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**JAN 19 2012**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 287360  
Kittitas County Cause No. 00-3-00017-7

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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Nuthavadee Slane, Respondent  
v.  
Stephen Slane, Appellant

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APPELLANT'S REPLY BRIEF

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- I. ISSUES AND ASSIGNMENTS OF ERROR IN REPLY TO RESPONDENT'S BRIEF
- A. MRS. KUKES WAS REQUIRED TO PROVIDE MR. SLANE NOTICE OF ENTRY OF THE FINAL ORDERS PER CR 55 BECAUSE TWO YEARS HAD PASSED SINCE THE PETITION WAS FILED AND DEFAULT ORDERED, AND MR. SLANE DID NOT APPEAR PRIOR TO THE ENTRANCE OF THE FINAL ORDERS, AS HIS APPEARANCE WOULD HAVE REQUIRED LEAVE OF THE COURT. FUTHERMORE, NOTHING MR. SLANE SIGNED WAIVED NOTICE OF ENTRY OF THE FINAL ORDER OF SUPPORT. THE JOINDER, WERE IT VALID, ONLY STIPULATED THAT AN ORDER OF SUPPORT BE ENTERED PER RCW 26.09 AND RCW 26.19.
- B. NOT ONLY WAS TRIAL COURT'S DENIAL OF MR. SLANE'S MOTION TO VACATE JUDGMENT/ORDER WAS AN ABUSE OF DISCRETION AND MUST BE REVERSED, IT IS A QUESTION OF LAW AS TO WHETHER THE ORDER WAS VOID ON ITS FACE, AS POINTED OUT ABOVE. THE TRIAL COURT LACKED AUTHORITY TO SIGN THE ORDER. THE COURT HAS A NONDISCRETIONARY DUTY TO VACATE ORDERS THAT ARE VOID. FRAUD ALSO GENERALLY RENDERS AN ORDER VOID.
- C. IT WAS AN ABUSE OF DISCRETION FOR THE TRIAL COURT TO CONCLUDE THAT MR. SLANE'S MOTION TO VACATE HAD NO BASIS IN LAW OR FACT AND THAT THE MOTION WAS INTERPOSED FOR IMPROPER PURPOSES. IT WAS AN ABUSE OF DISCRETION FOR THE TRIAL COURT TO CONCLUDE THAT MR. SLANE'S MOTION FOR CONTEMPT WAS BROUGHT WITHOUT REASONABLE BASIS AND TO AWARD COSTS AND FEES TO MRS. KUKES.
- D. MRS. KUKES SHOULD NOT BE ENTITLED TO ANY COSTS OR ATTORNEY'S FEES.

## II. STATEMENT OF FACTS

Though some facts are contested, Mr. Slane and Mrs. Kukes have provided a statement of the case.

## III. ARGUMENT

- A. MRS. KUKES WAS REQUIRED TO PROVIDE MR. SLANE NOTICE OF ENTRY OF THE FINAL ORDERS PER CR 55 BECAUSE TWO YEARS HAD PASSED SINCE THE PETITION WAS FILED AND DEFAULT ORDERED, AND MR. SLANE DID NOT APPEAR PRIOR TO THE ENTRANCE OF THE FINAL ORDERS, AS HIS APPEARANCE WOULD HAVE REQUIRED LEAVE OF THE COURT. FUTHERMORE, NOTHING MR. SLANE SIGNED WAIVED NOTICE OF ENTRY OF THE FINAL ORDER OF SUPPORT. THE JOINDER, WERE IT VALID, ONLY STIPULATED THAT AN ORDER OF SUPPORT BE ENTERED PER RCW 26.09 AND RCW 26.19.

### 1 Standard of Review

The interpretation of CR 55, which relies on CR 54, is a question of law reviewed de novo. Gourley v. Gourley 158 Wn. 2d. 460, Oct. 2006; Arborwood Idaho, L.L.C. v. City of Kennewick , 151 Wn.2d 359 , 367, 89 P.3d 217 (2004) .

