NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

DIVISION ONE
FILED: 12/27/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA ex. rel. THE DEPARTMENT OF ECONOMIC SECURITY (GESELE CLAUDETTE MORDINI),	)	1 CA-CV 10-0821
	)	DEPARTMENT A
Petitioners/Appellees,	)	**MEMORANDUM DECISION**
v.	)	
PAUL THOMAS CARRAHER,	)	Not for Publication – (Rule 28, Arizona Rules of Civil Appellate Procedure)
Respondent/Appellant.	)	

Appeal from the Superior Court in Maricopa County

Cause No. FC2003-006650

The Honorable Pamela Gates, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Jamie R. Katelman, Assistant Attorney General
Attorneys for State of Arizona

Paul Thomas Carraher Jeffersonville, IN
Respondent/Appellant, *In Propria Persona*

T I M M E R, Presiding Judge

¶1 Respondent/Appellant Paul Thomas Carraher appeals the superior court's denial of his motion to vacate a default judgment obtained by Petitioner/Appellee the Arizona Department

of Economic Security, Division of Child Support Enforcement ("State") regarding paternity and child support. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 On June 16, 2003, the State filed a paternity and child support action against Carraher seeking reimbursement from him for public assistance it provided to Gesele Claudette Mordini for expenses associated with the support of L.M. and M.M., children born to Mordini out of wedlock in 1986 and 1988. On September 4, 2003, process server Kevin O'Connor filed a Certificate of Service in which he avowed that on August 11, 2003, at 9:36 a.m., he personally served Carraher with the summons, complaint, and an order and notice to attend parent information class. O'Connor stated he served Carraher at his place of employment, Gator Leasing, in Florida.

¶3 Carraher did not timely respond to the complaint, and the State filed an Affidavit of Default and Application for Entry of Default and Judgment by Default. The State indicated it mailed/delivered those documents to Carraher on October 21, 2003 at his apartment complex, but it did not designate a specific apartment number. In addition, the State stated it mailed/delivered the documents to Carraher at Gator Leasing.

¶4 Carraher did not respond, and the court entered a default paternity and child support judgment against him on

January 27, 2004. The default judgment included a current child support order and a judgment for past support. On February 25, the court entered an order of assignment, and beginning June 27, Carraher's wages were assigned. In March 2005, the Arizona Department of Economic Security denied Carraher's request for an administrative review.

¶5 Four years later, on March 5, 2009, Carraher moved to vacate the default judgment on the grounds that the State had not served him with a copy of the summons and complaint and that he never received notice of the application for default. The State opposed the motion and asserted the court had jurisdiction to enter the default judgment because the State had properly served Carraher with the summons and complaint. The court denied the motion.

¶6 Carraher moved again to vacate the default judgment on the grounds that there were jurisdictional defects in the complaint and the court had not conducted a default hearing. The court denied those motions. Carraher attempted to appeal, but because he appealed from unsigned minute entry rulings, his appeals were premature. At Carraher's request, we dismissed his appeals without prejudice to allow him to seek relief from the default judgment.

¶7 Carraher then filed an amended motion to vacate the default paternity and child support judgment. He argued that

the superior court (1) lacked subject matter jurisdiction because the complaint did not establish a basis for jurisdiction and Mordini had not appeared in the action, and (2) lacked personal jurisdiction over him because he had no contacts with Arizona, he was not properly served, and he had not received notice of the State's application for default pursuant to Arizona Rule of Civil Procedure 55.[1] The State opposed the motion on the grounds that it was not timely under Arizona Rule of Family Law Procedure 85 and was precluded by the doctrine of res judicata because the issues Carraher raised had been ruled on by the court in its denial of his original motion to vacate, from which Carraher did not timely appeal. The court denied the amended motion to vacate.

¶8 Carraher timely appealed.

ISSUES

¶9 Carraher contends the superior court erred in denying his motion to vacate.

DISCUSSION

A. The default judgment was not void for lack of jurisdiction

¶10 Carraher moved to vacate the default judgment as void on the grounds the court lacked both subject matter and personal

[1] Carraher also asked the court to order the State to reimburse him for the funds it had assigned.

jurisdiction and contends the superior court erred in denying his motion. We review de novo the superior court's denial of a motion brought under Arizona Rule of Family Law Procedure 85(C)(1)(d)[2] to vacate a judgment as void. *Ezell v. Quon*, 224 Ariz. 532, 536, ¶ 15, 233 P.3d 645, 649 (App. 2010) (discussing Arizona Rule of Civil Procedure 60(c)(4)).[3]

¶11 Rule 85(C)(1)(d) allows the court to relieve a party from a final judgment when the judgment is void, i.e., the court lacked jurisdiction over the subject matter, over the person involved, or to render the particular judgment. *Martin v. Martin*, 182 Ariz. 11, 14-15, 893 P.2d 11, 14-15 (App. 1994). "When a judgment is void due to lack of jurisdiction, 'the court has no discretion, but must vacate the judgment.'" *Ezell*, 224 Ariz. at 536, ¶ 15, 233 P.3d at 649 (citation omitted). The movant challenging a judgment on the grounds that it is void bears the burden of demonstrating he is entitled to relief.

