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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA ex rel. ARIZONA) 1 CA-CV 09-0111
DEPARTMENT OF ECONOMIC SECURITY)
(SUZANNE L. HARRINGTON),) DEPARTMENT E
)
Petitioner-Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
DOMINIC PAUL JAUQUET, SR.,)
)
Respondent-Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. DR1996-093662

The Honorable Kirby D. Kongable, Commissioner

AFFIRMED

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H A L L, Judge

¶1 Dominic Paul Jauquet, Sr. (Father) appeals from the trial court's denial of his motion to set aside the default judgment. We affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Father and Mother have two out-of-wedlock children in common: a daughter born in 1990 (Daughter) and a son born in 1994 (Son). On July 3, 1996, Mother filed a "Complaint for Paternity, Child Custody, Visitation, and Child Support" against Father. In the complaint, Mother sought sole custody, reimbursement for medical expenses resulting from the children's births, an order of paternity for Father and the addition of his name to the children's birth certificates, supervised visitation for Father, child support from Father, and ongoing medical insurance and costs for the children. The complaint was served on Father on July 17, 1996.

¶3 Father failed to respond. On August 13, 1996, Mother applied for default, which the court entered on the same day. On December 2, 1996, the trial court entered a default judgment establishing paternity and providing Mother with the relief she requested in the complaint. Accordingly, the court awarded Mother a judgment of \$59,862.00 for "expenses incurred relating to medical care[,] hospitalization[,] and other costs related to birth of the

child(ren)."¹ The court ordered Father to pay \$907.00 per month of child support. The court also ordered Father to pay \$500.00 per month toward "payment on arrears."²

¶4 On December 31, 1996, Father submitted a Request to Change Child Support. In the request, Father claimed that he only earned \$600.00 per month, and asked the court to reduce his monthly support to \$106.00 per month. Father also claimed that "the [\$]500 per month of medical is not owed," characterizing it as "unknown medical." In her response opposing the change, Mother asked the court to "explain to [Father] that [\$]500.00 is not for medical but to reimburse [Arizona Health Care Cost Containment System (AHCCCS)]." On March 11, 1997, after a hearing, the court denied Father's motion. In 2001, Father moved again for a modification of

¹ The record does not contain a transcript of the default hearing at which the court arrived at the amount of the judgment. Accordingly, we "assume the missing portions of the record would support the trial court's findings and conclusions." *State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, 30, ¶ 16, 66 P.3d 70, 73 (App. 2003).

² In December 1996, Arizona law required a paternity court that found parentage to direct the father to pay the amount of back child support the court determined he owed, Ariz. Rev. Stat. (A.R.S.) section 25-809(A) (1996), and the "expenses for the lying-in, support of and attendance upon the mother during her confinement," § 25-809(B). See 1996 Ariz. Sess. Laws, ch. 192, § 14 (2d Reg. Sess.) (renumbering the statute effective April 16, 1996). The statute further provided that "after judgment the court shall determine amounts owing under the existing orders of the court and provide for the payment thereof." A.R.S. § 25-809(G).

the support order based on his earnings, and the court reduced his payment obligation to \$352.25 per month.

¶15 This brings us to the current dispute. On August 21, 2007, Mother filed a "Motion for Entry of Formal Written Judgment and Enforcement Thereof," claiming that Father now owed the original medical judgment combined with interest and cumulative support arrearages, which totaled \$208,546.22. In his response, Father asked the court to relieve him from the judgment under Arizona Rule of Family Law Procedure 85 and requested a hearing to support his position. Father disagreed with the inclusion of the medical expenses and argued that Mother "knowing[ly] misrepresented the income of [Father] at the time the original child support, medical expenses, and arrearages were assessed." Mother countered that Father had not attempted to contest or appeal the default judgment when it was entered, and that his Rule 85 motion was untimely.

¶16 The trial court ordered an evidentiary hearing on the issue of Father's arrears. At the hearing, Father called an attorney from AHCCCS and a compliance officer from Health Choice, Mother's managed-care provider, as witnesses. The witnesses testified that neither AHCCCS nor Health Choice required Mother to reimburse them for the medical benefits they provided. Mother testified that she "didn't ask for" the \$59,862 judgment, that

"[t]he judge [wa]s the one that put it in there" and that she "[did]n't know what the judge [was] thinking." She further testified that she only asked the court to enforce the judgment on her attorney's advice, and that she had no knowledge of the basis for the \$59,862 amount.