### 2 Argument.

CR 55(a)(2) provides in relevant part:

Pleading After Default. Any party may respond to any pleading or otherwise defend at any time before a motion for default and supporting affidavit is filed, whether the party previously has appeared or not. If the party has appeared before the motion is filed, he may respond to the pleading or otherwise defend at any time before the hearing on the motion. ***If the party has not appeared before the motion is filed he may not respond to the pleading nor otherwise defend without leave of court.*** Any appearances for any purpose in the action shall be for all purposes under this rule 55.

CR 55(f)(1) also provides:

Notice. When more than 1 year has elapsed after service of summons with no appearance being made, ***the court shall not sign an order of default or enter a judgment until a notice of the time and place of the application for the order or judgment is served on the party in default***, not less than 10 days prior to the entry.

Proof by affidavit of the service of the notice shall be filed before entry of the judgment.

CR 55(f)(2) provides:

Service. Service of notice of the time and place on the application for the order of default or default judgment shall be made as follows: (A) by service upon the attorney of record; (B) if there is no attorney of record, then by service upon the defendant by certified mail with return receipt of said service to be attached to the

affidavit in support of the application; or (C) by a personal service upon the defendant in the same manner provided for service of process. (D) If service of notice cannot be made under subsections (A) and (C), the notice may be given by publication in a newspaper of general circulation in the county in which the action is pending for one publication, and by mailing a copy to the last known address of each defendant. Both the publication and mailing shall be done 10 days prior to the hearing.

CR 54(c) provides:

***A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment.*** Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

The Washington Supreme Court favors resolution of disputes on the merits and "will liberally apply" the civil rules and equitable principles to vacate default judgments where fairness and justice require. Morin v. Burris, 160 Wn.2d 745, 759 (2007); Tiffin v. Hendricks, 44 Wash.2d 837, 847, 271 P.2d 683 (1954).

Mr. Slane has limited his appeal, and therefore most of his argument, to the Order of Child Support and the denial to vacate it, along with the award of attorney's fees. He did so in his initial brief, so, he will refuse to address any of Mrs. Kukes' points that are too broad and seek to reargue the entire case. Mr. Slane will, however, address some of those points merely to justify reversal of

the award of attorney's fees.

Here, as pointed out in Respondent's brief at 12, approximately eight months after default, eleven months after the petition was filed, and without leave of the court as required by CR 55, Mr. Slane did sign the petition (CP 39-44), which Mrs. Kukes then filed. Mr. Slane did not, however, check the "Joinder" checkbox on the petition because he did not want to waive notice of, or service for anything, which is why Mrs. Kukes produced the orders for his signing, though she didn't file the child support order (CP 39-44). Furthermore, the Petition, with or without joinder, specifically said that an order of child support be entered per the Washington State Child Support Schedule, which is controlled by RCW 26.19. It did not waive any notice of such an order (CP 1-6, 39-44). It waived notice of entrance of the decree. Mr. Slane also then signed all of the orders of dissolution, which included an order of child support and child support worksheet, the latter of which Mrs. Kukes never filed, and they are clearly not those adopted by the court. The child support order and worksheet adopted by the court lack Mr. Slane's signature and are different from all other proposed orders of support in the record (CP 17-20, 29-32, 47-51 and CP 52-58). The final child support worksheet and order were signed and filed by Mrs. Kukes five days before she presented the orders, more than two years after the petition was filed. However, as Mr. Slane was in default and did not seek leave of the court per CR 55(a)(2), these acts did not constitute an appearance that would waive the requirement of CR 55(f)(1). It's important to point out that on the bottom of each order is a computer generated date showing the order for support was printed the day it was filed.

