income/assets info. Mrs C-R used fraud.

(Attach Additional Pages if Necessary and Number Them.) (Please see MEMO & Declaration)

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Arroy Heights, [City] WA [State] on Jun 15, 2015 [Date].

16  Pro Se RICHARD CASE
17 Signature of Declarant Print or Type Name

18 Do not attach financial records, personal health care records or confidential reports to this
19 declaration. Such records should be served on the other party and filed with the court using one
20 of these cover sheets:

- 21 1) Sealed Financial Source Documents (WPF DRPSCU 09.0220) for financial records
- 22 2) Sealed Personal Health Care Records (WPF DRPSCU 09.0260) for health records
- 23 3) Sealed Confidential Report (WPF DRPSCU 09.270) for confidential reports

24 If filed separately using a cover sheet, the records will be sealed to protect your privacy (although
25 they will be available to all parties in the case, their attorneys, court personnel and certain state
agencies and boards.) See GR 22(C)(2).