¶7 The court upheld the judgment, concluding that Father's request to set aside the judgment was untimely because he "did not move to set it aside until 2007," despite being aware of its existence since early 1997. The court also offered an alternative rationale, finding that although the paternity court claimed to have awarded "\$59,862 for expenses incurred relating to medical care[,] hospitalization and other costs related to [the] birth of the child(ren)" as Mother sought in her paternity complaint, it had actually intended this amount as back support for the children for the time period between their birth and the judgment. To determine that the paternity court erred in entering the judgment as medical, the court calculated back support at the court's rate of \$907.00 per month "from the birth of the oldest child . . . through the date of the paternity judgment," totaling \$68,025. The court explained the discrepancy between that figure and the judgment amount by concluding that the court used "some lesser amount" to calculate support for the time period between the births of the two children "when there was only one child." On February 27, the

court amended its judgment, entering separate judgments for each component of the total owed and reducing the judgment to \$152,772.03.

¶8 Father timely filed this appeal. We have jurisdiction under A.R.S. § 12-2101(C) (2003).

DISCUSSION

¶9 Father takes his appeal from the trial court's refusal to set aside the default judgment under Arizona Rule of Family Law Procedure 85(C)(1), which allows a court to

relieve a party . . . from a final judgment, order or proceeding for the following reasons: a. mistake, inadvertence, surprise, or excusable neglect; b. newly discovered evidence, which by due diligence could not have been discovered in time to move for a new trial under Rule 83(D); c. fraud, misrepresentation, or other misconduct of an adverse party; d. the judgment is void; e. the judgment has been satisfied, released, or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or f. any other reason justifying relief from the operation of the judgment.

To be considered, "[t]he motion shall be filed within a reasonable time, and for reasons 1(a), 1(b) and 1(c) not more than six (6) months after the judgment or order was entered or proceeding was taken." Rule 85(C)(2).

¶10 Rule 85 is based on Arizona Rule of Civil Procedure 60. Ariz. R. Fam. L. P. 85(C) cmt. We generally uphold a court's refusal to set aside a judgment under Rule 60(c) absent an abuse of

discretion. *Moreno v. Jones*, 213 Ariz. 94, 97, ¶ 15, 139 P.3d 612, 616 (2006) (citing *City of Phoenix v. Geyler*, 144 Ariz. 323, 328, 697 P.2d 1073, 1078 (1985)). An abuse of discretion occurs if there is "no evidence to support the superior court's conclusion" or if the reasons given for the decision by the court are "clearly untenable, legally incorrect, or amount to a denial of justice." *Charles I. Friedman, P.C. v. Microsoft Corp.*, 213 Ariz. 344, 350, ¶ 17, 141 P.3d 824, 830 (App. 2006) (internal quotation marks omitted) (quoting *State v. Chapple*, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983)). But this broad discretion "is circumscribed by public policy favoring finality of judgments and termination of litigation." *Panzino v. City of Phoenix*, 196 Ariz. 442, 448, ¶ 19, 999 P.2d 198, 204 (2000) (quoting *Waifersong, Ltd. v. Classic Music Vending*, 976 F.2d 290, 292 (6th Cir. 1992)). "Parties to a legal action should thereafter be 'entitled to rely upon such adjudication as a final settlement of their controversy.'" *Id.* (quoting *Hines v. Royal Indem. Co.*, 253 F.2d 111, 114 (6th Cir. 1958)).

¶11 Father first argues that the medical expenses portion of the default judgment is void under Rule 85(C)(1)(d) because the default judge exceeded her discretion and ruled on matters outside her jurisdiction. This argument is based on Mother's testimony

that she had not requested the medical expenses portion of the judgment, and that the judge added it "unilaterally." We disagree.

¶12 "[A] default judgment which is entirely outside the issues in the case and upon a matter not submitted to the court for its determination is void." *Tarnoff v. Jones*, 17 Ariz.App. 240, 245, 497 P.2d 60, 65 (1972) (internal quotation marks omitted). Void judgments are distinct from erroneous judgments: the former "are those rendered by a court which lacked jurisdiction, either of the subject matter or the parties," but the latter are "issued by a court with jurisdiction [and are] subject to reversal on timely direct appeal." *Cockerham v. Zikratch*, 127 Ariz. 230, 234, 619 P.2d 739, 743 (1980). A complaint raises an issue sufficiently to support a default judgment if it contains a plain and concise statement of the cause of action and gives defendants fair notice of the allegations as a whole. *Id.*

¶13 The default judgment in this case was not void. Notwithstanding her testimony to the contrary, Mother's petition clearly sought an "[o]rder that . . . Defendant pay a reasonable amount to cover unreimbursed expenses incurred by the mother related to the birth of each child," thus raising the issue before the court and giving it jurisdiction. She served this demand on Father, who failed to raise the defense he now asserts either in a timely answer or in any subsequent pleading for the next ten years.