CR 55(a)(2) states "***If the party has not appeared before the motion is filed he may not respond to the pleading nor otherwise defend without leave of court.***" Any appearances for any purpose in the action shall be for all purposes under this rule 55." The language the rule is clear and unambiguous. If Mr. Slane had appeared prior to default, or had leave of the court to make an

appearance after default, those acts would have constituted an appearance for any purpose under the rule, and no notice would have been required to be given per CR 55(f)(1). Since Mr. Slane had not appeared prior to default, he could only make an “appearance” after seeking leave of the court. Therefore, the court acted without authority by signing the final order of child support per CR 55(f)(1) “When more than 1 year has elapsed after service of summons with no appearance being made, **the court shall not sign** an order of default or enter a judgment until a notice of the time and place of the application for the order or judgment is served on the party in default, not less than 10 days prior to the entry of the judgment.” By this language, the order of child support was *void ab initio*, as the court lacked the authority to enter it. The amount of the court’s final order also differed substantially in amount in the previously proposed child support worksheets record (CP 17-20, 29-32, 47-51 and CP 52-58), which contradicts CR 54(c) as referenced in CR 55(b). Default judgments shall not be “***different in kind from or exceed in amount that prayed for in the demand for judgment.***”

Mrs. Kukes stated that Mr. Slane argued that his signing the petition constituted an appearance (Brief of Resp 12). Mr. Slane did make that argument, but the argument was made under the premise that the order of default was void, because Mrs. Kukes had revised her petition approximately three (3) weeks before default was entered (CP 21-22). All Mrs. Kukes was required to do under CR 55(f)(1) was file an affidavit ten (10) days prior to entry of the final orders.

Mr. Slane has ***not*** asked the court to vacate the orders of dissolution that bear his signature waiving notice of their presentment, with exception to the “continued restraining order” in the final decree, as there was no restraining order to continue and I would have contested it, along with the child support order. The parties had a limited and temporary order of protection for four (4) months, for an extremely minor incident, and that order had expired two years prior to the final

dissolution. Prior to Mrs. Kukes' actions in Grant County, the parties had a friendly relationship. Furthermore, since more than a year prior to dissolution, Mr. Slane has resided more than two (2) thousand miles away and it's been over 13 years since Mr. Kukes got the four (4) month order of protection, with absolutely no incident, to include the two years that followed the expiration of that temporary order. There is absolutely no need that Mr. Slane be prejudiced by a permanent restraining order or permanent order of protection. It is completely absurd and needlessly and permanently damages Mr. Slane's reputation.

Because two years had lapsed since the petition was filed, and Mr. Slane was in default, having made no appearance, Mrs. Kukes was required to serve Mr. Slane notice of presentment of the final child support order ten (10) days prior to presentment to the court, and file affidavit with the court. The court clearly acted without authority by signing the final child support order, and most likely all of the other orders of dissolution. BROOKS V. UNIV. CITY, INC. 154 Wn. App. 474 (2010). Mr. Slane's constitutional right to due process was also violated since the court acted without proper authority under CR 55 in that "a person shall not be deprived of liberty or property without due process of law." See Wichert v. Cardwell, 117 Wn.2d 148, 151 (1991). Indeed, "[d]efault proceedings ... must be carefully scrutinized for potential due process violations. Boyd v. Kulczyk, 115 Wn. App. 411, 415 (2003).

The court must reverse the denial to vacate the child support order as it is and always has been a void order. The court should similarly vacate the portion of the decree continuing a restraining as there was none to continue. The language of CR 55(f)(1) dictates that the court should never have signed a default order of child support until Mr. Slane was notified of its entry. In other words, the order is a nullity, as it should have never been signed. The court lacked authority. If there is any legal merit to the documents that bear my signature waiving notice of their entry, this does not apply to

the order of child support, as Mrs. Kukes chose to enter a different order than the one I signed. (CP 47-58). Also, when I signed the petition, I only stipulated that a child support order should be entered pursuant to RCW 26.19, and that is without regard to the fact that I specifically did not check that portion of the petition that waived notice of entry of dissolution decree. I believe this is moot since I didn't take leave of the court to sign the petition. CR 55(f)(1) would require that I be provided notice of entry of every default judgment, so, while waiving notice of entry might satisfy that requirement for orders I signed for presentment, clearly this isn't the case with the child support worksheet and order of child support. (CP 47-58).

