STATE OF IDAHO)
County of KOOTENAI)ss

FILED August 5, 2020
AT 5:15 O'Clock P. M
CLERK, DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

JP DEVELOPMENT, INC., DBA ACCTCORP INTERNATIONAL,

Plaintiff,

VS.

NEIL MAYER and CAROLYN MAYER, as Husband and Wife, DONALD SMOCK and MARGARET SMOCK, as Husband and Wife, NORTH IDAHO TITLE INSURANCE, INC. AND DOES 1 through 20, INCLUSIVE, including all parties with interest in and/or residing in the real property commonly known as 37339 W. Coeur d'Alene Lake Shore S. Coeur d'Alene, ID 83814 and legally described as; LO22, Block 3 LA DEL CARDO BAY, ACCORDING TO THE PLAT RECORDED IN BOOK "A" OF PLATS, PAGE 81, RECORDS OF KOOTENAI COUNTY, IDAHO, PARCEL NUMBER 044899930020,

Defendants.

Case No. **CV28-19-5454**

MEMORANDUM DECISION AND ORDER GRANTING DEFENDANT NEIL MAYER'S PETITION TO SET ASIDE JUDGMENT

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

On July 22, 2020, oral argument was held in Kootenai County Case No. CV 2008-464, on defendant Neil Mayer's (Neil) Petition to Set Aside (Default) Judgment and on defendant Neil's Motion to Consolidate. (Defendant Carolyn Mayer passed away in July 2019. Petition to Set Aside Judgment 4, ¶22). At the conclusion of that hearing, the Court granted Neil's Motion to Consolidate and ordered that all future filings in Kootenai County Case CV2008 464 be filed in Kootenai County Case CV28-19-5454. The Court took

Neil's Petition to Set Aside Judgment under advisement.

On January 18, 2008, in Kootenai County Case No. CV 2008-464, plaintiff JP Development, Inc. (JP Development) filed a Complaint against the Mayers. The cause of action concerned a debt assigned to JP Development. Compl. 1. In the Complaint, this debt is listed as originally owed to Commercial Consultants Household Mastercard. *Id.* The Complaint lists two separate debts with separate dates. *Id.* The first debt is dated as April 30, 2005, with a principal of $5,513.35 and Interest of $3,719.79. *Id.* The second debt is dated as May 31, 2005, with a principle of $6,731.98 and interest of $5,117.63. *Id.* These amounts are totaled in the Complaint as $21,082.75. *Id.*

On March 20, 2008, JP Development filed an Affidavit of Service which showed a failure to personally serve the Mayers with the Summons and Complaint. On April 30, 2008, JP Development filed a Motion for Order for Service by Publication and an Affidavit of Charles C. Crafts (Crafts) supporting the Motion. On May 2, 2008, this Court signed an Order for Service by Publication. On June 27, 2008, JP Development filed an Application for Default Judgment, a Memorandum of Attorney Fees and Costs, and an Affidavit in Support of Entry of Default. On June 30, 2008 this Court signed an Entry of Default and Order, and a Judgment. On May 6, 2013, JP Development filed a Motion to Renew Judgment, and the Order was signed on May 7, 2013. On April 5, 2018, JP Development filed a second Motion to Renew Judgment, and an Affidavit in Support of Motion. On April 16, 2018, the Order to Renew Judgment was signed. On June 10, 2019, JP Development filed an application for continuing writ of Execution, an Affidavit in Support of Application, an Application for Order of Sale, and an Affidavit in Support of Application for Order of Sale of real property located at 37339 W. Coeur D'Alene Lake Shore S. Coeur D' Alene, ID 83814. This Court signed an Order of Sale on June 11, 2019.

On November 13, 2019, Neil appeared for the first time in CV 2008-464, by filing his Petition to Set Aside Judgment. On December 18, 2019, JP Development filed an Answer to the Petition to Set aside Judgment. On January 7, 2020, plaintiff JP Development, Inc., DBA Acctcorp International (JP Development) filed Plaintiff's Motion for Judgment of Dismissal Based on the Pleadings as to Defendant's Petition to Set Aside Judgment and a Memorandum in Support of Motion and an Affidavit in Support of Motion. The Court notes that JP Development's Motion for Judgment of Dismissal Based on the Pleadings as to Defendant's Petition to Set Aside Judgment has never been noticed for hearing. The Court treats these pleadings filed by JP Development on January 7, 2020, as essentially a response to Neil's Petition to Set Aside Judgment. On April 29, 2020, Neil filed a Motion to Consolidate, a Memorandum in Support of Defendants Petition to Set Aside Default Judgment and Motion to Consolidate, a Declaration of Neil Mayer in Support of Petition to Set Aside Judgment, and a Declaration of Michael Meline in Support of Petition to Set Aside Judgment. On May 13, 2020, JP Development filed an Objection to Defendant's Motion to Consolidate, and an Affidavit in Support of Plaintiff's Objection to Defendant's Motion to Consolidate.