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[2] Carraher asserts that the Arizona Rules of Family Law Procedure do not apply to this case because the State filed its complaint before those rules were adopted. The Arizona Rules of Family Law Procedure generally apply to all family law cases pending as of January 1, 2006. *Kline v. Kline*, 221 Ariz. 564, 568, ¶ 13, 212 P.3d 902, 906 (App. 2009).

[3] "Where the language of the family law rules is substantially the same as the language of other statewide rules, case law interpreting that language is applicable." *Kline*, 221 Ariz. at 568-69, ¶ 13, 212 P.3d at 906-07.

Blair v. Burgener, 226 Ariz. 213, 216, ¶ 7, 245 P.3d 898, 901 (App. 2010).

¶12 The superior court has original jurisdiction in proceedings brought to establish paternity, Ariz. Rev. Stat. ("A.R.S.") § 25-801 (2007), and in proceedings to establish, enforce, or modify the duties of family support, A.R.S. § 25-502(A) (Supp. 2010). Further, Arizona law required the superior court to enter an order of paternity once the service of the summons was complete and Carraher failed to appear or otherwise answer. A.R.S. § 25-813 (2007); A.R.S. § 25-806(D) (Supp. 2010). Accordingly, the superior court had subject matter jurisdiction over the State's complaint to establish paternity and child support.

¶13 Arizona courts will exercise personal jurisdiction over a defendant who "has sufficient minimum contacts with the [] state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Bohreer v. Erie Ins. Exch.*, 216 Ariz. 208, 213, ¶ 19, 165 P.3d 186, 191 (App. 2007). At the time the State filed its complaint, Arizona law conferred personal jurisdiction over a non-resident individual in a proceeding to establish a support order or to determine parentage when "[t]he individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse." A.R.S. § 25-623(A)(6)

(1996) (repealed 2005). The record establishes the superior court properly exercised jurisdiction over Carraher in this matter because Mordini became pregnant with the children as a result of sexual intercourse with Carraher in Arizona.[4]

¶14 Nevertheless, Carraher argues the superior court lacked personal jurisdiction over him because he was never served with the summons and complaint. He contends the process server's affidavit, in which the process server avowed he personally served Carraher on August 11, 2003, at 9:36 a.m., is false. The Arizona Rules of Civil Procedure permit service of process outside the state but within the United States in the same manner provided for service within the state. Ariz. R. Civ. P. 4.2(b).[5] Return of service by a process server's

[4] Carraher complains the State did not attach Mordini's Affidavits Supporting Paternity to the complaint. The affidavits, which the State filed with its response to Carraher's amended motion to vacate, were executed before the complaint was filed, the attorney who filed the complaint avowed she had seen them, and Carraher has never submitted any evidence to dispute the affidavits. Accordingly, we reject his argument that the complaint was incomplete and improper without the affidavits.

[5] Carraher asserts the State failed to comply with Rule 4.2(b) because it did not file an affidavit describing the circumstances warranting out-of-state service. This technical omission did not prejudice Carraher or render the default judgment inconsistent with substantial justice. *See Creach v. Angulo*, 186 Ariz. 548, 550-52, 925 P.2d 689, 691-93 (App. 1996) (finding no prejudice to properly served non-resident defendants when default judgment was entered before Rule 4.2(b) affidavit of circumstances was filed).

affidavit can be impeached only by clear and convincing evidence. *Occidental Life Ins. Co. of Cal. v. Marsh*, 5 Ariz. App. 74, 75-76, 423 P.2d 150, 151-52 (1967); *Gen. Elec. Capital Corp. v. Osterkamp*, 172 Ariz. 191, 194, 836 P.2d 404, 407 (App. 1992).

¶15 O'Connor's affidavit of service created a presumption of valid service. Carraher attempted to rebut that presumption by submitting documents he alleged showed O'Connor could not have served him at the time and place identified in the affidavit of service. Carraher filed an affidavit in which he avowed he was never in the office at Gator Leasing during business hours and claimed that the employment records he obtained from Gator Leasing showed he was not working at the time of the alleged service. He stated no reasonable person would believe he went to work six hours early on August 11, which he claims is his birthday. Carraher also submitted an affidavit from a woman named Nancy Darlene Miller, who averred Carraher had never gone to work six hours before his shift began and had never been served with court papers.

