2026 IL App (1st) 261513-U
No. 1-26-1513
Order filed November 13, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT, SIXTH DIVISION

IN RE MARRIAGE OF:

JANET SPENCER, Petitioner-Appellant,

and

JERRY J. JONES, Respondent-Appellee.

Appeal from the Circuit Court of Cook County.
Edward A. Arce, Judge, Presiding.
Nos. 2022D080040, 2024D079566

PRESIDING JUSTICE GAMRATH delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Denial of mother's motion to vacate default allocation judgment was an abuse of discretion.

¶ 2 Janet Spencer appeals from an order of the circuit court denying her motion to vacate a default judgment allocating parental responsibilities for the parties' minor child to Jerry Jones. Spencer filed her motion 20 days after the default judgment was entered, asserting that she had received no notice of the hearings at which the default order and the allocation judgment were entered. The judgment was entered after a proceeding lasting roughly five minutes, at which the court received no evidence bearing on the child's best interests or the parties' ability to cooperate

and share parental responsibilities with one another. For the following reasons, we find the denial of Spencer's timely motion to vacate the default judgment was an abuse of discretion. We reverse and remand and vacate the allocation judgment.

¶ 3 I. BACKGROUND

¶ 4 On August 17, 2022, Spencer filed a complaint to adjudicate parentage of the minor child born on November 1, 2020. The record shows no activity in the case for years.

¶ 5 On May 6, 2024, Jones filed a complaint concerning the allocation of parental responsibilities for the child. There is no record of Spencer being served with the complaint. On September 12, 2024, Jones moved to consolidate the two cases, which the court granted. Nothing happened in the consolidated cases until Jones filed a motion to establish parentage, set child support, and grant visitation on March 7, 2025.

¶ 6 On April 16, 2025, Spencer's attorney withdrew. The notice of motion lists Spencer's address at a property in Glenwood, Illinois. There is no evidence or court order requiring that Spencer's attorney provide her with a copy of the order or inform her that she was obligated to file an appearance within 21 days.

¶ 7 On July 21, 2025, Jones filed a motion to default Spencer. The notice of motion lists an address in Monee, Illinois, different from the Glenwood address listed in the motion to withdraw. The notice of motion does not list a date or time for the hearing on the motion to default Spencer. Nonetheless, the court granted the default motion on August 1, 2025, and set the matter for prove-up on September 15, 2025.

¶ 8 The matter was continued for eight months with little to no activity. It was finally proved up on May 6, 2026. Spencer was sent notice of the May 6 prove-up date via email on May 1, but she did not appear.

¶ 9 The cause proceeded to a one-sided prove-up hearing, which, based on the six-page transcript, lasted approximately five minutes. At the hearing, the court received no evidence on whether an allocation of parental responsibilities to Jones served the child's best interests, no evidence that the parties were able to cooperate, and no evidence that the child was bonded to Jones or had maintained regular ongoing contact with him.

¶ 10 On May 26, Spencer filed a motion to vacate the default judgment, alleging she was unaware of the prove-up date and only discovered the notices in a spam folder of an email account that she no longer used. She alleged the child had not seen Jones since September of 2022, and the provisions of the default allocation judgment granting shared parental responsibilities and substantial visitation time to Jones were not in the child's best interests and endangered the child.

¶ 11 Though Spencer's motion cited section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203), the circuit court viewed the motion as a section 2-1301(e) (735 ILCS 5/-1301(e)) motion to vacate the default judgment. The court did not hear testimony on the motion but denied it after finding Spencer received notice and failed to act diligently before the allocation judgment was entered. The court also found Spencer did not establish a meritorious basis to vacate the judgment and doing so would cause further delay, disrupt the parenting arrangements, and undermine stability, particularly where Jones had been litigating the matter for approximately two years. Spencer appeals.

¶ 12 II. ANALYSIS

¶ 13 A motion to vacate a default judgment filed within 30 days of its entry may be brought under section 2-1301(e) of the Code, which authorizes the court, in its discretion, to "set aside any final order or judgment upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e) (West 2024). In a case tried without a jury, section 2-1203(a) separately permits any party,

within 30 days after entry of judgment, to move "to vacate the judgment or for other relief." 735 ILCS 5/2-1203 (West 2024). Which section applies is immaterial to our review because, under either section, we review the circuit court's decision for an abuse of discretion. *Jacobo v. Vandervere*, 401 Ill. App. 3d 712, 715 (2010). We may find an abuse of discretion "only where the trial court acted arbitrarily such that no reasonable person would take the position it adopted." *Id*. A court likewise abuses its discretion when its decision "exceeds the bounds of reason and ignores principles of law such that substantial prejudice has resulted." (Internal quotation marks omitted.) *Godfrey Healthcare & Rehabilitation Center, LLC v. Toigo*, 2019 IL App (5th) 170473, ¶ 38.