As mentioned at the outset, oral argument on Neil's Petition to Set Aside Judgment and Motion to Consolidate was heard on July 22, 2020. At oral argument, counsel for JP Development withdrew Plaintiff's Objection to Defendant's Motion to Consolidate, and this Court granted Neil's Motion to Consolidate. On July 28, 2020, this Court signed the Order for Consolidation. Following oral argument, Neil's Petition to Set Aside Judgment was taken under advisement by this Court.

II. STANDARD OF REVIEW

The decision to grant or deny a motion to set aside a default judgment, pursuant to either I.R.C.P. 55(c) or 60(b), is committed to the sound discretion of the trial court.

Baldwin v. Baldwin, 114 Idaho 525, 75 P.2d 1244 (Ct. App. 1988). Denial of an I.R.C.P. 60(b) motion is reviewed for an abuse of discretion. *Alderson v. Bonner*, 142 Idaho 733, 743, 132 P.3d 1261 1271 (Ct. App. 2006). Appellate review of the trial court's abuse of discretion standard has four parts: whether the trial court 1) correctly perceived the issue as one of discretion; 2) acted within the outer boundaries of its discretion, 3) acted consistently with the legal standards applicable to the specific choices available to it, and 4) reached its decision by the exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018). For good cause shown, the court may set aside an entry of default and, if judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b). I.R.C.P. 55(c). A district court must examine each case in light of the unique facts and circumstances presented. *Avondale on Hayden, Inc. v. Hall*, 104 Idaho 321, 326, 658 P.2d 992, 997 (Ct. App. 1983).

Judgments by default are not favored and, generally, the Court is to grant relief from the default in order to reach a judgment on the merits. *Johnson v. Pioneer Title Co. of Ada County*, 104 Idaho 727, 732, 662 P.2d 1171, 1176 (Ct. App. 1983). Where grounds for a motion are non-discretionary, such as in Rule 60(b)(4) motions, however, the motion is reviewed under the *de novo* standard. *Reinwald v. Eveland,* 119 Idaho 111, 112, 803 P.2d 1017, 1018 (Ct. App. 1991).

III. ANALYSIS

There is a two-prong test for setting aside a default judgment; 1) the moving party must satisfy at least one of the criteria of Rule 60(b), and 2) the moving party must allege facts which, if established, would constitute a meritorious defense to the action. *Hearst Corp. v. Keller*, 100 Idaho 10, 11, 592 P.2d 66, 67 (1979), *disapproved*

on other grounds, 108 Idaho 935, 703 P.2d 699 (1985). This Court will address both prongs of the two-prong test in order.

A. PRONG ONE; NEIL HAS SATISFIED AT LEST ONE OF THE I.R.C.P. 60(b) CRITERIA.

Neil first argues that:

> Plaintiff committed its first mistake with the affidavit in support of the motion for publication. The affidavit was signed only by the attorney of record and merely attached an objectionable hearsay document from the process server that asserted the Defendants' address was known as a post office box. No attempt was made to investigate alternative options for a physical location of the Defendants. There was insufficient due diligence Exerted to personally locate or serve the Defendants. The Defendants resided at the same address for over twenty years. (See Declaration of Neil Mayer, ¶ 2).

Mem. in Supp. of Def's. Petition to Set aside Default J. and Mot. to Consolidate 3. Additionally, Neil argues that, " [t]he second mistake by the Plaintiff occurred when the Order for Service by Publication was not served upon Defendants at their last known address." *Id.* at 4.

On March 6, 2008, JP Development's process server attempted service at the location of the Mayers private mail box, located at 212 W. Ironwood Dr., Coeur d'Alene, Idaho. Personal service failed in this attempt because this address was not a residency but instead a shipping and mailing center. Aff. of Charles C. Crafts Ex. A.