¶16 In addition, Carraher submitted various documents that he claimed were his employment records from Gator Leasing for August 11, 2003. Carraher offered no foundation for the documents, however, and there was no evidence they were records of regularly conducted business activity. *See* Ariz. R. Evid.

803(6), 902(11). Regardless, the purported employment records do not show by clear and convincing evidence that O'Connor did not serve Carraher on August 11, 2003. A document entitled "Shift Details" indicates that Carraher started his shift on August 11, 2003, at 3:11 p.m. and ended it at 12:19 a.m. on August 12. But this record conflicts with a hand-written timesheet for the same day that reflects no scheduled work for Carraher.[6] Moreover, neither document directly contradicts O'Connor's avowal that he served Carraher at Gator Leasing on the morning of August 11, 2003. The superior court did not err by implicitly ruling that Carraher failed to overcome the presumed validity of the return of service of process. *See Occidental Life Ins. Co.*, 5 Ariz. App. at 76, 423 P.2d at 152.

¶17 Carraher next asserts the court lacked jurisdiction to enter the default judgment because the State did not properly notify him of its application for entry of default, as required by Arizona Rule of Civil Procedure 55(a)(1)(i). Rule 55(a)(1)(i) provides: "When the whereabouts of the party claimed to be in default are known by the party requesting the entry of default, a copy of the application for entry of default shall be

[6] Carraher claimed the time clock was broken and the entries marked for August 12, 2003 were in fact the times he worked on August 11, 2003. We note, however, that the entries on the hand-written timesheet do not correspond to Gator Leasing's "Shift Details" report.

mailed to the party claimed to be in default." A default entered by the clerk is effective ten days after the filing of the application for entry of default. Ariz. R. Civ. P. 55(a)(2). The purpose of the rule is to provide a defaulting party a second chance to avoid the entry of a default judgment; a party must satisfy the notice requirement contained in Rule 55(a)(1)(i) in order to trigger the running of the ten-day grace period contained in Rule 55(a)(2). *Ruiz v. Lopez*, 225 Ariz. 217, 222-23, ¶¶ 20-21, 236 P.3d 444, 449-50 (App. 2010). "Without such notice, the ten-day grace period does not begin to run, the entry of default is ineffective, and the default judgment is void." *Id.* at 223, ¶ 21, 236 P.3d at 450.

¶18 Carraher suggests that because the State mailed its application for default to his apartment complex but did not designate his particular apartment number, it did not give him proper notice of its application under Rule 55(a)(1)(i). *See id.* at 221-22, ¶ 15, 236 P.3d at 448-49 (holding that mailing notice to defendant's large apartment complex without designating the apartment number was "tantamount to sending no notice at all" and did not meet the requirements of Rule 55(a)(1)(i)). Because the State also mailed the notice to Carraher's place of employment, however, where it had served him two months earlier and where he was still employed, it complied with Rule 55(a)(1)(i). *Id.* at ¶¶ 13, 15 (stating that Rule

55(a)(1)(i) contemplates possibility of mailing notice to some place other than defendant's residence, and noting that plaintiff could have mailed notice to defendant's place of employment).[7]

B. Carraher's motion to vacate on the grounds that the default judgment was procured by the State's fraud, misrepresentation, or misconduct was untimely

¶19 Finally, Carraher asserts the superior court erred by denying his motion to vacate because the State obtained the default judgment by fraud, misrepresentation, or other misconduct. A motion to set aside a judgment on the grounds that it was procured by the fraud, misrepresentation, or other misconduct of an adverse party must be filed not later than six months after the judgment was entered. Ariz. R. Fam. L.P. 85(C)(2). The court entered the default judgment on January 27, 2004. Although Carraher admits he had notice of the judgment in June 2004, he did not move to vacate it until five years later, on March 5, 2009. And the ruling he now appeals is the court's denial of his amended motion to vacate, which he filed on July 27, 2010. Thus, Carraher's motion to vacate on the grounds of

[7] The State admitted in its response to Carraher's first motion to vacate that the notice of application for default it mailed to Carraher's Florida apartment complex, but not his specific apartment number, was returned. The record establishes, however, that the State also mailed the notice to Carraher's place of employment.

fraud, misrepresentation, or misconduct was untimely, and the superior court correctly denied it.[8]

CONCLUSION

¶20 For the foregoing reasons, we affirm.

/s/
Ann A. Scott Timmer, Presiding Judge

CONCURRING:

/s/
Patrick Irvine, Judge

/s/
Lawrence F. Winthrop, Chief Judge

[8] We therefore do not consider whether the court's ruling could be affirmed on the grounds that the doctrine of res judicata barred Carraher's amended motion.