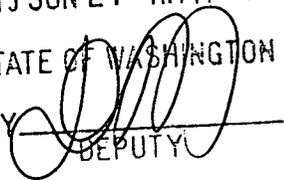


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DIVISION II

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STATE OF WASHINGTON

BY  DEPUTY

NO. 44552-2-II

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

IN RE THE ADOPTION OF
HMG, a minor child

BRIEF OF APPELLANT, PP

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NATURE OF THE CASE

Appellant PP¹ had her parental rights terminated and lost her child to adoption through an order of default entered without notice to her. Within days after learning of the order, she moved to set it aside under CR 60. A court commissioner decided she had not properly served her motion and denied it. Within days after that, she refiled and properly served the motion. This time a judge ruled that her motion was an untimely effort to revise the commissioner's ruling. He also decided that reopening the adoption was not in the best interests of the child. Because the trial court applied an incorrect standard of review, and because PP was not in default and was entitled to notice of the default proceedings before default was taken, the trial court should be reversed and the matter remanded for trial on the merits of the Respondents' petitions for termination of the parent/child relationship and adoption.

ASSIGNMENTS OF ERROR

1. The trial court erred in entering the "Order on Motion for Default" (CP 110-11) on April 5, 2012, in its entirety. In addition, the court erred in entering Findings of Fact 2.1 and 2.4. (Appendix 1)

1. Pursuant to General Order 2006-1, the parties will be referred to by their initials. The Appendix of Orders identified in Appellant's assignments of error will be filed separate from this brief.

2. The trial court erred in entering the “Findings of Fact, Conclusions of Law and Order of Relinquishment/Termination of Parent/Child Relationship” (CP 131-34), on April 27, 2012, in its entirety. In addition, the court erred in entering Findings of Fact III, VI and VII, and Conclusions of Law I, III and IV. (Appendix 2)

3. The trial court erred in entering the “Findings of Fact and Conclusions of Law” (CP 135-37) on April 27, 2012, in its entirety. In addition, the court erred in entering the first full paragraph, Findings of Fact 5 and 8, and Conclusions of Law 1 and 2, and Order of Relinquishment/Termination 1 and 2. (Appendix 3)

4. The trial court erred in entering the “Decree of Adoption” (CP 138-40) on April 27, 2012. (Appendix 4)

5. The trial court erred in entering the “Order on Motion to Vacate Order of Dismissal” (CP 144) on May 3, 2012. (Appendix 5)

6. The trial court erred in entering the “Order on Motion to Vacate Default Order” (CP 154-55) on June 12, 2012. (Appendix 6)

7. The trial court erred in entering the “Order on Motion to Vacate Default Judgment” (CP 559-60) on January 25, 2013. (Appendix 7)

8. The trial court erred in entering the “Order Denying Motion for Reconsideration” (CP 651) on March 22, 2013. (Appendix 8)

ISSUES

1. Should the trial court have vacated the order of default because PP was not in default and did not receive notice to which she was entitled?

2. Should the trial court have set aside the order of default for excusable neglect?

3. Did the trial court apply an incorrect standard of review in deciding whether to set aside the order of default?

4. Should the “Findings of Fact and Conclusions of Law,” entered April 27, 2012, the “Findings of Fact, Conclusions of Law and Order of Relinquishment/Termination of Parent/Child Relationship,” entered April 27, 2012, (CP 135-37), the “Decree of Adoption” entered April 27, 2012, and the “Order on Motion to Vacate Order of Dismissal” (CP 144) on May 3, 2012 be vacated because they were based on the faulty order of default and entered without notice to PP.

5. Should the “Findings of Fact and Conclusions of Law,” entered April 27, 2012, the “Findings of Fact, Conclusions of Law and Order of Relinquishment/Termination of Parent/Child Relationship,” entered April 27, 2012, (CP 135-37), and the “Decree of Adoption” entered April 27, 2012, be vacated because they are not supported by the evidence.

STATEMENT OF THE CASE

Preface

Though PP’s past has nothing to do with whether default was correctly entered against her, or whether she was entitled to her day in court to have Respondents prove their case against her, Respondents have made, and likely will continue to make, this case about PP more than about the legal issues. To avoid any implication that Appellant is hiding from the facts, the court should be aware that in 2010 PP was convicted of perjury and bribery that stemmed from her efforts to retain custody of her son. See Unpublished Opinion, *State v. P.*, No. 65127-7-I (August 1, 2011).

Even persons convicted of a crime are entitled to due process. PP served her sentence. She has testified that she is moving on with her life and

is hopeful to re-establish direct visitation with her son. (CP 385-87) Though in their efforts to prevent that from happening Respondents have made numerous other allegations of wrongdoing on her part, these are unsupported in the record and as yet unproven. By obtaining default, they never had to prove them. In light of that, the following are the facts material to the issues in the case, none of which is disputed.

1. PP and KG, the parents of HMG, separate and begin a paternity/custody action.

HMG is the natural child of KG and PP. HMG was born in May 2007. KG and PP were not married. They separated in September, 2007. In a subsequent paternity and custody action, Pierce County Cause No. 11-3-03358-8² (hereafter the paternity action), KG was awarded custody with PP having visitation. The extent of PP's right to visit HMG has varied over time. (See CP 35-41, 58-64³) At the time of the events underlying this appeal, PP was actively engaged in fulfilling court imposed prerequisites for reestablishing visitation following her incarceration. (CP 360, 362-63, 365, 368-69, 372, 375.)

2. The paternity action originated in Thurston County but was transferred to Pierce County.

3. The original parenting plan is not in the record. These modifications occurred following PP's sentence to prison.

2. KG and his second wife CG file a new action in Pierce County, cause no. 11-5-00474-7, to terminate PP's parental rights.

This appeal pertains to a lawsuit separate from the paternity action. On April 25, 2011, while the paternity action was pending and PP was attempting to gain broader visitation with HMG, KG and his second wife, CG, filed petitions in Pierce County Superior Court to terminate PP's relationship with HMG and allow CG to adopt HMG (hereafter the termination proceedings). (CP 1-4, 8-11) The petitions were assigned cause number 11-5-00474-7.

3. PP appears and resists KG's and CG's efforts to terminate her parental rights.

PP answered the termination petitions on June 7, 2011. (CP 16-17, 18-20.) She denied there was a basis for terminating her relationship with HMG. The matter was set for trial in January, 2012. (CP 21-22.)

On October 5, 2011, KG and CG filed a motion in the termination proceeding to temporarily suspend PP's rights under the parenting plan entered in the paternity proceeding, pending a decision on their motion to terminate PP's parental rights. (CP 23-69) PP opposed the motion by filing pleadings and appearing in court. (CP 70-72, 73-83) On October 28, 2011, the Hon. Elizabeth Martin denied the motion on the basis that granting the

motion would improperly interfere with PP's efforts to extend custody through the paternity action. (CP 84-85; 253-55)

4. KG and CG voluntarily dismiss their petitions to terminate PP's parental rights.

On November 6, 2011, KG and CG moved to dismiss the termination proceedings. (CP 86-88) They cite PP's indication that she would comply with the final parenting plan entered in the dissolution (CP 87, 375-76), though PP denied that she ever declined to comply. (CP 89, 380) The court, the Hon. James Orlando, heard the motion on December 2, 2011 (CP 374-84), and entered an order of dismissal without prejudice. (CP 90)

5. PP continues to fight for more visitation in the paternity action.

On February 10, 2012, in the paternity action, PP asked the court to appoint a counselor, Dr. Tye Hunter, who would recommend a visitation plan for PP and HMG. (CP 389-93) PP had been contending for months that KG would not act to agree on a counselor. (CP 70-72, 73-83) Her motion forced the issue. KG's attorney did not appear or object.⁴ (CP 391) The court granted the motion, ordering the counselor to provide KG's attorney with "a proposed plan for reunification between PP and child." (CP 635)