Neil states in his Declaration:

> 2. Commencing 1996 and consistently until 2019 (23 years), my wife, Defendant CAROLYN MAYER, and I lived on the same parcel of property located on Lake Coeur d'Alene.
> 3. For many years there was no physical address and no U.S. mail delivery at our property.
> 4. From 1996 to approximately 1999 our mail was delivered to a private mail box, number 551 at Mailboxes, Etc. located at 2615 N. 4th St, Coeur d'Alene, Idaho.
> 5. From approximately 2000 to approximately 2009 our mail was delivered to a private mail box, number 268 at Postal Annex+ located at 212 W. Ironwood Dr., Coeur d'Alene, Idaho.

6. Commencing approximately 2009 and thereafter the U.S.P.S first started delivering our mail to our residence, which was given the address of 37339 W. Coeur d'Alene Lake Shore, Coeur d'Alene, Idaho.

Decl. of Neil Mayer in Supp. of Petition to Set Aside J.1-2, ¶¶ 2-6..

The Process server, Rod Johnson, states in JP Development's Affidavit of Service, "I am unable to locate and/or serve CAROLYN MAYER or NEIL MAYER in KOOTENAI County, Idaho for the following reason(s): CANNOT BE SERVED AT THIS ADDRESS. PVT MBX FACILITY, NO FWD AVAILABLE." Aff. of Charles C. Crafts Ex. 1. JP Developments' Attorney, Charles C. Crafts states, "[t]hat service cannot be perfected upon Defendants for the reason that after due diligence Rod Johnson, Process Server has been unsuccessful at performing service of the summons and complaint for the reason that the Defendants address of record is a private mailbox facility and personal service is not possible at this time." Aff. of Charles C. Crafts.

Idaho Code § 5-508 states:

> When the person on whom the service is to be made resides outside of the state, or has departed from the state, or cannot after due diligence be found within the state, or conceals himself therein to avoid the service of summons, or is a foreign corporation having no managing or business agent, cashier or secretary within this state, or where any persons are made defendant by the style and description of unknown owners, or unknown heirs or unknown devisees of any deceased person and the names of such unknown owners or heirs or devisees are unknown to the complainant in the action, and such facts appear by affidavit to the satisfaction of the court in which the suit is pending, and it also appears by the affidavit or a verified complaint on file that a cause of action exists against the defendant in respect to whom the service is to be made, and that he is a necessary or proper party to the action, the court may make an order for the publication of the summons; and an affidavit setting forth in ordinary and concise language any of the grounds as above set forth, upon which the publication of the summons is sought, shall be sufficient without setting forth or showing what efforts have been made or what diligence has been exerted in attempting to find the defendant. Service upon any person, firm, company, association or corporation who is subject to the jurisdiction of the courts of this state pursuant to the provisions of section 5-514, Idaho Code, may be made in the manner provided in section 5-515, Idaho Code.

Idaho Rule of Civil Procedure 2.3.(a), (b) reads:

> (a) Proposed Order or Judgment. The prevailing party, or other party designated by the court to draft a proposed order or judgment, must serve a copy of the proposed order or judgment on each party and must provide to the clerk sufficient copies for service upon all parties, together with envelopes addressed to each party with sufficient postage attached, unless otherwise ordered by the court.
>
> (b) Service of Entered Order or Judgment. Immediately after entering an order or judgment, the clerk of the district court, or magistrates division, must serve a copy of it on every party, with the clerk's filing stamp showing the date of filing. The order or judgment may be served by mailing, emailing, or delivering it to the attorney of record for each party, or if the party is not represented by an attorney, by mailing to the party at the address designated by the prevailing party as most likely to give notice to that party. The clerk must make a note in the court records of the mailing of the entered order. Mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules.

JP Development met all of the requirements of Idaho Code § 5-508 for service by publication. As stated above, "the court may make an order for the publication of the summons; and an affidavit setting forth in ordinary and concise language any of the grounds as above set forth, upon which the publication of the summons is sought, shall be sufficient without setting forth or showing what efforts have been made or what diligence has been exerted in attempting to find the defendant." I.C. § 5-508. Crafts' Affidavit complies with Idaho Code § 5-508, and sets forth a showing of why the process server was unable to serve the Mayers because, "the Defendants address of record is a private mailbox facility and personal service is not possible at this time." Affidavit of Charles C. Crafts.

