

At that hearing, defendant Diana Witherspoon was informed by the Court that she could not represent her husband. At the conclusion of the hearing, the Court found that defendant Diana Witherspoon had not met her burden, and the Court denied defendant Diana Witherspoon's Motion to Set aside Default. The Court informed counsel for plaintiff to prepare an order to the effect. As of this date, one week later, counsel for plaintiff has failed to prepare such an order.

On November 6, 2015, defendant Diana Witherspoon filed another Motion to Set Aside Default.

II. STANDARD OF REVIEW.

Although a default judgment may be set aside on the basis of mistake, inadvertence surprise or neglect, a party seeking to set aside a default judgment must, in addition to meeting the requirements of I.R.C.P. 60(b), show a meritorious defense going beyond the mere notice requirements which would be sufficient if pled before default since it would be an idle exercise for a court to set aside a default if, in fact, there is no real justiciable controversy. *Reeves v. Wisenor*, 102 Idaho 271, 629 P. 2d 667 (1981).

III. ANALYSIS

Because defendant Diana Witherspoon cannot represent her husband, any motion to set aside default on behalf of defendant James Witherspoon must be denied. Additionally, because defendant Diana Witherspoon failed to meet her burden of proof, her motion to set aside default filed September 22, 2015, is denied. In her motion to set aside default filed on November 6, 2015, defendant Diana Witherspoon has provided no additional evidence, accordingly, that motion must be denied.

IV. CONCLUSION AND ORDER.

For the reasons stated above,

IT IS HEREBY ORDERED any motion to set aside default on behalf of defendant James Witherspoon is DENIED.

IT IS FURTHER ORDERED defendant Diana Witherspoon's motion to set aside default filed September 22, 2015, is DENIED.

IT IS FURTHER ORDERED defendant Diana Witherspoon's motion to set aside default filed on November 6, 2015, is DENIED.

Entered this 13TH day of November, 2015.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of November, 2015, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Lawyer</u>	<u>Fax #</u>		<u>Lawyer</u>	<u>Fax #</u>
Bryan N. Zollinger	208 529 4166		James and Diana Witherspoon	

Jeanne Clausen, Deputy Clerk