**B. NOT ONLY WAS TRIAL COURT'S DENIAL OF MR. SLANE'S MOTION TO VACATE JUDGMENT/ORDER WAS AN ABUSE OF DISCRETION AND MUST BE REVERSED, IT IS A QUESTION OF LAW AS TO WHETHER THE ORDER WAS VOID ON ITS FACE, AS POINTED OUT ABOVE. THE TRIAL COURT LACKED AUTHORITY TO SIGN THE ORDER. THE COURT HAS A NONDISCRETIONARY DUTY TO VACATE ORDERS THAT ARE VOID. FRAUD ALSO GENERALLY RENDERS AN ORDER VOID.**

**1. Standard of Review**

Motions to vacate a judgment as void under CR 60(b)(4),(5) or (11) may be brought at any time after entry of judgment. In re Marriage of Markowski, 50 Wn. App. 633, 635, 749 P.2d 754 (1988). In re Marriage of Hardt, 39 Wn. App. 493, 496, 693 P.2d 1386 (1985). "We generally review a decision regarding a motion to vacate de novo. Where the trial court proceeding turns on credibility and a review of documentary evidence alone, however, the appropriate standard of review is substantial evidence." In re Marriage of Rideout, 150 Wn.2d 337, 351-52, 77 P.3d 1174 (2003). "Evidence is substantial if it is sufficient to persuade a rational, fair-minded person

of the factual finding.” Pardee v. Jolly, 163 Wn.2d 558, 566, 182 P.3d 967 (2008). Mrs. Kukes incorrectly contends the standard for review should be for an abuse of discretion, rather than de novo. Using the wrong standard may warrant reversal in a higher court. Morris v. Palouse River & Coulee City R.R., 149 Wn.App. 366, 372 (2009).

## 2. Argument

A **void judgment**, which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, **or lacks authority** to enter the particular judgment, or an order procured by **fraud**, can be attacked at any time, in any court, either directly or collaterally. Long v. Shorebank Development Corp., 182 F.3d 548 (C.A.7 Ill. 1999).

Washington courts have “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. Similarly, if default judgment is rendered against a party who was entitled to, but did not receive, notice, the judgment will be set aside.” Tiffin v. Hendricks, 44 Wash.2d 837, 847, 271 P.2d 683 (1954). Morin v. Burris, 160 Wn.2d 745, 759 (2007).

First, because the child support order was void on its face, or otherwise void or voidable due to fraud, there is no time limitation to vacate it. This standard applies to orders where fraud was committed as well. In re Marriage of Markowski, 50 Wn. App. 633, 635, 749 P.2d 754 (1988). In re Marriage of Hardt, 39 Wn. App. 493, 496, 693 P.2d 1386 (1985).

Mrs. Kukes committed fraud in two ways. First, she had me sign all of the orders of dissolution waiving notice of their entry, yet entered a different child support order, making it appear as though I

was engaged in a manner that the court believed, in error, that it could proceed in signing all of the orders whether I signed them or notice of their entry was given me, or not. (CP 113-131). As Mrs. Kukes points out, a definition of fraud includes any behavior by the prevailing party that precludes the other party from presenting its case. (Brief of Resp. 19.) Momah v. Bahrti, 182 P.3d 455, 469 (2008). Clearly Mrs. Kukes tried to skirt the requirements of CR 55(f)(1) by entering a child support order that differed than that which was agreed upon and signed by Mr. Slane with all of the other documents of dissolution that did bear his signature (CP 47-51,52-58). The child support worksheet was signed and dated 5 days prior to dissolution and the child support order bears the same computer generated date on the bottom of the signature page. Each of the orders and documents that Mr. Slane was given and signed waiving notice of their entry also bear a computer generated date of the bottom of the signature page, showing when they were printed. The documents bearing Mr. Slane's signature were created and printed in early 2001, while the child support order and worksheet were printed and/or signed by Mrs. Kukes five days prior to the court signing them. (CP 47-51,52-58, 59-65, 66-70, 71-74).