4. A month later, KG's attorney would try to have the order set aside, but the court refused. (CP 297-302)

6. KG and CG re-serve PP to terminate her parental rights.

On March 9, 2012, KG and CG served PP with what they titled “amended” pleadings: one was entitled “Amended Petition for Adoption by Stepparent” (CP 92-94); another was entitled “Amended Petition for Relinquishment/Termination of Parent/Child Relationship RCW 26.33.100” (CP 97-101); a third was entitled “Amended Summons for Petition for Relinquishment/Termination of Parent/Child Relationship RCW 26.33.100 and Petition for Adoption.” (CP 95-96) The pleadings used the termination proceeding cause number. KG and CG’s attorney “served” PP with the pleadings by handing them to her while PP and the attorney were attending a hearing in the paternity action on March 9, 2012.⁵ (CP 102) Except for the word “amended,” the amended petitions and summons were identical to the original ones. (Compare CP 8-11 with 97-101; 1-4 with 92-94)

7. PP tries to answer the amended petitions.

PP prepared answers to the petitions by March 27th. She and her father testified that PP gave the answers to her father to copy and mail, but he did not.⁶ (CP 147, 145)

5. This was the hearing discussed in footnote 3, supra.

6. PP later showed that her father was subsequently diagnosed with Alzheimer’s Disease. (CP 510-21)

8. KG and CG purport to reopen the termination proceedings.

KG and CG had not filed the amended petitions when they served PP. Instead, they waited until April 3, 2012, to file. When they did, they filed them in Pierce County under the same cause number as the first petitions. (CP 92, 97) KG and CG did not pay a filing fee. They did this without reopening the termination proceeding.

9. Without giving notice to PP, KG and CG get an order of default, and orders terminating her parental rights.

The same day they filed the amended petitions, April 3, 2012, KG and CG also filed a Motion and Declaration for Default. (CP 103-07). In it, they contend that “the other party has failed to appear.” (CP 104) They provided no proof that they served PP with the motion. There is no dispute they did not give PP notice of this motion.

Up to this time, KG and CG had not asked to reopen the termination proceeding. They started to correct the failure on April 5, 2012, over a month after they served PP, and days after they filed the petitions and the motion for default using the cause number in the termination proceeding. On that day, KG and CG filed a motion to vacate the previous order of dismissal that was entered on December 2, 2011. (CP 108-09) Even though PP obviously was

a party to the termination proceeding, and entitled to notice of KG's and CG's motion to reopen that proceeding, it is undisputed that KG and CG did not give PP notice of this motion either.

Ex parte, and again without notice to PP, KG and CG obtained an order of default from Commissioner Diana Kiesel on April 5, 2012. (CP 110-11) Commissioner Kiesel found that PP had failed to appear or answer. (CP 111)

On April 27, 2012, again ex parte, and without notice to PP, KG and CG obtain "Findings of Fact, Conclusions of Law and Order of Relinquishment/Termination of Parent/Child Relationship," "Findings of Fact and Conclusions of Law," and a "Decree of Adoption" from the trial court in the termination proceeding. (CP 131-34; 135-37; 138-40). These terminated PP's parental right. The findings appear to be based on an adoption report (CP 112-30) from an investigator who had not been appointed by the court,⁷ was chosen by KG and CG without notice or input from PP, and who never interviewed or even contacted PP. (CP 112-30)

Not until after all this did KG and CG let PP know what had happened. On April 27, 2012, through their attorney, KG and CG sent this

7. The court file contains no order appointing an adoption investigator.

court statement to PP: “Enclosed please find the Order of Default entered in this matter on April 5, 2012. The final adoption papers were filed with the court on April 27, 2012.” (CP 189)

On May 3, 2012, ex parte and without notice to PP, KG and CG obtained an order vacating the order of dismissal entered in the termination proceeding on December 2, 2011. (CP 144) In other words, all the previous actions – the filing of the amended petitions, the order of default, the decree of adoption – occurred before the cause in which they occurred, the termination proceeding, was reopened. To avoid the obvious problems this created, KG and CG asked that the court make the order *nunc pro tunc* to April 6th. The trial court agreed. (CP 144)

10. PP moves to set aside the orders.

Once PP learned what had occurred, she acted promptly to set it aside. On May 31, 2012, PP filed a motion to vacate the order of default under CR 60. (CP 145-49) She argued that she had not received notice of the motion for default, but even so had actually tried to file an answer to the new petitions. (CP 145, 147) KG and CG responded by arguing that PP had not noted her motion in accordance with CR 60. (CP 152-53) On June 12, 2012, Commissioner Diana Kiesel denied the motion. She concluded that the

motion was not noted in compliance with CR 60, and that PP “had not shown [the Commissioner] there would be a different result.” (CR 154-55; 564)

On June 28, 2012, PP filed a “Motion and Declaration for CR 60 Relief from Judgment or Order,” properly noting it under CR 60. (CP 156-57, 158-91, 192-93, 194-95, 196-231) PP argued, among other things, that she had answered the first petitions and had not received notice of the motion for order of default. (CP 162-63) On July 10, 2012, KG and CG opposed the motion, arguing that “the motion has already been heard by Commissioner Kiesel on June 12, 2012, and the request for relief was denied,” and that PP could not succeed in avoiding termination of her parental rights in any event. (CP 234-35). After several delays, on January 25, 2013, the trial court denied PP’s motion, stating that while the motion was properly before it, “all issues and facts were before Commissioner Kiesel [sic]. Her ruling was not revised or appealed by respondent” and “there is no evidence that Respondent would ultimately prevail in this adoption proceeding.” (CP 559-60) In the judge’s oral decision he made his thoughts known more precisely:

So, setting aside any analysis of defects in today's hearing, the next level of analysis is what happened in front of Commissioner Kiesel and is there any basis to have this heard again, and I just don't see it. As I indicated in my questions, anything and everything that was in front of Commissioner Kiesel is now in front of the Court, and there's

nothing new, except for this very late-developing declaration from PP, and it does not begin to amount to a reason to re-examine what Commissioner Kiesel did. She had all the information. She made her decision. There was no motion to revise; there was no motion to reconsider. End of discussion, as far as this Court is concerned. I don't think this matter is appropriately heard again.

Now, let me make the next level of analysis to try and hopefully drive a stake through the heart of this matter, if I can, because it just keeps resurrecting itself. Even if I were to move to the next step and see if there is a basis to reopen the question of the adoption, I don't find it anywhere near being in the best interest of the child to have that happen, which is a consideration that has to weigh heavily on the Court when it considers setting aside an adoption. For that reason, even if I determined that Commissioner Kiesel's ruling ought to be re-examined, I would not find that the moving parties prevailed.

The motion is denied.

RP (1-25-13) at 14-15. The court awarded attorney fees to KG and CG. *Id.*

On February 4, 2013, PP sought reconsideration. (CR 563-66, 567-80). The court summarily denied the motion on March 22, 2013, noting simply "it's not raising anything new." RP (3-22-13) at 10.

ARGUMENT

1. Standard of Review

The decision whether to vacate a default judgment is reviewed for abuse of discretion. *Lamar Outdoor Advertising v. Harwood*, 162 Wn. App.

385, 390, 254 P.3d 208 (2011), citing *Griggs v. Averbeck Realty, Inc.*, 92 Wn.2d 576, 582, 599 P.2d 1289 (1979). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *Id.* at 391, citing *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Refusal to vacate a default judgment is more likely to amount to an abuse of discretion because default judgments are generally disfavored. *Id.* citing *White v. Holm*, 73 Wn.2d 348, 351-352, 438 P.2d 581 (1968).

Washington has a strong preference for giving parties their day in court; thus, default judgments are disfavored. While not a proceeding in equity, the decision to vacate a judgment should be made in accordance with equitable principles.

Id.

2. The order of default and subsequent orders based on it were improper. PP was not in default.

A party who has answered a complaint is not in default. *Duryea v. Wilson*, 144 P.3d 318, 135 Wn. App. 233 (2006); *Tacoma Recycling v. Capitol Material Handling Co.*, 34 Wn. App. 392, 395, 661 P.2d 609 (1983). After answering an original complaint, failure to answer an amended complaint cannot form the basis for a default.