Despite meeting the requirements of Idaho Code § 5-508, this Court finds that JP Development did not meet the requirements of I.R.C.P. 2.3.(a) and (b) because JP Development has not put forward evidence that a copy of the Order for Service by Publication, was mailed to the Mayers. There is no certificate of mailing for the Order for Service by Publication, and JP Development does not assert that these documents

were mailed to the Mayers. For that above reason, the Motion and Order for Service by Publication contains a mistake under I.R.C.P. 2.3.(a) and (b).

Next, the Mayers argue that:

> Plaintiff committed another critical mistake when they neglected to provide self-addressed stamped envelope ("SASE") with the proposed Judgment that was subsequently entered on June 30, 2008. Kootenai County civil clerks require SASE accompany proposed order or judgment when parties to a case must be served by mail. Due to Plaintiff's mistake in complying with this requirement, the Defendants had no notice that Judgment was entered against them at that time.

Mem. in Supp. of Def's. Petition to Set Aside 4. Additionally, the Mayers argue that "[t]he Kootenai County Civil Clerk's office contributed to the Defendants' lack of notice due to the clerk's mistake and inadvertence in not taking the initiative to mail the Judgment to the Defendants." *Id.*

The certificate of mailing for the June 30, 2008, Judgment contains a hand written note next to the certificate of mailing which reads:

> no S.A.S.E
> faxed to C. Crafts
> @ (208)389-2109

Idaho Rule of Civil Procedure 55(b)(1) states:

> An application for a default judgment must also contain written certification of the name of the party against whom judgment is requested and the address most likely to give the defendant notice of the default judgment. The clerk must use this address in giving the party notice of judgment.

Since no self-addressed stamped envelope was provided, the Clerk did not mail a copy of the Default Judgment to the address provided. This also constitutes a mistake, this time under I.R.C.P. 55(b)(1).

Next, Neil argues that

> Plaintiff committed mistake when they drafted the first Order to Renew Judgment, entered on May 7, 2013. Plaintiffs drafted the order with an obsolete mailing address for the Defendants, so upon its entry the court

> clerk sent it to location that would not reach the Defendants. (See Declaration of Neil Mayer, 11 6) Plaintiff failed to ascertain Defendant's then-current address, and so again, due to Plaintiff's repeated mistakes and lack of diligence, the Defendants had no awareness that Judgment or renewed Judgment had been entered against them.

Mem. in Supp. of Def's. Pet. to Set Aside 4. It appears that the first Order to Renew Judgment is the first order or pleading of any kind that is confirmed by a certificate of mailing to have been mailed to the Mayers. Unfortunately, this order was sent to 212 W Ironwood Dr STE D268 Coeur D Alene, ID 83814. As stated by Neil Mayer in his Declaration, "[c]ommencing approximately 2009 and thereafter the U.S.P.S first started delivering our mail to our residence, which was given the address of 37339 W. Coeur d'Alene Lake Shore, Coeur d'Alene, Idaho." Decl. of Neil Mayer 2. At the time of the issuance of the First Order to Renew Judgment, over five years had passed since the initial service was attempted, and it appears that JP Development failed to update the Mayers' mailing address, which according to Neil Mayer's Declaration had been changed for around four years at that point. No evidence has been presented that JP Development attempted to investigate the Mayers' then current address. While this does not constitute a mistake, under I.R.C.P. 2.3(b), it certainly provides evidence of lack of notice.

Next Neil argues that, "Defendants were never served with the Complaint which led to default judgment, and therefore entry of the default judgment satisfies the basis for relief on the grounds of surprise under IRCP 60. In this case it is undisputed that the Defendants were surprised by the entire lawsuit." Mem. in Supp. of Def's. Pet. to Set Aside 5.

Furthermore, Neil argues that since they were not personally served with the complaint, the initial Judgment, the Motion to Renew the Judgment, or any renewed judgment, and where therefore surprised as to the lawsuit, "[t]he Delay from the default

Judgment until the Defendants moved for relief is excusable neglect under ... IRCP 60(b)(1)." *Id.* at 8. Additionally, Neil argues that, "Defendants were diligent and a reasonable amount of time elapsed from when they first learned of the default judgment to when they sought relief." *Id.*

A second Order to Renew Judgment was issued on April 16, 2018. This time JP Development had finally updated the certificate of mailing to the Defendants current address at the time at 37339 W. Coeur d'Alene Lake Shore, Coeur d'Alene, Idaho. Neil Mayer states that:

> 20. From October 2017 through April 2018, Carolyn and I wintered in Arizona. We had our mail forwarded to us by the U.S.P.S. in Arizona. While in Arizona I reviewed all our mail as it was received, and we did not receive any mail containing the Order to Renew Judgment filed herein on April 16, 2018.
> 21. We returned to our home in Idaho in late April 2018, and terminated the mail forwarding.
> 22. The first I learned of the Judgment or its renewals was on or about May 20, 2019, when we were in the process of selling our home and learned there was a lien against title in the closing documents.

