

**FILED: August 27, 2014**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

WILLIAM GOLDMAN,  
Defendant-Appellant.

Multnomah County Circuit Court  
HA10391401

A155592

Terry G. Hannon, Judge pro tempore.

Submitted on July 07, 2014.

William Goldman filed the brief *pro se*.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Timothy A. Sylwester, Assistant Attorney General, filed the brief for respondent.

Before Armstrong, Presiding Judge, and Nakamoto, Judge, and Egan, Judge.

NAKAMOTO, J.

Reversed and remanded.

---

**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Appellant

- No costs allowed.  
 Costs allowed, payable by Respondent.  
 Costs allowed, to abide the outcome on remand, payable by
-

1                    NAKAMOTO, J.

2                    Defendant appeals an order denying relief from the default judgment of  
3 conviction for a "temporary no parking" violation and the assessed doubled fine as a  
4 result of his failure to appear. Defendant challenges the sole basis for the trial court's  
5 denial of the order: that defendant's declaration in support of his motion to set aside the  
6 default failed to set forth sufficient grounds for relief under ORS 153.820(7). We  
7 conclude that defendant did set forth sufficient grounds for relief in his declaration and  
8 reverse and remand for the court to consider whether to exercise its discretion to set aside  
9 the judgment.

10                   Defendant's car was towed from a Portland city street on December 14,  
11 2012. Defendant retrieved his car the same day from the towing company, after paying  
12 for various items. Defendant acknowledges in his brief that he later received a notice  
13 from the circuit court dated March 1, 2013, stating that a judgment of conviction had  
14 been entered against him for a "temporary no parking" violation; that he had failed to pay  
15 his ticket or to post bail and request a hearing; and that, pursuant to ORS 153.820,<sup>1</sup> the  
16 court had entered the conviction and judgment assessing a fine. The record does not  
17 reveal the contents of the notice--just that a notice was printed. According to defendant,

---

<sup>1</sup> Under ORS 153.820(2), a court in a county with a population of more than 500,000, such as Multnomah County, may make a determination, without a hearing, on a citation for a parking violation if (a) none of the registered owners of the vehicle timely appears, (b) notice of the citation and the provisions of ORS 153.820 were mailed to the registered owner or owners at the address or addresses reflected in the records of the Department of Transportation, and (c) no request for hearing or other appearance is timely filed with the court.

1 the notice indicated a "citation date" of December 17, 2012. However, there is no  
2 citation in the record.

3 Defendant promptly sought relief from the default judgment. He filed a  
4 declaration in support stating the following:

5 "My car was towed on 12/14/12 by Speed's Towing. I did not know  
6 of this until I returned from Seattle that morning after being away for a  
7 week. I learned of the towing after phoning Portland Parking Dept. They  
8 told me where it was and in answer to my question of why they said it was  
9 because the car was blocking leaf sweeping, the parking fine was \$8[,] and  
10 Speed would charge for the towing. I paid Speed and they added \$13 for  
11 parking, not 8. There was no citation on my car, nor did Speed have one. I  
12 never received a citation. I have copies of receipts. I request a hearing and  
13 that the judgment be set aside.

14 "I hereby declare that the above statement is true to the best of my  
15 knowledge and belief, and that I understand it is made for use as evidence  
16 in court and subject to penalty for perjury."

17 The trial court denied the motion. The order states that "[t]he declaration does not set  
18 forth sufficient grounds required by ORS 153.820(7) for relief from the judgment, the  
19 motion is denied."

20 Under ORS 153.820(7),

21 "[o]n motion and upon such terms as are just, the court may relieve a  
22 person from a judgment entered under this section upon a showing that the  
23 failure of the person to appear was due to mistake, inadvertence, surprise or  
24 excusable neglect. The motion must be made within a reasonable time, and  
25 in no event more than one year after entry of judgment in the matter."

26 On appeal, defendant contends that he provided grounds for relief because, as he  
27 explained in his declaration, he never received a citation. He further contends that he was  
28 denied due process.

29 We agree with defendant that he made a showing, through his declaration,

1 that his nonappearance constituted "mistake, inadvertence, surprise or excusable neglect"  
2 under ORS 153.820(7). *See Trucke v. Baughman*, 210 Or App 448, 455, 150 P3d 1080  
3 (2007) (holding that nonappearance by a party who failed to receive notice was a  
4 sufficient showing under ORCP 71 B, which contains identical grounds for relief from a  
5 default judgment). Therefore, the trial court erred, and we remand to allow the court to  
6 exercise its discretion.

7                   Reversed and remanded.