The second way Mrs. Kukes committed fraud involves perjury and omissions of fact that where she was obligated to provide information, under the penalty of perjury and/or statute. Mrs. Kukes misleads this court by misstating the facts concerning her income, her being voluntarily unemployed and omissions of fact made concerning the child support worksheet which she used to secure an order of support. Perjury does constitute the type of fraud which would render an order void. Pettet v.26 Wonders, 23 Wn.App. 795, 800, 599 P.2d 1297 (1979). CR 60 even states "Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party". By the standard of review indicated above, the evidence is irrefutable and clear to any reasonable person that Mrs. Kukes committed fraud:

1. Mrs. Kukes had an affirmative duty to disclose the income from other adults her in household,

on the child support worksheet. She did not do this and the affidavit of her then live-in boyfriend, now husband, supports this fact where he claims to have provided support. CP 281-282. The instructions clearly ask the person filling out the worksheet for information concerning income from additional adults living in the household.

2. The evidence secured by subpoena from the State of Washington Employment Security Department (CP 435-452) and review of the child support worksheet (CP 47-51) and outdated financial declaration (CP 23-28) showed:
  - a. Mrs. Kukes was **voluntarily** unemployed per RCW 50.20.050. RCW 26.19.071 **required** the court to impute income to her. It is against public policy for an order of child support to permanently waive any financial obligation toward the children and the findings state the Mrs. Kukes was voluntarily unemployed, though she had the lesser disqualification because her employer did not appear at the hearing. In re Marriage of Goodell, 130 Wn. App. 381, (2005). Nonetheless, RCW 26.19.071 makes no distinction in the level or degree of voluntary unemployment. That ruling enabled Mrs. Kukes to receive unemployment benefits after waiting a few weeks, as opposed to none at all. (CP 435-452). Mrs. Kukes had known since December 2001 that the Employment Security Department considered her voluntarily unemployed.
  - b. Mrs. Kukes was receiving unemployment benefits, they were contingent upon her meeting a requirement. (CP 435-452)
  - c. Mrs. Kukes withheld her tax returns as required by RCW 26.19. (CP 47-51 and CP 23-28)
  - d. She withheld her recent paystubs/Statements from the Employment Security Department. (CP 435-452)
  - e. Mrs. Kukes had income from work just before and just after the final orders of dissolution were signed and was employed soon after dissolution. (CP 435-452)

- f. Mrs. Kukes has (and had at the time) a Bachelor of Science degree in Microbiology, and has been gainfully employed full time since dissolution. (CP 435-452)
3. Mrs. Kukes did not deny that she knew I was supporting other children, though here in her brief, she only states I owed no support to my stepson with my then girlfriend, now wife. (Brief of Resp. 16). She fails to say why she did not list my biological son, which she knew about, I even presented the court with a picture of her holding my infant son, which doesn't matter as she didn't deny knowing this fact. (CP 367-369, 330). (Brief of Resp. 21). She had a duty as the person filling out the information, to fill out all the information requested, if she knew it. She was able to fill out what she thought my income was. Mrs. Kukes' claim that Mr. Slane is saying she should have "represented him" in the dissolution has no bearing on her accurately and truthfully filling out the child support worksheet, as she was required to do, under the penalty of perjury. Mrs. Kukes breached an affirmative duty to disclose information she knew, which is one way fraud is proven rather than showing the nine (9) elements. Crisman v. Crisman, 85 Wn. App. 15,21,931 P.2d 163 (1997). (CP 327-328) (Brief of Resp. 21). What Mrs. Kukes owed to me and the court was to be truthful, complete and accurate in her filings, under the penalty of perjury.
4. Mr. Slane did prove that he was providing health care by providing a letter from his employer at the time (CP 365) as well as a paystub showing that I was paying for the insurance (CP 366, 330). This is contrary to Mrs. Kukes claim in her brief that I did not prove that I provided health insurance at the time. (Brief of Resp. 21).