We are unaware of any published Washington appellate case in which a defendant answered the original complaint and was found to be in default for failure to file an answer to an amended complaint, especially when the amendment does not

substantially alter the original. *Duryea* cites us to no such case. Instead, existing Washington precedent suggests otherwise. When the defendant has previously answered the plaintiff's complaint, a failure to answer an amended complaint that makes no substantial changes does not create a default.

Duryea v. Wilson, 144 P.3d at 239 (citations omitted).

When the trial court improperly enters a default order, that is, when the defendant was not truly in default, the defendant need not make the four part showing, including a meritorious defense, required by CR 60(b) to set the judgment aside. *Duryea v. Wilson*, 144 P.3d at 238; *Shreve v. Chamberlin*, 66 Wn. App. 728, 731-32, 832 P.2d 1355 (1992); *Tiffin v. Hendricks*, 44 Wn.2d 837, 844-47, 271 P.2d 683 (1954); *Whatcom County v. Kane*, 31 Wn. App. 250, 252-53, 640 P.2d 1075 (1981). Instead, the defendant is entitled to have the default judgment set aside as a matter of right, with no required showing of a meritorious defense. *Duryea v. Wilson*, 144 P.3d at 238.

Here, PP answered KG's and CG's first petitions, and denied the factual basis for their claims. The amended petitions were identical to the originals. Under these circumstances, PP could not be held in default for failing to answer the amended petitions. Accord *C. Rhyne & Associates v. Swanson*, 41 Wn. App. 323, 704 P.2d 164 (1985)(vacating default judgment where plaintiff commenced an action against defendant by serving but not

filing summons and complaint, defendant served a timely answer, then plaintiff obtained a default judgment by serving a nearly identical complaint 3 months later, which the defendant failed to answer.) As a result, she did not have to establish a meritorious defense. The trial court erred in requiring her to prove a meritorious defense and refusing to vacate the orders.

3. If PP was in default, the order of default and subsequent orders based on it still were improper. PP was not given notice of the motion for default or any of the other proceedings.

a. PP had appeared and was entitled to notice.

CR 5(a) provides that orders, pleadings subsequent to the original complaint, written motions other than ones which may be heard ex parte, and other documents “shall be served upon each of the parties.” The rule requires that all pleadings subsequent to the summons and complaint be served on all parties. *Lenzi v. Redland Ins. Co.*, 140 Wn.2d 267, 276 n.2, 996 P.2d 603 (2000). Parties who have appeared are entitled to notice of all subsequent proceedings. RCW 4.28.210. Notice of every written motion other than one which may be heard ex parte must be served upon each of the parties. CR 5(a); CR 6(d); *Spokane County v. Specialty Auto & Truck Painting, Inc.*, 119 Wn. App. 391, 397, 79 P.3d 448 (2003).

A party appears in an action when she answers, demurs, makes any

application for an order therein, or gives the opposing party written notice of her appearance. RCW 4.28.210; *Seek Systems, Inc. v. Lincoln Moving/Global Van Lines, Inc.*, 63 Wn. App. 266, 268, 818 P.2d 618 (1991). Here, PP had answered KG's and CG's first petitions, and denied the factual basis for their claims. She also responded to and argued in court against motions brought by KG and CG in the termination proceeding. PP clearly appeared. She was, therefore, entitled to notice of the motion for default and the orders based on it.

KG and CG will argue that PP's previous appearance was not sufficient. They will argue that their "amended" petitions for termination of PP's parental rights and for adoption started a new action which required PP to appear anew. They were entitled to an order of default and the subsequent orders based on it, they will contend, because PP did not appear anew after she was served with the amended petitions and summons.

A similar argument was made and rejected in *Shreve v. Chamberlin*, 66 Wn. App. 728, 832 P.2d 1355 (1992). On April 15, 1988, Michael and Claudia Shreve took judgment against Steven and Elizabeth Chamberlin for \$59,266 in an action arising out of a partnership accounting. From December, 1988, through September, 1989, the Shreves served five writs of garnishment

on Chamberlin's employer, John L. Scott, Inc. A Scott employee handled the writs for Scott and served ten timely answers, as a result of which the Shreves collected roughly \$4,000. On October 3, 1989, the Shreves served a sixth writ of garnishment on Scott. Somehow, the employee lost track of this writ, and Scott failed to answer by October 23, the date on which an answer was due. On October 26, the Shreves obtained a default judgment against Scott for \$57,140.48, the total remaining on the underlying Shreve/Chamberlin judgment after costs and attorney's fees occasioned by the garnishments were added to it. Notwithstanding Scott's ten previous answers, the Shreves obtained the judgment without giving notice to Scott and without even inquiring of Scott as to the possibility of an oversight. Scott moved to vacate the judgment. The trial court refused, ruling that the Shreves had no obligation to give notice of their intent to take a default judgment. The Court of Appeals reversed stating:

In this case, all six writs of garnishment were part of the same underlying action, and all were part of a single continuing effort to collect a single judgment. All bore the same cause number, and all were filed within a nine month time span. Under these circumstances, we hold that Scott appeared by answering the first five writs in timely fashion, and that before the Shreves could take a default judgment on the sixth writ, they were required to give Scott notice. Because they failed to do that, the default judgment on the sixth writ must be vacated.

66 Wn. App. at 733.

Here, KG and CG did not begin a new action. At their choice, they filed their amended petitions under the same cause number and caption as their previous petitions. They did not pay a filing fee to commence a new action. They denominated their petitions “amendments” of the earlier petitions. The petitions themselves were identical to the original petitions. Indeed, they even moved – also without notice to PP – to have the original order of dismissal vacated so they could proceed in the original cause. The court granted the motion. They have no basis to claim the amended petitions constituted a new action, or that they triggered an obligation for PP to appear anew.

Moreover, the argument is a red herring in any event. Even if the amended petitions created a new action, PP had appeared. Appearing in and contesting an earlier stage of an action carries over and constitutes an appearance in the subsequent action. See *Gage v. Boeing Co.*, 55 Wn. App. 157, 162, 776 P.2d 991 (1989) (Defendant appeared in and vigorously contested earlier administrative stages of the same action constituting an appearance in an appeal de novo to superior court.); accord *Hardesty v. Stenchever*, 82 Wn. App. 253, 917 P.2d 577 (1996)(Order of default properly

set aside where Plaintiff failed to give notice of motion for default to party who appeared in identical prior proceeding). As the *Gage* court noted, CR 55 was “intended to protect those parties who, although delaying in a formal sense by failing to file pleadings within the twenty-day period, have otherwise indicated to the moving party a clear purpose to defend the suit.” 55 Wn. App. at 161. The Court reasoned that *Gage* could have “entertained no illusions regarding respondent's intentions to contest the claims”; that the administrative and superior court proceedings were really one action in which Boeing had appeared; and that to treat the superior court appeal as an entirely new and separate proceeding “would elevate form over substance.” *Id.* at 162. Likewise, by vigorously contesting the termination proceedings and by vigorously pursuing visitation in the paternity proceeding, KG and CG could have no illusions that PP intended to contest the termination proceedings, and would have appeared if she understood the legal niceties that KG’s and CG’s attorney believed applied because they served her with a new summons.

b. Because KG and CG did not give PP notice of any of the proceedings, the orders granted in those proceedings must be vacated.

CR 6(d) provides that motions shall be served not later than 5 days before the hearing. CR 55(a)(3) establishes a minimum of 5 days notice

before a default judgment can be entered.

Notice and the opportunity to be heard on matters which materially affect a litigant's rights are essential elements of due process that may not be disregarded. *In re Marriage of Mahalingam*, 21 Wn. App. 228, 230, 584 P.2d 971 (1978). A judgment entered without notice and an opportunity to be heard is void. *Sheldon v. Sheldon*, 47 Wn.2d 699, 702, 289 P.2d 335 (1955); *State ex rel. Adams v. Superior Court*, 36 Wn.2d 868, 220 P.2d 1081 (1950); *State ex rel. First Nat. Bank of Central City, Colo. v. Hastings*, 120 Wash. 283, 207 P. 23, 31 (1922). "A trial court has no authority to enter a default judgment against a party who has appeared but did not receive proper notice. As a result, a party who did not receive required notice is entitled as a matter of right to have a default judgment set aside." *Rosander v. Nightrunners Transp., Ltd.*, 147 Wn. App. 392, 399, 196 P.3d 711 (2008)(citations omitted); *Sacotte Const., Inc. v. National Fire & Marine Ins. Co.*, 143 Wn. App. 410, 419, 177 P.3d 1147 (2008)(where defendant made an informal telephonic appearance in the matter, it was entitled to notice prior to default, and therefore the trial court acted outside its authority by entering an order of default without notice in violation of CR 55(a)(3) and abused its discretion by denying defendant's motion to vacate default judgment.)

