

FILED _____

AT _____ O'Clock _____ M
CLERK OF DISTRICT COURT

Deputy

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

**TERRY-LEE, *sui juris*, a Sovereign Being,)
)
Plaintiff,)
)
vs.)
)
**NATHON-DAVID, *sui juris*, a Sovereign)
Being,)
Defendant)
)
)****

Case No. **S CV 2009 788**

**MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFF'S
MOTIONS**

I. PROCEDURAL HISTORY AND BACKGROUND.

Can a party's refusal to accept mail, or refusal to open mail, provide a defense of "excusable neglect" to a subsequent motion? Turns out, the answer to that question is "No."

Plaintiff Terry-Lee (Terry-Lee), pro se, has filed the following pleadings which are now at issue:

"By Forced Attendance Motion to Vacate Judgment and to Vacate the Transfer of the Undivided Half Interest of the Land(s) in Question Against the State Created trust TERRY LEE for Cause and for Fraud Against the Court and Against Terry-Lee the Sovereign Being for Rule 60(b) and by and Thru [sic] Your Rule 59(b), and Rule 26(e)(3), and Rule 9(b)- 4 pages Defendant's Objection to Notice of Scheduled Hearing to Vacate Default Judgment and Set Trial Date" - 2 pages

"By Forced Attendance Terry-Lee's Rebuttal's [sic] to All Documents Found in the Clerks [sic] File on This Case by Lukins & Annis Just Received and Paid For July 8th AD 2010"- 24-pages with extensive exhibits

"Objections and Denials to Defendants Opposite [sic] to Motion to Vacate

Judgment Dated August 3, 2010- 8 pages and handwritten corrections to Young's Opposition to Motion to Vacate and Objection to Hearing"

Defendant Nathon Young (as referred to by Terry-Lee, Nathan David Young as referred to by Nathan David Young) (Young), through his attorney Michael G. Schmidt, filed an: "Opposition to Motion to Vacate Judgment", an "Objection to Notice of Scheduled Hearing to Vacate Default Judgment and to Set Trial Date", and "Opposition to Motion to Vacate Judgment", and supporting Affidavit of Michael G. Schmidt. Oral argument was held on Terry-Lee's motions on September 29, 2010.

Terry-Lee filed his *pro se* "Verified Request for Dissolution of Partnership and Division of Real Property's [sic] in Bonner County" on May 6, 2009. Young filed his Answer, Affirmative Defenses and Counterclaim on November 10, 2009. On December 15, 2009. Young filed a 3-day Notice of Intent to Take Default; thereafter, Terry-Lee filed what he identified as "Evidence Being Entered into the Record on This Matter" on December 28, 2009, this evidence consisted of numerous documents regarding Terry-Lee's designating himself as "Terry-Lee" and as a sovereign. On January 5, 2010, Young filed his motion and affidavit for default, and this Court entered its Order for entry of Default on January 5, 2010, stating, "IT IS HEREBY ORDERED that default against Plaintiff/Counterclaim Defendant Terry-Lee be entered." Order for Entry of Default, p. 1. On May 12, 2010, Young filed his motion for entry of judgment and affidavit in support thereof. On June 2, 2010, this Court granted the motion for entry of judgment after the hearing on the matter held on June 1, 2010. The two-day Court trial in this matter, scheduled to begin on August 16, 2010, was vacated on that date.

Terry-Lee then filed a motion to vacate the judgment and a "rebuttal" to all documents in the Court file. The "rebuttal" was filed on July 13, 2010. The motion to

vacate was received by this Court via United States Postal Service on June 14, 2010, but was not then noticed up for hearing, and no action was taken on the motion. On July 23, 2010, a Notice of Scheduled Hearing to Vacate Default Judgment and to Set Trial Date was filed by Terry-Lee (the Notice was captioned for Case CV 2009 198, a case before District Judge Ben Simpson, but presumably was filed for Case CV 2009 788). Young objected to the timeliness of the originally set August 5, 2010, hearing date. The matter was then reset for September 29, 2010.

II. STANDARD OF REVIEW.

A motion for relief from a final judgment, pursuant to I.R.C.P. 60(b), is committed to the sound discretion of the trial court. *Clear Springs Trout Co. v. Anthony*, 123 Idaho 141, 143, 845 P.2d 559, 561 (1992); *Johnston v. Pascoe*, 100 Idaho 414, 599 P.2d 985 (1979). 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). Where a motion invokes discretionary grounds for relief from a judgment, the standard is review of discretion; however, where the grounds are non-discretionary, as when a judgment is void, the question presented is one of law over which reviewing courts exercise free review. *Knight Ins., Inc. v. Knight*, 109 Idaho 56, 704 P.2d 960 (Ct.App.1985).