Decl. of Neil Mayer 3, ¶¶ 20-22.

JP Development argues that:

> The petitioner is seeking safe harbor from proper notification of properly mailed judgments and renewals of judgment because they were "wintering in Arizona" at the time the paperwork was sent to them. This assertion is absurd. If the petitioner chose to winter in Arizona then they had a duty to have their mail forwarded to them during that time; it is their burden to maintain a proper address where paperwork can be mailed. Their failure to do so is not the fault of the Plaintiff in this case.

Mem. in Supp. of Pl's. Mot. for Judgment of Dismissal Based on the Pleadings (pages are not numbered, but it is page 4.) Additionally, JP development argues that:

> Defendants have been provided "actual" notice of the judgment against them through the filings and mailings in the record over the course of the past eleven (11) years. Defendants have been given "constructive notice" through the recording 0f such court documents over the course of the past eleven (11) years. The time allowed for the Defendants Motion to set aside has expired.

> A motion or "Petition to Set Aside Judgment" must be brought before the Court within year after the judgment was entered. The judgment was entered more than eleven (11) years ago. Judgment has been renewed twice over the course of the past eleven (11) years.

Id. at 5.

This Court finds that Neil has satisfied the first prong of grounds for relief under I.R.C.P. 60(b) because the Default Judgment entered on June 30, 2008, is void pursuant to I.R.C.P. 60(b)(4).

Neil frames the majority of his arguments in the terms of grounds for relief due under I.R.C.P. 60(b)(1), but those grounds are of little consequence due to the fact that "[a] motion under Rule 60(b) must be made within a reasonable time, and for reasons (1), (2), and (3) no more than 6 months after the entry of the judgment or order or the date of the proceeding." I.R.C.P. 60(b)(1). Neil filed his Petition to Set Aside Judgment eleven years after the initial Judgment has been entered. Therefore, any argument based solely on I.R.C.P. 60(b)(1) does not have merit.

Instead, this Court finds that the Default Judgment entered on May 1, 2008, is void under I.R.C.P. 60(b)(4) because copies of the Summons and Complaint were not mailed to the Mayers as required by I.R.C.P. 4(e)(1).

Idaho Rule of Civil Procedure 4(e)(1)(C) states "[w]hen the summons, notice or order is served by publication it must contain, in general terms, a statement of the nature of the grounds of the claim, and copies of the summons and complaint must be mailed to the last known address most likely to give notice to the party."

The Idaho Supreme Court has held that:

> In Idaho, a court may set aside a judgment by default in accordance with I.R.C.P. 60(b). I.R.C.P. 55(c). When a default judgment is predicated upon an erroneously entered default, the judgment is voidable. *Knight Ins., Inc. v. Knight,* 109 Idaho 56, 59, 704 P.2d 960, 963 (Ct.App.1985). For a judgment to be considered void under I.R.C.P. 60(b)(4), there generally must have been some jurisdictional defect in the court's

authority to enter the judgment, because the court lacked either personal or subject matter jurisdiction. *Puphal v. Puphal,* 105 Idaho 302, 306, 669 P.2d 191, 195 (1983). Additionally, a judgment is void when a court's action amounts to a plain usurpation of power constituting a violation of due process. *Dragotoiu v. Dragotoiu,* 133 Idaho 644, 647, 991 P.2d 369, 372 (1998). The right to procedural due process guaranteed under both the Idaho and United States Constitutions requires that a person involved in the judicial process be given meaningful notice and a meaningful opportunity to be heard. 133 Idaho at 648, 991 P.2d at 373.