There is no dispute that KG and CG did not give PP notice of their motion for default or any of the other proceedings that ultimately terminated her parental rights. Therefore, the orders are void. The trial court erred in refusing to vacate the order of default and all the other orders based on it that were entered without notice to PP. It also erred in requiring PP to show a meritorious defense before vacating the orders.

4. If PP was required to appear anew, her failure to appear was the result of excusable neglect that justifies setting aside the order of default and the subsequent orders based on it.

CR 55(c)(1) provides that once a default judgment has been entered, a court “may likewise set it aside in accordance with [CR] 60(b).” Under CR 60(b)(1), the grounds for vacating a default judgment include “[m]istakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order.” In exercising its discretion to vacate a judgment pursuant to CR 60(b), a trial court must consider whether: (1) there is substantial evidence to support, at least prima facie, a defense to the opposing party's claim; (2) 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) the moving party acted with due diligence after notice of entry of the default judgment; and (4) vacating the default

judgment would result in a substantial hardship to the opposing party. *Hardesty v. Stenchever*, 82 Wn. App. 253, 263, 917 P.2d 577 (1996).

The last three elements are clearly present. KG and CG filed their second petitions under the same cause number as the first. They denominated the new petitions as “amended” petitions implying they were continuations or supplements of the first petitions. PP had already appeared in the initial proceeding, answered KG’s and CG’s first petitions, and denied the factual basis for their claims. She also responded to, appeared in court for, and argued against motions brought by KG and CG in that proceeding. Under the circumstances it was reasonable and excusable for PP to believe she did not need to file a new appearance.

Moreover, PP had good reason to believe she had answered the petitions. PP and her father testified that PP had prepared answers to the petitions by March 27th. She gave them to her father to copy and mail, but he did not.⁸ (CP 147, 145) PP had no reason to believe she had failed her duty.

She also acted promptly after receiving notice of the order of default. Thirty one days after she learned about the default, she moved to vacate it. Sixteen days after Commissioner Kiesel denied her motion because she had

8. PP later showed that her father was subsequently diagnosed with Alzheimer’s Disease. (CP 510-21)

failed to present it properly, PP corrected her procedural failures and filed a new motion. Clearly she met the diligence requirement.

Equally clearly, PP suffered substantial hardship from the default. A natural parent's interest in the care and custody of his or her child is a "fundamental liberty interest." *In re C.R.B.*, 62 Wn. App. 608, 615, 814 P.2d 1197 (1991), quoting *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 1395, 71 L.Ed.2d 599 (1982). The order of default and the subsequent orders based on it deprived her of those rights.

Petitioners' only argument is that PP did not provide substantial evidence to support, at least prima facie, a defense to their petitions. They are incorrect.

Termination of a parent child relationship requires "clear, cogent and convincing evidence of abandonment." *In re Adoption of Webb*, 14 Wn. App. 651, 656, 544 P.2d 130 (1975). Abandonment requires a finding of an intention, either expressed or implied, on the part of the parent to permanently relinquish all claims to his children. *In re Tryon*, 27 Wn. App. 842, 845, 621 P.2d 775 (1980). "For purposes of an adoption, . . . the natural parent will only be deemed to have deserted or abandoned his children when he has intentionally pursued a course of conduct 'showing a wilful substantial lack

of regard for parental obligations.” *Id.* at 848.

Here, PP had answered the original petitions for termination of her parental rights denying the factual basis for KG’s and CG’s claims. Less than ninety days before they filed their amended petitions, KG and CG withdrew the original, identical petitions because even they believed PP was taking steps to comply with the parenting plan. (CP 87, 375-76) Just slightly more than a month before that, Judge Elizabeth Martin denied KG’s and CG’s motion to terminate PP’s visitation rights even temporarily. (CP 84-85; 253-55) In fact, at the time of the default, PP was actively engaged in fulfilling the requirements of the parenting plan. She initiated multiple hearings to have the process of expanding her visitation rights move forward. (CP 273, 274-78, 287-96) Just thirty days before the order of default, the court in the paternity proceeding had ordered the counselor to provide KG’s attorney with “a proposed plan for reunification between PP and child.” (CP 635) Five days after the order of default, KG’s and CG’s other attorney, Brita Long, was still corresponding with that counselor about that plan. (CP 415-16) In conjunction with her motion to vacate the order of default, PP filed numerous emails, letters and records of correspondence showing that she was actively engaged in maintaining her relationship with HMG and gaining more contact.

(CP 70-72, 73-83, 89-90, 179-86, 308-26, 327-52, 463-65, 478-80) She was current on her support obligations. (CP 597) This was substantial evidence of defense to KG's and CG's claims.

This case is similar to *C. Rhyne & Associates v. Swanson*, 41 Wn. App. 323, 704 P.2d 164 (1985). There, the plaintiff commenced an action against defendant by serving a summons and complaint. Though Plaintiff did not file the complaint, Defendant nevertheless served a timely answer. Three months later, the Plaintiff served and filed a nearly identical complaint. When defendant failed to answer the second complaint, plaintiff obtained a default judgment. Twenty days after the order, the Defendant moved to set it aside. The only evidence he presented of a viable defense was his answer to the original complaint. The trial court refused to vacate the order of default. The Court of Appeals reversed, holding that the trial court abused its discretion in not finding that the Defendant's failure to answer the second complaint was "excusable neglect" under CR 60(b)(1). The court reasoned that because the Defendant had appeared and answered the first complaint, it was excusable neglect for him not to answer the second. The court also concluded that the affirmative defenses raised in his answer, though tenuous, were sufficient to show a prima facie defense, and sufficient to support the

motion to vacate. The same reasoning should guide this case.

5. PP's motion to vacate was timely and correct.

In its January 25, 2012 order denying PP's Motion to Vacate, the trial court noted that while the motion was properly before the court procedurally, all issues and facts were before Commissioner Kiesel and her ruling "was not revised or appealed by respondent." That conclusion was in error.

The court misperceived the posture of the case. The motion the court considered on January 25, 2013, was not a challenge to Commissioner Kiesel's previous ruling, but a correction of the procedural error which caused Commissioner Kiesel to deny PP's motion in the first instance. PP correctly brought her motions under CR 60. That rule sets forth a specific procedure for motions brought under it. KG and CG objected to the first motion on the basis that PP failed to comply with that procedure. (CP 152-53) Commissioner Kiesel correctly agreed. (CR 154-55; 564)

At that point, PP had no alternative but to re-file the motion in order to place it in the correct procedural posture for consideration.⁹ PP did that on June 28th. This was a new motion. It was not an appeal of or challenge to the Commissioner's ruling, but rather an effort to correct the mistake that

9. PP testified she consulted an attorney who advised her that refileing the motion rather than seeking revision or reconsideration was the proper way to proceed. (CP 558)

prevented the Commissioner from considering the first motion.

Because Commissioner Kiesel decided that the first motion was not properly before her, any additional finding regarding the merits of that motion was dicta. Commissioner Kiesel could not prohibit PP from correcting her procedural error and obtaining full consideration of her motion on the merits. Indeed, PP had to refile the motion in order to protect her right to appeal. She did that by filing the second motion.

The trial court simply followed Commissioner Kiesel's earlier decision. As a result, PP's motion was never addressed on the merits. Thus, it was error for the trial court to conclude that it was obligated to affirm Commissioner Kiesel's earlier decision.