The Idaho Supreme Court and Court of Appeals agree that the decision as to whether to enter default judgment is a matter of discretion for the trial court. *Mastrangelo v. Sandstrom, Inc.*, 137 Idaho 844, 849-850, 55 P.3d 298, 303-304 (2002); *Johnson v. State*, 112 Idaho 1112, 1114, 739 P.2d 411, 413 (Ct.App. 1987) (comparing I.R.C.P. 55 to Fed.R.Civ.P. 55); *see also Clear Springs Trout Co. v. Anthony*, 123 Idaho 141, 143, 845 P.2d 559, 561 (1992).

III. ANALYSIS.

A. Motions Pursuant to I.R.C.P. 59(b), 26(e)(2)(A), and 9(b).

Terry-Lee moves this Court to vacate the judgment entered in CV 2009 788 (*Terry-Lee v. Nathan Young*) on June 2, 2010. He argues he did not receive proper service of process or notices of hearing. Motion to Vacate Judgment, p. 2. Terry-Lee's allegations find no support in Idaho statutes, rules, or case law. It appears Terry-Lee seeks a new trial under I.R.C.P. 59(b). *Id.* However, trial was vacated in this matter after judgment was entered against Terry-Lee following his default. Terry-Lee cites no authority which would permit this Court to order a new trial given these facts. See *Soria v. Sierra Pacific Airlines, Inc.*, 111 Idaho 594, 726 P.2d 706 (1986) (“[W]ise appellate review should only require the ordering of a new trial where there is a probability that a different result would occur upon the completion of the new trial.”)

Terry-Lee next argues I.R.C.P. 26(e)(2)(A)'s requirements were not met because Young supplied an affidavit containing erroneous and false claims, “and is in substance a knowing concealment”. Motion to Vacate Judgment, p. 2. Terry-Lee does not identify the affidavit of Young and has not provided it to the Court. Idaho Rule of Civil Procedure 26(e)(2)(A) refers to the duty of a party to supplement discovery responses learned not to have been true when made or learned to no longer be true because of information the party obtains. That rule is simply inapplicable to the instant facts.

Finally, Terry-Lee argues I.R.C.P. 9(b) applies to statements by Young, who has “purposely misrepresented the value of our 32 acre development to this Court...” Motion to Vacate Judgment, pp. 2-3. In support of this contention, Terry-Lee has attached a letter from Exit Realty Sandpoint stating the commercial lots may have a value of \$4/square foot with infrastructure and the raw lots have a value of

approximately \$15,000. Terry-Lee argues the total value of the property at issue was \$2,640,000. However, I.R.C.P. 9(b) involves the requirement that fraud claims be pled with particularity. Terry-Lee, who filed the suit, *did not allege fraud* and, therefore, Rule 9(b) has no applicability to his claim seeking dissolution of a partnership.

B. Motion to Vacate Judgment.

Terry-Lee's motion seeks to vacate this Court's entry of judgment. He argues his excusable neglect in defaulting and not appearing to defend against the motion for entry of judgment was the result his not receiving service. Motion to Vacate Judgment, p. 2.

Terry-Lee writes:

For the Premeditated mistake's by Nathon's Illegal Attorney, willful misrepresentations and other misconduct by Nanthon-David and his illegal attorney, and I's excusable non-attendance (neglect) by lack of service of process, I did not receive any notice of hearing or I would have been there.

Id. [Sic in original]

At oral argument, Terry-Lee asked: "Is there any law requiring me to open someone else's mail?" The law requires one to do what is reasonable. Terry-Lee did not do what was reasonable and cannot avail himself of excusable neglect.

Young responds that Terry-Lee's Notice of Scheduled Hearing to Vacate Default Judgment and Set Trial Date was untimely served under I.R.C.P. 7(b)(3)(A) and 6(e)(1). Objection to Hearing, p. 1. Terry-Lee's Notice regarding hearing on the motion to vacate on August 5, 2010, was not received by Young's counsel until July 28, 2010. Idaho Rule of Civil Procedure 7(b)(3)(A) requires parties to file motions and notices on hearings with the court fourteen days before hearing and serve the opposing party "so that it is received by the parties no later than fourteen (14) days before the time specified for the hearing." Idaho Rule of Civil Procedure 6(e)(1) provides an additional

three days be added to this time period when service is upon the other party by mail. As argued by Young, receipt of the Notice on July 28, 2010, for an August 5, 2010, hearing amounts to eight total days' notice and is improper under the rules. However, I.R.C.P. 61 requires the Court to "disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Young has not identified any prejudice resulting from the untimely notice, and has properly filed his Opposition to the Motion to Vacate. At the present time, Young's argument regarding the timeliness of Terry-Lee's service upon him is moot as this matter was rescheduled for September 29, 2010.