Even assuming the default judgment was erroneous, this does not void the judgment. *Rodriguez v. Rodriguez*, 133 Ariz. 88, 89, 649 P.2d 291, 292 (1982) ("Public policy requires an end to litigation and even erroneous final judgments must be honored in order to continue the 'well-ordered functioning of the judicial process.'" (quoting *In re Marriage of Fellers*, 125 Cal.App.3d 254, 178 Cal.Rptr. 35, 37 (1981))). Accordingly, we affirm the trial court's determination that the default judgment was not void.

¶14 Nor are we persuaded by Father's argument that his delay in raising his defense against the default judgment was excusable. He claims that when he moved in December of 1996, his W-2 tax statements were destroyed, and Mother gave him a bag of burned paperwork, preventing him from preparing his taxes.

¶15 A defendant seeking relief from a default judgment for excusable neglect must show that: (1) excusable neglect was the cause for his failure to answer, (2) he sought relief promptly, and (3) he has a meritorious defense. *Master Fin., Inc. v. Woodburn*, 208 Ariz. 70, 74, ¶ 18, 90 P.3d 1236, 1240 (App. 2004). We compare a defendant's neglect to "that of a reasonably prudent person under the circumstances." *Id.* The party seeking to set aside the default carries the burden of explaining why they did not "respond[] to lawful service of process." *Baker Int'l Assocs., Inc. v. Shanwick Int'l Corp.*, 174 Ariz. 580, 583-84, 851 P.2d 1379,

1382 (App. 1993). Moreover, Arizona Rule of Family Law Procedure 85(C)(1)(a) allows a court to set aside a judgment for excusable neglect, but requires a motion for relief to be filed "not more than six (6) months after the judgment or order was entered." Rule 85(C)(2).

¶16 Father attempts to compare this case to *Ulibarri v. Gerstenberger*, 178 Ariz. 151, 153, 871 P.2d 698, 699 (App. 1993). In that case, the plaintiff filed a medical malpractice suit against her psychiatrist alleging that he "engaged in improper conduct, including sexual fondling and intercourse" while she was under hypnosis. *Id.* at 154, 871 P.2d at 701. The defendant sought summary judgment, claiming among other things that because the events had occurred at least six years prior to filing, the suit was barred by the two-year statute of limitations. *Id.* at 155, 871 P.2d at 702. The court held that defendant was not entitled to summary judgment because the "discovery rule" allowed the plaintiff to toll the statute of limitations. *Id.* at 158, 871 P.2d at 705. The court reasoned that the rule applied because "the psychological effects of the abuse prevented timely discovery of the injuries," *id.*, and there was "evidence that the defendant concealed [the] cause of action thereby preventing the plaintiff from timely filing." *Id.* at 159, 871 P.2d at 706.

¶17 *Ulibarri* is inapposite. The nature of this case, in which Father challenges a default judgment arising from his failure to timely raise a defense, is clearly distinguishable from the statute of limitations defense in *Ulibarri*. Further, Mother's alleged destruction of financial documents has no bearing on Father's discovery of his defense to the medical judgment: namely, that Mother could not recover the costs of childbirth expenses for their children when AHCCCS paid them. Father offers no other justification for his delay in raising the defense. The record shows that he was properly served with the complaint. Furthermore, even if Father's failure to raise his defense after the default were attributable to excusable neglect, he did not seek relief within six months of the judgment to set it aside on that basis, and his motion to do so ten years later is untimely. Ariz. R. Fam. L. P. 85(C)(2). Accordingly, excusable neglect is not a valid basis to set aside the default judgment.

CONCLUSION

¶18 For the foregoing reasons, we affirm the trial court's denial of the motion to set aside the default judgment.³

/s/
PHILIP HALL, Judge

CONCURRING:

/s/
SHELDON H. WEISBERG, Presiding Judge

/s/
JOHN C. GEMMILL, Judge

³ Because of the nature of our resolution of the case, we need not consider the state's arguments regarding the court's alternative rationale for the judgment and claim preclusion.