As importantly, even if PP was required to, but had not, properly sought revision of Commissioner Kiesel's order, or properly appealed, her motion still was proper. As discussed above, orders of default entered when a party is not in default, or without notice to a party who has appeared, are void. The law is clear that void judgments can be challenged anytime. See, e.g., *In re Marriage of Buecking*, 167 Wn. App. 555, 558, 274 P.3d 390 (2012) ("There is no time limit for attacking a void judgment."); *Cole v. Harveyland LLC*, 163 Wn. App. 199, 205, 258 P.3d 70 (2011) ("A void

judgment may be challenged at any time.”); *Colacurcio v. Burger*, 110 Wn. App. 488, 497-98, 41 P.3d 506 (2002)(“Because the default order and default judgment were void, we need not decide whether Burger’s motion to vacate was brought within a reasonable time, and whether Burger had a defense to the claim for damages.”); *Allstate Ins. Co. v. Khani*, 75 Wn. App. 317, 324, 877 P.2d 724 (1994)(“Consequently, not even the doctrine of laches bars a party from attacking a void judgment.”). PP was not in default, had appeared, and did not receive notice of the motions. Perceived failures to meet time restrictions do not trump those facts.

6. If the court refuses to vacate the order of default, it still should vacate the orders terminating PP’s parental rights. The trial court did not conduct a meaningful hearing on the merits, and did not enter findings of fact or conclusions of law sufficient to support termination.

In proceedings to terminate parental rights, even when a parent is in default, a hearing on the merits is necessary to satisfy due process requirements. *In re C.R.B.*, 62 Wn. App. 608, 616, 814 P.2d 1197 (1991).

RCW 13.34.180 & .190 set forth specific procedural requirements that must be followed in order to terminate parental rights, including establishing particular factual matters. In seeking a default judgment, the State may not circumvent these requirements. CR 55(b)(2) states:

If, in order to enable the court to enter judgment or to carry it into effect, it is

necessary to ... establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings as are deemed necessary.... Findings of fact and conclusions of law are required under this subsection.

Id. Required findings must be “sufficiently specific to permit meaningful review.” *Id.* at 618, quoting *In re LaBelle*, 107 Wn.2d 196, 218, 728 P.2d 138 (1986). In *In re C.R.B.*, the court reversed an order terminating the appellants’ parental rights following an order of default. The court reasoned that because the trial court’s findings of fact consisted only of legal conclusions not supported by facts and did not satisfy the mandate of proof by clear, cogent, and convincing evidence, they did not satisfy the requirements of RCW 13.34.180 & .190, and were not sufficiently specific to permit meaningful review. 62 Wn. App. at 619.

Here, there is no evidence of a meaningful hearing on the merits of KG’s and CG’s petitions. The record discloses no evidence submitted in support of the petitions. The court docket does not show that a hearing occurred. In the Findings of Fact, Conclusions of Law and Order of Relinquishment-Termination of Parent/Child Relationship, the only finding the Court made regarding PP’s parenting was the perfunctory statement: “Relinquishment/termination is in the best interests of the minor child.” (CP

136) Even in that, the court cited no evidence it considered, or the basis for the conclusion. In the Findings of Fact and Conclusions of Law entered in support of HMG's adoption, the Court again did not identify any fact indicating abandonment. The only evidence of any kind it identified was in the statement: "That Joni Irvin¹⁰ was appointed next friend and the final Report of the Next Friend has been entered and considered by the court." (CP 133) These do not show a hearing on the merits and are not sufficient to support a finding of abandonment. Therefore, the orders terminating PP's rights and allowing the adoption are faulty in and of themselves. They should be vacated.

CONCLUSION

It is difficult to imagine a more serious breach of PP's right to due process. PP was actively engaged in getting more time with her son in the paternity action. She had vigorously resisted KG's and CG's efforts to terminate her parental rights. KG's and CG's refile did not require her to reappear anew. Even if it did, KG and CG could have no doubt that PP

10. It bears noting that, like all the other proceedings, PP was never informed of Irvin's appointment, was not contacted in conjunction with Irvin's investigation, and was not provided with a copy of her report. The court docket does not show how, when, or at whose request the court appointed Irvin. The docket does show that her report was filed the day before the court signed the decree of adoption. To the extent this report served as the sole basis for termination of PP's rights, it violated PP's due process right to address the evidence against her.

would appear and defend their refiled effort to terminate her rights if she knew she had to. Yet they proceeded without giving notice to her until their efforts were complete. They did not notify her they were asking for an order of default. They did not notify her that an adoption advisor would make a recommendation regarding adoption. They did not give her notice of the proceedings to terminate her parental rights or have her son adopted. They did not even give her notice that they were reopening the termination case, to which she was undeniably a party. As a result, they were able to get PP's parental rights terminated without resistance, with virtually no evidence of abandonment, based on an adoption report from a person who did not even speak to PP to learn her side of the story. They got an end run around the paternity action, where the court was working to reunify PP and her son.

The trial court erred when it upheld these events. Without ever addressing the merits of the procedure, the court wrongly decided that instead of filing a new motion to vacate after Commissioner Kiesel had told her the original motion was defective, PP instead should have sought revision or reconsideration. But revision or reconsideration would not have corrected the defect in her CR 60 motion. Only properly filing the motion would. Moreover, the trial court erred when it decided that PP had to show a

meritorious defense and failed. Because the default order was obtained improperly, PP was not required to show a meritorious defense. But even if she was, the record contained evidence greatly exceeding what was needed to show that PP had not abandoned her son. Indeed, just days before default was entered, the trial court in the paternity action entered an order directing “a proposed plan for reunification between PP and child.” (CP 635) Clearer evidence could not be found.

PP had a fundamental right to the parenthood of her child. That right was taken from her without notice or an opportunity to be heard. Apparently it was taken from her based solely on a report she had never seen, prepared by an evaluator who was never disclosed to her and who never contacted her. This process violated basic notions of due process, as well as Washington statutes, court rules and court decisions. The trial court affirmed those violations when it denied her motion to vacate. Because that ruling is contrary to the law and the evidence, PP asks this court to reverse the “Order on Motion for Default” entered on April 5, 2012. Because default was improperly ordered, PP also asks the court to vacate the “Findings of Fact, Conclusions of Law and Order of Relinquishment/Termination of Parent/Child Relationship” entered April 27, 2012; the “Findings of Fact and

Conclusions of Law” entered April 27, 2012; “Decree of Adoption” entered April 27, 2012; “Order on Motion to Vacate Default Order” entered June 12, 2012; “Order on Motion to Vacate Default Judgment” entered January 25, 2013, and “Order Denying Motion for Reconsideration” entered March 22, 2013. She also asks the court to reverse the award of attorney fees to made in the January 25th order. PP should be restored to the position she was in before the Order of Default and allowed to defend against the termination of her parental rights.

Dated this 27th day of June, 2013.


TIMOTHY R. GOSSELIN, WSBA #13730
Attorney for Appellant, PP

NO. 44552-2-II

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STATE OF WASHINGTON

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

IN RE THE ADOPTION OF
HMG, a minor child

APPENDIX TO BRIEF OF APPELLANT, PP

Timothy R. Gosselin,
WSBA #13730
Attorneys for Appellant, PP

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Table of Contents to *Appendix*
(Filed under separate cover to comply with GO 2006-1)

1. "Order on Motion for Default" (CP 110-11) entered April 5, 2012
2. "Findings of Fact, Conclusions of Law and Order of Relinquishment/Termination of Parent/Child Relationship" (CP 131-34), entered April 27, 2012
3. "Findings of Fact and Conclusions of Law" (CP 135-37) entered April 27, 2012
4. "Decree of Adoption" (CP 138-40) entered April 27, 2012.
5. "Order on Motion to Vacate Order of Dismissal" (CP 144) entered May 3, 2012 (*nunc pro tunc* to April 6, 2012).
6. "Order on Motion to Vacate Default Order" (CP 154-55) entered June 12, 2012.
7. "Order on Motion to Vacate Default Judgment" (CP 559-60) entered January 25, 2013.
8. "Order Denying Motion for Reconsideration" (CP 651) entered March 22, 2013.