Mrs. Kukes erroneously states that every motion to vacate brought under CR 60 must meet four (4) factors for consideration. (Brief of Resp. 14) citing Calhoun V. Merritt, 46 Wn. App. 616, 619, 731 P.2d 1094 (1986). This does not pertain where the court is asked to vacate void orders, and void orders must be vacated **without respect to time or reasonable defense for waiting**. Orders

procured by intrinsic fraud, including perjury, are void and most certainly can be vacated under CR60 (b) (4). PETTET v. WONDERS (1979) 23 Wn. App. 795, 599 P.2d 1297. This standard covers CR 60 (b) (4), (5) and (11), which means relief can be sought without regard to passage of time. 50 Wn. App. 633,749 P.2d 754 Marriage of Markowski (1988). IN RE MARRIAGE OF MAXFIELD, 47 Wn. App. 699,702,737 P.2d 671 (1987); IN RE MARRIAGE OF HARDT, 39 Wn. App. 493, 496, 693 P.2d 1386 (1985). KENNEDY v. SUNDOWN SPEED MARINE, INC., 97 Wn.2d 544, 549,647 P.2d 30 (Utter, J., dissenting), CERT. DENIED, 459 U.S. 1037 (1982); IN RE MAXFIELD, at 703; BRICKUM INV. CO. v. VERNHAM CORP., 46 Wn. App. 517, 520, 731 P.2d 533 (1987).

Even if those four factors were required for consideration, they were addressed. 1) Mr. Slane was not completely aware of the child support order until he saw it, in August of 2003. Prior to that, Mrs. Kukes verbally told him to pay the amount in the administrative order for support that existed prior (CP 116-117). 2) Then when Mr. Slane became aware of Mrs. Kukes' omissions and that she had entered a different child support order other than what she gave him prior, the parties agreed to an amount of \$500 and signed an agreement, but never finalized it with the court. This was to avoid getting Mrs. Kukes in trouble. Mr. Slane did not know such agreements were against public policy. (CP 85) 3) Mr. Slane sought relief within four months of Mrs. Kukes going back on her agreement and securing a judgment while enforcing the original child support order, in April 2009. (CP 75) 4) Mrs. Kukes has demonstrated no adverse effect of vacating the order. She merely makes a bare and unsupported statement that the effects are evident. (Brief of Resp. 17)

**C. IT WAS AN ABUSE OF DISCRETION FOR THE TRIAL COURT TO CONCLUDE THAT MR. SLANE'S MOTION TO VACATE HAD NO BASIS IN LAW OR FACT AND THAT THE MOTION WAS INTERPOSED FOR IMPROPER PURPOSES. IT WAS AN ABUSE OF DISCRETION FOR THE TRIAL COURT TO CONCLUDE THAT MR. SLANE'S MOTION FOR CONTEMPT WAS BROUGHT WITHOUT REASONABLE BASIS AND TO AWARD COSTS AND FEES TO MRS. KUKES.**

**1. Standard of Review**

A court has a nondiscretionary duty to vacate a void judgment. Allstate Ins. Co. v. Khani, 75 Wn. App. 317, 323, 877 P.2d 724 (1994).

"We generally review a decision regarding a motion to vacate de novo. Where the trial court proceeding turns on credibility and a review of documentary evidence alone, however, the appropriate standard of review is substantial evidence." In re Marriage of Rideout, 150 Wn.2d 337, 351-52, 77 P.3d 1174 (2003). "Evidence is substantial if it is sufficient to persuade a rational, fair-minded person of the factual finding." Pardee v. Jolly, 163 Wn.2d 558, 566, 182 P.3d 967 (2008).