McGloon v. Gwynn, 140 Idaho 727, 729, 100 P.3d 621, 623 (2004). The Idaho Supreme Court continued:

> Service of process is the due process procedure that vests a court with jurisdiction over a person, with the power to require such person to comply with the court's orders. The United States Supreme Court has indicated that due process in this context is:
>
> > notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. (citations omitted). The notice must be of such nature as reasonably to convey the required information ..., and it must afford a reasonable time for those interested to make their appearance. (citations omitted).
>
> *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865, 873 (1950). The *Mullane* court also made constructive comments on the sufficiency of service by publication alone. It stated at 339 U.S. 315, 70 S.Ct. 658, 94 L.Ed. 874 that:
>
> > It would be idle to pretend that publication alone as prescribed here, is a reliable means of acquainting interested parties of the fact that their rights are before the courts. It is not an accident that the greater number of cases reaching this Court on the question of adequacy of notice have been concerned with actions founded on process constructively served through local newspapers. Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information **625 *731 will never reach him are large indeed.
>
> In order to provide a method of constructive service that meets the due process requirements of notice, this Court has adopted I.R.C.P. 4(e)(1) which provides in pertinent part:
>
> > Whenever the summons, notice or order is served by publication it shall contain in general terms a statement of the nature of the grounds of the claim, and copies of the

> summons and complaint **shall be mailed** to the last known address most likely to give notice to the party. (Emphasis added).

McGloon, 140 Idaho at 730–31, 100 P.3d at 624–25 (bold in original). The Idaho Supreme Court in *McGloon* found that the plaintiff's failure to mail a copy of the Summons and Complaint to the defendant was an outcome determinative error under I.R.C.P. 4(e)(1). *Id.* The Court further found that even though the Plaintiff's knew that the defendant no longer lived at the address "most likely to give notice of any default judgment" the plaintiffs still erred in not sending a copy of the summons and complaint to this address because, "the requirement of mailing is there for a reason and we have no way of knowing whether a mailing there might have been forwarded to [defendant] or might somehow have come to [defendant's] attention." 140 Idaho at 731, 100 P.3d at 625.

In this case, JP Development did not mail a copy of the Summons and Complaint to the Mayers when the Motion for Service by publication was issued, or at any time during the proceedings. This is an outcome determinative error that rendered the subsequent Judgment void under I.R.C.P. 4(e)(1) and *McGloon.*

Setting aside a void judgment still requires that a motion to set aside be brought within a reasonable time. Idaho Rule of Civil Procedure 60(c) reads:

> (c) Timing and Effect of the Motion.
> (1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time, and for reasons (1), (2), and (3) no more than 6 months after the entry of the judgment or order or the date of the proceeding.

The Idaho Court of Appeals in *Lytle v. Lytle,* 158 Idaho 639, 350 P.3d 340 (Ct. App. 2015), set forth the standard for analyzing reasonable time for filing a motion under Rule 60(b)(4):

In *McGrew v. McGrew,* 139 Idaho 551, 82 P.3d 833 (2003), an ex-spouse filed a motion to set aside a specific provision of a default divorce decree—the award of retirement benefits—claiming the provision was void. Twenty-one months had elapsed before she brought her Rule 60(b) motion for relief. The Idaho Supreme Court held:

> To obtain relief from a void judgment under Rule 60(b)(4) of the Idaho Rules of Civil Procedure, a party must bring a motion for such relief within a reasonable time. Where judgment is entered without the party's knowledge, what constitutes a reasonable time is judged from the time that the party learned of the judgment.

McGrew, 139 Idaho at 559, 82 P.3d at 841 (citation omitted). The Court also discussed, in passing, that the question whether the twenty-one months was reasonable was left open. *Id.* Similarly, in *Wright v. Wright,* 130 Idaho 918, 922, 950 P.2d 1257, 1260 (1998), the Idaho Supreme Court stated:

> The district court applied the proper standard in determining whether the Wrights had acted within a reasonable time, determining that they had acted promptly once they learned of the judgment.

These cases clearly indicate that relief must be sought within a reasonable time from when the party learns of a default judgment and that a reasonable amount of time to challenge a void judgment is something less than "any time."

Consistent with the Idaho Supreme Court's cases addressing the issue, this Court has concluded that a Rule 60(b)(4) motion must be brought within a reasonable time and that what constitutes a reasonable time is based upon the facts of each case, stating:

> We have reviewed the record and find no basis to conclude that the delay of five months was unreasonable under the facts and circumstances of this case for purpose of Rule 60(b)(4).... Therefore, we hold as a matter of law that [the party's] Rule 60(b)(4) motion was brought within a reasonable time and remand of this issue to the district court is unnecessary.

Fisher Sys. Leasing, Inc. v. J & J Gunsmithing & Weaponry Design, Inc., 135 Idaho 624, 628–29, 21 P.3d 946, 950–51 (Ct.App.2001) (footnote omitted); *see also Meyer v. Meyer,* 135 Idaho 460, 462, 19 P.3d 774, 776 (Ct.App.2001).