APPENDIX 1

FILED
IN PIERCE COUNTY JUVENILE COURT



11-5-00474-7 38303684 ORDFL 04-09-12

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PIERCE COUNTY WASHINGTON
KEVIN STOKK, County Clerk
BY DEPUTY

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Superior Court of Washington
County of Pierce

<p>In re the Adoption of:</p> <p>HUNTER MICHAEL GREGERSON,</p> <p>Minor child.</p>	<p>No. 11-5-00474-7</p> <p>Order on Motion for Default (ORDFL) granted (ORDFL)</p>
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I. Basis

A motion for default has been presented by Christin and Kelly Gregerson.

II. Findings

The court *finds*:

2.1 Proper Jurisdiction and Venue

The court has proper jurisdiction and venue.

2.2 Service on Nonrequesting Party

mother was served with the Amended Summons for Termination, Amended Petition for Adoption and Amended Petition for Termination on March 9, 2012.

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2.3 Time Elapsed Since Service

The nonrequesting party was served within the State of Washington and more than 20 days have elapsed since the date of service.

2.4 Appearance

The nonrequesting party has failed to appear.

2.5 Servicemembers Civil Relief Act Statement

2.5.1 Service member status --- It appears the nonrequesting party:

is not a service member.

2.5.2 Dependent of a service member status --- It appears the nonrequesting party:

is not a dependent of a resident of Washington who is on active duty and is a National Guard member or a Reservist.

2.6 Other

III. Order

It is Ordered:

The nonrequesting party is in default.

Dated: 4/3/12



Judge/Commissioner
DIANA LYNN KIESEL

Presented by:



Daniel W. Smith, WSBA#15206
Signature of Requesting Party or Lawyer/WSBA No.

APPENDIX 2



11-5-00474-7 38428142 FNFL 04-30-12



Superior Court of Washington
County of Pierce

In re the Adoption of:

HUNTER MICHAEL GREGERSON,

No. 11-5-00474-7

Minor child.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

THIS MATTER having come regularly before the court upon the application of the petitioner, KELLY and CHRISTIN GREGERSON, husband and wife; the petitioners appearing in person and by and through their attorney, Daniel W. Smith of Campbell, Dille, Barnett, & Smith, P.L.L.C., and the court in all things being advised, makes the following:

FINDINGS OF FACT

I

Petition for Adoption

A Petition for Adoption was signed by CHRISTIN GREGERSON and filed with this court on April 3, 2012.

II

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW - Page 1 of 4**

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Identification of Parties

2.1 HUNTER MICHAEL GREGERSON is a minor child born on the 7TH day of May, 2007, born in Puyallup, Washington, and presently resides in Lacey, Washington.

2.2 KELLY GREGERSON is the biological father of HUNTER MICHAEL GREGERSON.

2.3 PEPPER PRIGGER is the biological mother of HUNTER MICHAEL GREGERSON.

2.4 The petitioners, KELLY GREGERSON and CHRISTIN GREGERSON are the current custodial parents of HUNTER MICHAEL GREGERSON.

III

Orders of Termination of Parental Rights

The parental rights of PEPPER PRIGGER were terminated in Pierce County Superior Court Juvenile Department, cause number 11-5-00474-7, on this day.

IV

Indian Child Welfare Act

The Indian Child Welfare Act, 25 U.S.C., Sec. 1901, et seq., does not apply in that the child is not a member of an Indian Tribe or eligible for membership in an Indian Tribe and not the biological child of a member of an Indian Tribe.

V

Soldiers & Sailors Relief Act

FINDINGS OF FACT AND CONCLUSIONS OF LAW - Page 2 of 4

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1 The Soldiers & Sailors Relief Act of 1940, 50 U.S.C., Sec. 501, et seq., does not apply to
2 this proceeding in that none of the persons whose rights may be affected are in the military
3 service of the United States.
4

5 VI

6 Next Friend

7 That Joni Irvin was appointed next friend and the final Report of the Next Friend has
8 been entered and considered by the court.

9 VII

10 Petitioners

11 That the petitioner, CHRISTIN GREGERSON, is a resident of the State of Washington;
12 of the Caucasian race; of good moral character and reputation and fully able and qualified to
13 support and care for said infant; your petitioner has great love and affection for said child and
14 said child has been in her care for years; said petitioner wishes to adopt said child for her own
15 child for all intents and purposes. It is in the best interests of said child and all concerned that
16 said Petition be granted.
17

18 VIII

19 Name of Minor Child

20 Your petitioners desire that the name of said child not be changed.

21 FROM THE FOREGOING FINDINGS OF FACT, THE COURT NOW MAKES THE
22 FOLLOWING:

23 CONCLUSIONS OF LAW

24 I

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW - Page 3 of 4**

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The petitioners are entitled to a decree of the court approving their Petition for Adoption.

II

That the name of the child not be changed.

III

That the Registrar of Vital Statistics of the State of Washington issue a new birth certificate in the form and manner provided by law.

IV

That said decree provide that the records of the Registrar be secret and not disclosed except upon order of this court for good cause shown.

Let judgment be entered accordingly.

DONE IN OPEN COURT this 27th day of April, 20 12.

Tom Felnagle

JUDGE

Presented by:

[Signature]

Daniel W. Smith, WSBA #15206
of Campbell, Dille, Barnett, & Smith, P.L.L.C.
Attorneys for Petitioners

Thomas J. Felnagle



FINDINGS OF FACT AND CONCLUSIONS OF LAW - Page 4 of 4

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APPENDIX 3



11-5-00474-7 38428143 FNFL 04-30-12



Superior Court of Washington
County of Pierce

In re the Adoption:

HUNTER MICHAEL GREGERSON

No. 11-5-00474-7

Minor Child.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER OF RELINQUISH-
MENT/TERMINATION OF
PARENT/CHILD RELATIONSHIP**

THIS MATTER having come on regularly this day upon the petition of CHRISTIN GREGERSON and KELLY N. GREGERSON for the termination of Parent/Child Relationship; and the petitioners appearing in person and by and through their attorney, Daniel W. Smith of Campbell, Dille, Barnett & Smith, PLLC, and the Court being fully advised in the premises, and having heard the evidence, now, therefore, the Court makes the following:

FINDINGS OF FACT

1. That the child involved herein, HUNTER MICHAEL GREGERSON, is the child of KELLY GREGERSON, father and PEPPER PRIGGER, mother, an unmarried couple, and was born in Puyallup, Washington, on May 7, 2007. The child presently resides in Thurston

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER OF RELINQUISH-MENT/TERMINATION OF
PARENT/CHILD RELATIONSHIP - Page 1 of 3**

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1 County, Washington with the Petitioners.

2 2. That PEPPER PRIGGER, the natural mother of the child, was born on February
3 22, 1977, is not a minor and presently resides at Arlington, Washington.

4 3. That KELLY GREGERSON the natural father of the child, was born on
5 December 1, 1976, is not a minor and presently resides at Lacey, Washington.

6 4. That CHRISTIN GREGERSON is the prospective adoptive parent of HUNTER
7 MICHAEL GREGERSON and the wife of KELLY GREGERSON.

8 5. That PEPPER PRIGGER was served personally, and an order of default was
9 entered against her on April 6, 2012.

10 6. The Indian Child Welfare Act, 25 U.S.C., Sec. 1901, et seq., does not apply in
11 that the child is not a member of an Indian Tribe or eligible for membership in an Indian Tribe
12 and not the biological child of a member of an Indian Tribe. The child is not an Alaskan native.

13 7. The Soldiers & Sailors Relief Act of 1940, 50 U.S.C., Sec. 501, et seq., does not
14 apply to this proceeding in that none of the persons whose rights may be affected are in the
15 military service of the United States.

16 8. Relinquishment/termination is in the best interest of the minor child.

17 **CONCLUSIONS OF LAW**

18 1. That this Court has jurisdiction of the person of the above named minor child and
19 of the subject matter.

20 2. That the parent/child relationship between PEPPER PRIGGER and HUNTER
21 MICHAEL GREGERSON should be terminated and the relinquishment approved.