Substantively, Young opposes the Motion to Vacate because Terry-Lee has not met the requirements of I.R.C.P. 60(b) and has not presented a meritorious defense. Opposition to Motion to Vacate Judgment, pp. 2-4. Young notes Terry-Lee has not alleged any purported fraud upon the Court which would justify vacating the judgment; "the entirety of his fraud argument rests on unsupported allegations that Mr. Young's testimony was inaccurate or untruthful." *Id.*, p. 2. Additionally, Young argues Terry-Lee's neglect cannot be considered "excusable neglect" within the meaning of the Rules. Young argues:

Mr. Lee's garbled and nonsensical allegations (generally refusing to acknowledge jurisdiction or the existence of governmental states, zip codes, social security numbers, and the like) are not "reasonable" as contemplated by Rule 60(b). The unreasonableness of his actions is compounded by the fact that he was the first to bring suit in this action and therefore availed himself of the courts.

Id., p. 3. Finally, Young states Terry-Lee has not presented a meritorious defense to the judgment entered against him. *Id.*, pp. 3-4.

Young's arguments are well-taken. Excusable neglect is determined by examining what might be expected of a reasonably prudent person under similar

circumstances. *Johnson v. Pioneer Title Co.*, 104 Idaho 727, 662 P.2d 1171 (Ct.App. 1983). Refusing to accept mail and returning any correspondence utilizing a zip code is not acting as a reasonably prudent person would under similar circumstances. In *Rodell v. Nelson*, the Court of Appeals found that the district court was justified in not setting aside a default judgment, and finding that the defendant refused service, where a process server was attacked by dogs as he attempted to serve a copy of an order for the withdrawal of defendant's attorney and where a certified mailing to the defendant was returned unclaimed. 113 Idaho 945, 947, 750 P.2d 966, 968 (Ct.App. 1988). The Court stated:

It is a well-settled general principle that a person has no right to shut his eyes or ears to information and then to say that he lacked notice of the avoided facts. As a corollary to that principle, a person may not avoid the effect of a written notice by refusing service of the notice.

Id. The Court must also determine whether the party seeking to set aside the default judgment has pled facts which, if established, present a meritorious defense to the action. *Johnson*, 104 Idaho 727, 732, 662 P.2d 1171, 1176. 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 Corp. v. Keller*, 100 Idaho 10, 12, 592 P.2d 66, 68 (1979). Terry-Lee has not done so; rather, he argues Young was not a party to the contract between "Terry-Lee and Nathon-David". Objections and Denials, p. 4. He states the Judgment was improperly entered against a "State Created Legally Built Implied Constructive Trust, known as TERRY LEE which has no interest in the land development project stated in this case." *Id.* (emphasis in original).

The fraud allegations are also insufficient with regard to Terry-Lee's motion. See

Anderton v. Herrington, 113 Idaho 73, 741 P.2d 360 (Ct.App. 1987) (Perjury or misrepresentation by a party or witness does not constitute the fraud contemplated by I.R.C.P. 60); *Compton v. Compton*, 101 Idaho 328, 334, 612 P.2d 1175, 1181 (1980) (Fraud, for the purposes of this rule, requires more than interparty misconduct and “will be found only in the presence of such ‘tampering with the administration of justice’ as to suggest ‘a wrong against the institutions set up to protect and safeguard the public’”). No such showing has been made.

Idaho Rule of Civil Procedure 60(b)(4) allows relief from a void judgment, but generally only where a court lacks the jurisdiction to enter judgment, such as where the court lacks either personal jurisdiction or subject-matter jurisdiction. See *Catledge v. Transport Tire Co.*, 107 Idaho 602, 607, 691 P.2d 1217, 1222 (1984). Here, as previously stated, it was Terry-Lee who availed himself of the Courts by filing the instant lawsuit. Ultimately, Terry-Lee can point to no reasons justifying relief from the entry of judgment. The catch-all provision of Rule 60(b)(6) was not intended to allow a Court to reconsider the legal basis for its original decision. *First Bank & Trust v. Parker Cros., Inc.* 112 Idaho 30, 32, 730 P.2d 950, 952 (1986).

IV. CONCLUSION AND ORDER.

For the reasons stated above, this Court must deny all of Terry-Lee’s motions.

IT IS HEREBY ORDERED all of plaintiff Terry-Lee’s motions are DENIED.

Entered this 30th day of September, 2010.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of September, 2010, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer
Michael Schmidt

Fax #

|
Terry-Lee

c/o [box 1084]
Loon-Lake, non-domestic
Washington state, dejure
(address certified by Terry-Lee would result in
delivery to Terry-Lee)

Jeanne Clausen, Deputy Clerk