A plain reading of Rule 60(b), along with *McGrew, Wright, Fisher* and *Meyer,* all require that a Rule 60(b)(4) motion must be brought within a reasonable time. Further, were we to hold that any amount of time is reasonable, as Charles claims, the "reasonable time" language in the rule would be rendered completely superfluous.

Lytle, 158 Idaho at 641–42, 350 P.3d at 342–43.

In the present case, this Court finds that Neil's Petition to Set Aside Judgment was timely filed under I.R.C.P 60(c) because the Neil acted to bring his motion for relief on November 13, 2019, and this constitutes a reasonable amount of time judged from when the Mayers learned about the Judgment on May 20, 2019. As described in *McGrew*, "[w]here judgment is entered without the party's knowledge, what constitutes a reasonable time is judged from the time that the party learned of the judgment." *McGrew,* 139 Idaho at 559, 82 P.3d at 841.

JP Development's initial error in not mailing the Summons and Complaint to the Mayers is a critical error rendering the judgment void, and therefore, as shown above, the service by publication does not constitute constructive notice. JP Development has committed numerous other errors in the service of further documents to the Mayers during the decade following the Judgment, and the only mailing that likely could have provided notice to the Mayers is the April 16, 2018, Order to Renew Judgment. In addition to this, the fact that the Judgment was recorded is a second possible source of notice.

Neil testifies that their mail was forwarded to them while they were in Arizona during the time period of the April 16, 2018, Order to Renew Judgment, and he further states that he read his mail and did not receive the April 16, 2018, Order to Renew Judgment. Decl. of Neil Mayer 3. Neil additionally testifies that he and his wife became aware of the judgment only after discovering a lien against their property while trying to sell the property in May 20, 2019. *Id.*

"Because judgments by default are not favored, a trial court should grant relief in doubtful cases in order to decide the case on the merits." *Dorion v. Keane*, 153 Idaho

371, 373, 283 P.3d 118, 120 (Ct. App. 2012) (citing *Meyers*, 148 Idaho at 287, 221 P.3d at 85).

In light of the long time that has elapsed in this case and the numerous errors in providing notice to the Mayers, this Court finds that the mailing of the April 16, 2018, Order to Renew Judgment, and the recording of the judgment, is not enough evidence to prove the Mayers had learned of the Judgment prior to May 20, 2019. The Mayers filed their Petition to Set Aside Judgment just under six months after learning about the Judgment, and this Court finds that this constituted prompt action taken by the Mayers to investigate their claims and file a challenge to the Judgment.

For the reasons described above, this Court finds that Neil has satisfied the first prong of the two-prong test for setting aside a default judgment.

B. PRONG TWO; NEIL ALLEGES A MERITORIOUS DEFENSE.

The Court must also determine whether the party seeking to have a default judgment set aside has pled facts which, if established, present a meritorious defense to the action. *Johnson v. Pioneer Title Co. of Ada County*, 104 Idaho 727, 732, 662 P.2d 1171, 1176 (1983). A party seeking to set aside a default judgment must show a meritorious defense and go beyond the mere notice requirements that would have been sufficient if the party had pled them before the default; factual details must be pled with particularity. *Hearst v. Keller,* 100 Idaho 10, 12, 592 P.2d 66, 68 (1979). The conclusion of the party or his attorney that the defendant has a good defense is not enough. *Thomas v. Stevens*, 78 Idaho 266, 271, 300 P.2d 811, 814 (1956). The defense matters must be detailed. *Hearst*, 100 Idaho 10, 12, 592 P.2d 66, 68 (1979).

Neil argues that:

> Defendants have meritorious defenses against Plaintiff's Complaint on both procedural and substantive grounds. Firstly, Plaintiff's Complaint

was defective on its face. Secondly, the evidence shows that Defendants were the victims of fraud and did not open accounts with Plaintiff.

Mem. in Supp. of Def's Petition to Set Aside Default J.9. In regards to Neil's assertion that JP Development's Complaint was defective, Neil argues that:

> Plaintiff's Complaint was filed without sufficient allegations or supporting documentation showing the contractual relationship between the parties or the basis for the debt, and was not verified by the Plaintiff under oath. Defendants have meritorious defense against such an inadequate pleading and the Plaintiff has failed to substantiate their contractual privity with Defendants, the nature of the debt, or any substantive evidence, and has admitted it has no documentation to corroborate the alleged debt as set forth in the unverified one—page Complaint. because all such documents have been "discarded." (*See Affidavit of Counsel, Exhibit A, Request for Production No. 2*).