22 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND**
23 **ORDER OF RELINQUISH-MENT/TERMINATION OF**
24 **PARENT/CHILD RELATIONSHIP - Page 2 of 3**

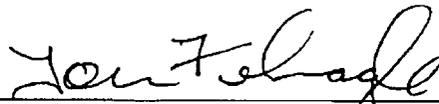
CAMPBELL, DILLE, BARNETT,
& SMITH, P.L.L.C.
Attorneys at Law
317 South Meridian
Puyallup, Washington 98371
253-848-3513
253-845-4941 facsimile

ORDER OF RELINQUISHMENT/TERMINATION

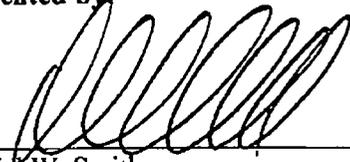
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3 1. IT IS HEREBY ORDERED that the parent/child relationship between the above
4 named minor child and PEPPER PRIGGER is terminated, divesting said parent(s) and child of
5 all legal rights, powers, privileges, immunities, duties and obligations, except past due child
6 support, between one another as provided by law.

7 2. IT IS FURTHER ORDERED that the Petition for Relinquishment is approved
8 and KELLY and CHRISTIN GREGERSON are hereby granted custody.

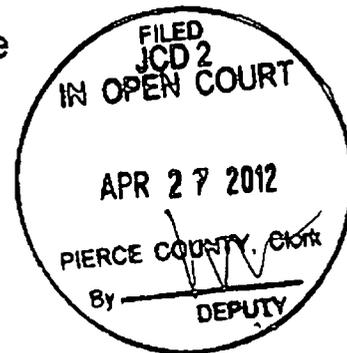
9 DATED this 27th day of April, 2012.

10
11 
12 _____
13 JUDGE/COURT COMMISSIONER

14 Presented by:

15 
16 _____
17 Daniel W. Smith
18 of CAMPBELL, DILLE, BARNETT & SMITH
19 Attorneys for Adoptive Parent

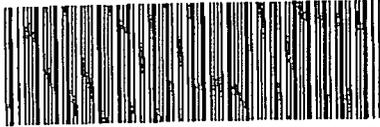
20 Thomas J. Felnagle



21
22
23
24 FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER OF RELINQUISHMENT/TERMINATION OF
PARENT/CHILD RELATIONSHIP - Page 3 of 3

CAMPBELL, DILLE, BARNETT,
& SMITH, P.L.L.C.
Attorneys at Law
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APPENDIX 4



11-5-00474-7 38428145 DCADP 04-30-12



Superior Court of Washington
County of Pierce

In re the Adoption of:

HUNTER MICHAEL GREGERSON

No. 11-5-00474-7

Minor Child.

DECREE OF ADOPTION

THIS MATTER having come regularly before the undersigned Judge of the above-entitled court on the 27th day of April, 2012, upon the petition of KELLY GREGERSON and CHRISTIN GREGERSON, husband and wife, for the adoption of the above-named minor child, and the court having heretofore entered Orders on this date under this cause number terminating the parent/child relationships between the minor child and the natural mother, and her parental rights terminated; and the court having heretofore entered its Findings of Fact and Conclusions of Law, and the court having been fully advised, now therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that HUNTER MICHAEL GREGERSON, born May 7, 2007 in County of Pierce, State of Washington, is and to all intents and purposes, and for all legal incidence, the child, legal heir and lawful issue of the petitioners, entitled to all

DECREE OF ADOPTION - Page 1 of 3

CAMPBELL, DILLE, BARNETT,
& SMITH, P.L.L.C.
Attorneys at Law
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Puyallup, Washington 98371
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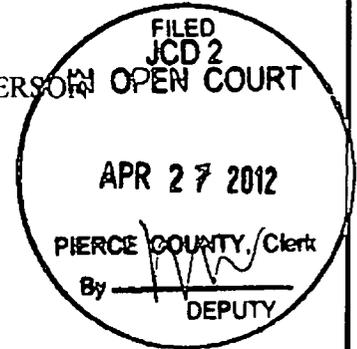
1 rights and privileges including the rights of inheritance and the right to take under testamentary
2 disposition and subject to all obligations of a natural child of the adoptive parents, whose Petition
3 for Adoption is hereby approved; and it is further
4

5 ORDERED, ADJUDGED AND DECREED that the name of the minor child not be
6 changed; and it is further

7 ORDERED, ADJUDGED AND DECREED that the State Registrar of Vital Statistics of
8 the State of Washington shall issue a new birth certificate for said child in the form and manner
9 provided by law, which birth certificate shall show the petitioners, KELLY GREGERSON and
10 CHRISTIN GREGERSON, herein as the parents of said child and that the records of the
11 Registrar shall be kept secret and shall not be disclosed except under order of the court for good
12 cause shown.

13 ADOPTION SUMMARY

- 14 1. Full original name of child is: HUNTER MICHAEL GREGERSON
- 15 2. Full new name is HUNTER MICHAEL GREGERSON
- 16 3. Date of birth is May 7, 2007.
- 17 4. Place of birth is: Puyallup, WA.
- 18 5. Petitioner(s) are: KELLY GREGERSON and CHRISTIN GREGERSON
- 19 6. The Indian Child Welfare Act does not apply.
- 20 7. The Soldiers and Sailors Civil Relief Act of 1940 does not apply.



21 DONE IN OPEN COURT this 27th day of April, 2012

22 Thomas J. Felnagle
23 JUDGE/COURT COMMISSIONER
24

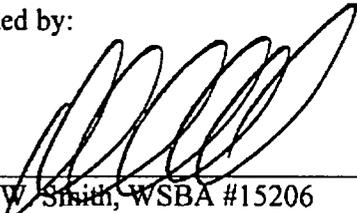
Thomas J. Felnagle

DECREE OF ADOPTION - Page 2 of 3

CAMPBELL, DILLE, BARNETT,
& SMITH, P.L.L.C.
Attorneys at Law
317 South Meridian
Puyallup, Washington 98371
253-848-3513
253-845-4941 facsimile

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Presented by:



Daniel W. Smith, WSBA #15206
of Campbell, Dille, Barnett, & Smith, P.L.L.C.
Attorneys for Adoptive Parents

DECREE OF ADOPTION - Page 3 of 3

**CAMPBELL, DILLE, BARNETT,
& SMITH, P.L.L.C.**
Attorneys at Law
317 South Meridian
Puyallup, Washington 98371
253-848-3513
253-845-4941 facsimile

I:\DATA\DWS\A\Gregerson, Kelly & Christin 43160.001\adecree.040912.rtf

APPENDIX 5



11-5-00474-7 38467982 ORV 05-07-12

FILED
IN PIERCE COUNTY JUVENILE COURT

A.M. **MAY 03 2012** P.M.

PIERCE COUNTY WASHINGTON
KEVIN STOCK County Clerk
BY  DEPUTY

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

8 **In re the Adoption of:**

9 **HUNTER MICHAEL GREGERSON,**

No. 11-5-00474-7

10 **Minor child.**

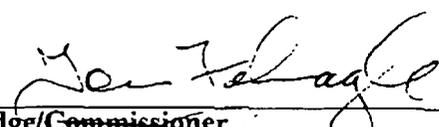
**ORDER ON MOTION TO VACATE
ORDER OF DISMISSAL**

12 **THIS MATTER** having come upon the motion of the petitioners, Christin and Kelly
13 Gregerson, appearing by and through their attorney Daniel W. Smith of Campbell, Dille,
14 Barnett, & Smith, P.L.L.C.; the court having reviewed the records and files herein and being
15 fully advised in the premises, it is hereby

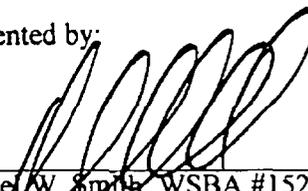
16 **ORDERED, ADJUDGED AND DECREED** that petitioners' motion to vacate order
17 of dismissal is hereby granted.

18 **DONE IN OPEN COURT** this 6th day of April, 2012.