**2. Argument**

I believe sections C and D of Respondent's brief have mostly been addressed. (Brief of Resp. 25-32) (Brief of Appellant 3-10). To supplement, the argument provided in the previous section (B) of this brief is enough to show that the basis for the motion to vacate had a basis in law and fact. Also, "A default judgment entered without notice to an appearing party is void, and we need not consider the passage of time or whether a meritorious defense exists. Colacurcio v. Burger, 110 Wn. App. 488, 497-98, 41 P.3d 506 (2002), review denied, 148 Wn.2d 1003 (2003); Allstate Ins. Co. v. Khani, 75 Wn. App. 317, 323-25,

877 P.2d 724 (1994)." This means that any theories about Mr. Slane's reasons for bringing the motion to vacate are of no consequence, though I think the argument in sections A and B of this brief show that equity and fairness are the primary reasons the motion was raised. Every point concerning contempt was also proven or admitted, so, it would be inconceivable to conclude that there is no basis in fact or law. I have not appealed the trial court's denial of the motion for contempt. (Brief of Appellant 3-10).

**D. MRS. KUKES SHOULD NOT BE ENTITLED TO ANY COSTS OR ATTORNEY'S FEES.**

Mrs. Kukes should not be entitled to recover any costs or fees on appeal, or in the trial court. Mr.

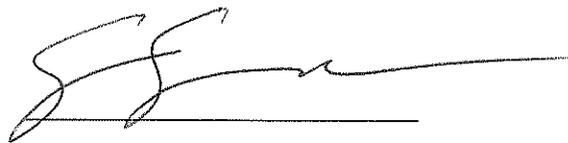
Slane has not requested fees or costs. Each party should be responsible for their own fees and costs.

**Conclusion**

CR 55(f)(1) requires that in cases where the petition was filed a year or more prior, with no appearance being made by the party in default, that notice be given for each default judgment, stating the time and place where the judgment will be presented. The language of CR 55 is clear in that for any judgment where such notice was not provided, the court cannot sign the order and the order must be vacated. BROOKS V. UNIV. CITY, INC. 154 Wn. App. 474 (2010). The standard in Washington is that the rules are to be applied liberally in causes to vacate default judgments and they are usually set aside to promote fairness. Morin v. Burris, 160 Wn.2d 745, 759 (2007). Mr. Slane would probably have little ground to appeal the order of child support had Mrs. Kukes filed the one Mr. Slane signed about a year prior, along with the other orders of dissolution, or had she just provided notice of it's entry 10 days prior to it's presentment to the court. Had she met either requirement, there would also be no claim of

fraud, as Mr. Slane would have tried to defend against the order that was ultimately entered. Mr. Slane did not know the contents of that order until 2003, when he signed the out of court agreement with Mrs. Kukes. The parties never abided by that order, until Mrs. Kukes decided to start further proceedings, ignoring the contract she signed, and held Mr. Slane in contempt of an order that was never in effect between the parties. An order that should be vacated. Mrs. Kukes cannot be given every advantage to get around the rules of the court, committing fraud, signing agreements and then backing out of those agreements only to reaffirm rights under an order she slipped by everyone, including the courts. All the while, the only one that pays for this, is Mr. Slane, and his children, as the relationships have been strained through three years of litigation. It's completely unfair and the courts have not applied the standards used to vacate default orders, as this appeal wouldn't be taking place if they had. There are too many reasons the court should have vacated the order. I pray this court vacates the order of child support and the continued restraining order in the decree, and reverses the fees, sanctions and costs awarded in this cause.

Respectfully submitted this 16<sup>th</sup> day of January, 2012.

A handwritten signature in black ink, appearing to read 'S. Slane', written over a horizontal line.

Stephen James Slane, Petitioner, *Pro Se*