Id. at 9-10. Regarding Neil's assertion that they were a victim of fraud, Neil states that:

> A meritorious defense exists for the Defendants based on the unrebutted evidence that they had no credit card accounts during the relevant time, and did not contract with the Plaintiff or Plaintiff's predecessor-in-interest or receive any benefit from the alleged debt. (*See Declaration of Neil Mayer 10-12*).
>
> The Defendants have set forth by way of expert witness opinion and declaration that this alleged debt was not on their credit report, the Defendants were subject to other identity theft crimes concurrently with this alleged debt, and that fraudulent address related to the Defendants' friends and/or family were connected with their credit reporting at the relevant time of this alleged debt. (*See Declaration of Michael L. Meline.*)
>
> All of these facts, if proven at hearing or trial, would amount to meritorious defense by the Defendants against this alleged debt.

Id. at 10.

JP Development argues that there are:

> no recorded depositions, affidavits or attestation of the deceased, Defendant Neil Mayer, cannot testify on behalf of the deceased. Defendant, Carolyn Mayer, has no meritorious defense to be made against the allegation of the Complaint.
>
> To that end, there is no way for the Defendant to affirmatively state that his wife was not the one who opened and benefited from the account that is the subject of this matter. Certainly, that is why the Rules of Civil Procedure provide for a full year within which to remedy such an alleged error. The parties here waited over eleven (11) years before filing this Petition to Set Aside the Judgment.

Mem. in Supp. of Pls' Mot. for J. of Dismissal. 4

This Court finds that Neil has presented a meritorious defense that satisfies the second prong to set aside a default judgment because Neil has presented factual details pled with particularity regarding defects in JP Development's Complaint and have provided specific evidence supporting their allegation that the Mayers were a victim of fraud in the debt being taken out in their name.

In regards to Neil's assertion of defects in JP Development's Complaint, this Court finds that the paucity of information provided in the Complaint regarding the nature of the debt and the parties involved in the debt to be troubling when considering such a large sum of money being bound to the Mayers. Additionally, Neil shows a meritorious defense in the evidence provided by Michael L. Meline Jr. (Meline), a cyber-crimes expert hired to perform an investigation of the Mayers' credit accounts. Decl. of Michael L. Meline, Jr. 2. Meline believes that the Mayers are the victims of fraud and identity theft in the execution of this debt. *Id.* at 5. Meline details that an address had appeared on the Mayers' credit report that they have never lived at and the "credit report indicates credit sought or obtained from an individual who used that address". *Id.* at 3. Based on Meline's Declaration, this address was that of Kelly M. Littell, a boyfriend of the Mayers' Daughter whom she lived with. *Id.* Meline testifies that identity theft and fraud is often carried out by family members as they have access to all the information required to commit identity theft. *Id.* Meline also testifies that "Mr. Mayer had other identity theft situations in the relevant time period to this case." *Id.* at 4.

While this Court understands JP Development's difficult position in providing evidence regarding a debt this old, as well as the difficulty in ruling out

Carolyn Mayer as the one who took out the debt, since she is now deceased, this does not destroy the detailed meritorious defenses presented by the Mayers in this case. Additionally, as mentioned above, the reasonableness of time spent to bring a Rule 60(b)(4) is judged from when the the party learned of the judgment. *McGrew,* 139 Idaho at 559, 82 P.3d at 841. Therefore, difficulty in providing evidence, due to the long time that had elapsed between when the Judgment was entered and when the Judgment was discovered by the Mayers, cannot be used as a defense to stop the setting aside of a void judgment.

For the reasons described above, this Court finds that Neil has satisfied both prongs of the test to set aside a default judgment. This Court 1) perceives the issue as one committed to its discretion, 2) believes it has acted within the outer boundaries of its discretion, 3) believes it has acted consistently with the legal standards applicable to the specific choices available to it, and 4) has reached its decision by the exercise of reason. *Lunneborg*, 163 Idaho at 863, 421 P.3d at 194.

IV. CONCLUSION.

For the reasons set forth above, defendants' Petition to Set Aside Judgment is **GRANTED**.

Entered this 5th day of August, 2020.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the 6th day of August, 2020, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail, email or facsimile to each of the following:

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By Jeanne Clausen, Secretary