19 **Nunc Pro Tunc**

21 
22 **Judge/Commissioner**
23 **Thomas J. Felnagle**

23 Presented by:

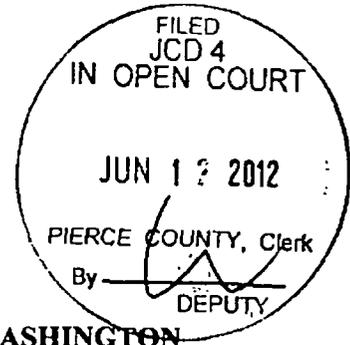
24 
25 **Daniel W. Smith, WSBA #15206**
26 **Attorney for Petitioners**

**ORDER ON MOTION TO VACATE
ORDER OF DISMISSAL- Page 1**

APPENDIX 6



11-5-00474-7 38687480 ORDY 06-14-12



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

8 In re the Adoption of:

9 HUNTER MICHAEL GREGERSON,

No. 11-5-00474-7

10 Minor child.

11 ORDER ON MOTION TO VACATE
DEFAULT ORDER

12 Judgment Summary

13 Applies as follows:

- | | | |
|-------|--|------------------------------|
| 14 A. | Judgment Creditor | Christin and Kelly Gregerson |
| 15 B. | Judgment Debtor | Pepper Prigger |
| 16 C. | Principal judgment amount | \$ |
| 17 D. | Interest to date of Judgment | \$ |
| 18 E. | Attorney fees | \$ |
| 19 F. | Costs | \$ |
| 20 G. | Other recovery amount | \$ |
| 21 H. | Principal judgment shall bear interest at 12% per annum | |
| 22 I. | Attorney fees, costs and other recovery amounts shall bear interest at 12% per annum | |
| 23 J. | Attorney for Judgment Creditor | Daniel W. Smith |
| 24 K. | Attorney for Judgment Debtor | |
| 25 L. | Other: | |

22 THIS MATTER having come upon the motion of the respondent, Pepper Prigger; the
23 petitioners, Christin and Kelly Gregerson, appearing by and through their attorney Daniel W.
24 Smith of Campbell, Dille, Barnett, & Smith, P.L.L.C.; the court having reviewed the records
25 and files herein and being fully advised in the premises, it is hereby

26 ORDERED, ADJUDGED AND DECREED that respondent's motion to vacate the
default order entered herein is hereby denied.

ORDERED, ADJUDGED AND DECREED that petitioners be awarded attorney

fees in the amount of \$ None.

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DONE IN OPEN COURT this 12th day of June, 2012.


Court Commissioner Diana Kiesel

DIANA L. KIESEL
COURT COMMISSIONER

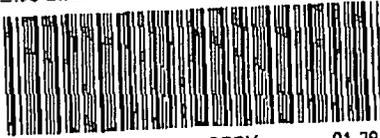
Presented by


Daniel W. Smith, WSBA #15206
Attorney for Petitioners

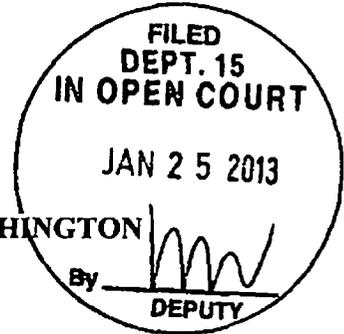

Pepper Prigger
Respondent

FILED
JCD 4
IN OPEN COURT
JUN 12 2012
PIERCE COUNTY, Clerk
By  DEPUTY

APPENDIX 7



11-5-00474-7 39911728 ORDY 01-29-13



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

8 In re the Adoption of:

9 HUNTER MICHAEL GREGERSON,

No. 11-5-00474-7

10 Minor child.

ORDER ON MOTION TO VACATE
DEFAULT ORDER

12 Judgment Summary

13 Applies as follows:

- 14 A. Judgment Creditor Christin and Kelly Gregerson
- 15 B. Judgment Debtor Pepper Prigger
- 16 C. Principal judgment amount \$
- 17 D. Interest to date of Judgment \$
- 18 E. Attorney fees \$ 500.00
- 19 F. Costs \$
- 20 G. Other recovery amount \$
- 21 H. Principal judgment shall bear interest at 12% per annum
- I. Attorney fees, costs and other recovery amounts shall bear interest at 12% per annum
- J. Attorney for Judgment Creditor Daniel W. Smith
- 22 K. Attorney for Judgment Debtor Richard Swanson
- L. Other:

22 THIS MATTER having come upon the motion of the respondent, Pepper Prigger; the
23 petitioners, Christin and Kelly Gregerson, appearing by and through their attorney Daniel W.
24 Smith of Campbell, Dille, Barnett, & Smith, P.L.L.C.; the court having reviewed the records
25 and files herein and being fully advised in the premises, it is hereby

26 ORDERED, ADJUDGED AND DECREED that respondent's motion to vacate the
default order entered herein is hereby denied.

ORDERED, ADJUDGED AND DECREED that petitioners be awarded attorney

fees in the amount of \$ 500.00 ⁰⁰ *PKS*

DONE IN OPEN COURT this 25th day of January, 2013.

Tom Felnagle
JUDGE/COMMISSIONER

Presented by:

Thomas J. Felnagle

[Signature]

Daniel W. Smith, WSBA #15206
Attorney for Petitioners

[Signature]

Richard W. Swanson, WSBA # 4775
Attorney for Pepper Prigger

PKS
287

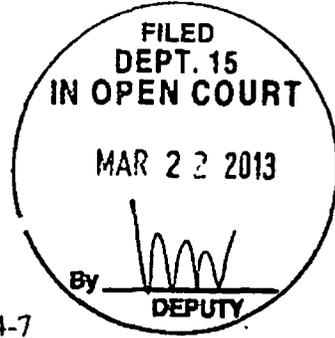
1. This motion is properly before the court procedurally.
2. All issues and facts were before Comm. Miesel. Her ruling was not ~~reversed~~ or appealed by Respondent.
3. There is no evidence that Respondent would ultimately prevail in this Adoption proceeding.

FILED
DEPT. 15
IN OPEN COURT
JAN 25 2013
BY *[Signature]*
DEPUTY

APPENDIX 8



11-5-00474-7 40235988 ORDY 03-26-13



Superior Court of Washington
County of Pierce

In re the Adoption of:

HUNTER MICHAEL GREGERSON,

Minor Child.

No. 11-5-00474-7

ORDER DENYING MOTION
FOR RECONSIDERATION

Order

This matter having come before the Court, the court being fully advised in the premises, now, therefore, it is hereby,

ORDERED, ADJUDED, AND DECREED the Motion for Revision is hereby denied.

Dated: MARCH 22, 2013

[Signature]
Judge Felnagle

Presented by: [Signature]

Daniel W. Smith
Attorney for Petitioner, WSBA #15206

Approved as to form and content:
[Signature]
Timothy R. Gosselein
Attorney for Respondent, WSBA #13730

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

IN RE THE ADOPTION
OF HMG, a minor child

NO.44552-2-II

CERTIFICATE
OF SERVICE

CERTIFICATE OF SERVICE

I, TIMOTHY R. GOSSELIN, declare and state:

I am a citizen of the United States of America and the State of Washington, over the age of twenty-one (21), not a party to the above-entitled proceeding, and competent to be a witness therein.

On the 27th day of June, 2013, I did personally deliver the Brief of Appellant, PP, Appendix to Brief of Appellant, PP, Appellant's Motion for Accelerated Review, and this Certificate to the following:

Daniel W. Smith
CAMPBELL, DILLE, BARNETT
& SMITH, PLLC
317 South Meridian
Puyallup, WA 98371

Washington State Court of Appeals
Division Two
950 Broadway, Suite 300
Tacoma, WA 98402

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

//

CERTIFICATE OF SERVICE
Page - 1

GOSSELIN LAW OFFICE, PLLC
1901 JEFFERSON AVENUE, SUITE 304
TACOMA, WASHINGTON 98402
OFFICE: 253.627.0684 FACSIMILE: 253.627.2028

Signed this 27th day of June, 2013, at Tacoma, Washington.

By : 
GINGER GALLAHER