¶ 14 A default judgment "is a drastic remedy that should be used only as a last resort." *Id.* ¶ 39 (citing *In re Haley D.*, 2011 IL 110886, ¶ 69). The law prefers that controversies be resolved based on the parties' substantive rights, and the provisions of the Code governing relief from a default judgment "are to be liberally construed toward that end." *Id.* As such, a party seeking to vacate a default judgment within 30 days is not required to show the existence of a meritorious defense or a reasonable excuse for not having asserted the defense *(id.)*, although the existence of such is a relevant consideration for the court (*Warren S. Winkler, LLC v. Weld All, Inc.*, 2026 IL App (3d) 240722, ¶ 56). Courts also consider the severity of the penalty resulting from the judgment and the relative hardships on the parties from granting or denying vacatur. *Jacobo*, 401 Ill. App. 3d at 715. The decisive inquiry is whether substantial justice is being done between the litigants, and whether it is reasonable, under the circumstances, to require them to proceed on the merits. *Godfrey,* 2019 IL App (5th) 170473, ¶ 39.

¶ 15 Spencer filed her motion to vacate 20 days after the default judgment was entered, well within the 30-day period that section 2-1301(e) prescribes. A motion filed promptly is evidence of diligence. See *McLeod v. McLeod,* 133 Ill. App. 2d 111, 112-13 (1971) (petition to vacate a default

divorce decree filed ten days after its entry was "in itself *** evidence of diligence," and denying it was an abuse of discretion).

¶ 16 Spencer's diligence, combined with her asserted lack of notice of the hearing, is a valid ground for vacatur.

¶ 17 In *Haley D.*, 2011 IL 110886, ¶ 70, our supreme court vacated a default judgment terminating a father's parental rights, because he was not served with the termination petition and had no notice of the prove-up hearing. The court observed, "This is not a situation where a litigant received specific notice of impending action and simply chose to ignore it." *Id.* Under the circumstances, substantial justice required the default to be set aside. *Id.*; see also *In re Marriage of Czekaj*, 66 Ill. App. 3d 484, 487-88 (1978) ("[d]epriving an individual of an opportunity to be heard should not be countenanced by any court").

¶ 18 In *Venema v. Venema*, 74 Ill. App. 3d 416, 419 (1979), the court also reversed the denial of a motion to vacate a default dissolution judgment, weighing together the uncertainty whether the husband had received notice, the fact that "there were two sides in this case and *** the trial court only heard one of them," and the absence of hardship to the opposing party.

¶ 19 Spencer's case presents the same combination of circumstances: a question of notice, a hearing at which only Jones was heard, and no hardship to Jones from a contested proceeding. Although the circuit court's order suggests Jones would suffer hardship because he had litigated the case for approximately two years, the record reflects that neither side did much of anything in that time. The case lay largely dormant, yet the allocation judgment significantly upended the status quo. Also, the "parenting arrangements" and "stability" the order mentions find no support in the record.

¶ 20 That the default judgment granted Jones shared parental responsibilities for the minor child only strengthens the case for vacatur, particularly given Spencer's allegations that Jones had not seen the child for years beforehand and had failed to supervise the young child properly. The court entered the allocation judgment after a five-minute proceeding that yielded no evidence of the child's best interests, of the parties' ability to cooperate, or of any bond between the child and Jones. Entering a default allocation judgment of this kind, without any means of assessing whether the parents could cooperate in carrying out the order or whether it served the child's best interests, is troubling, and on these facts, prompt vacatur would have prejudiced no one.

¶ 21 Finally, Spencer's appeal raises the question of jurisdiction based on the allegation she was never served with Jones's complaint. If Spencer neither was served nor appeared, the default judgment would rest on a more fundamental defect: the absence of personal jurisdiction, which would independently require that the judgment be vacated. Because the matter must be remanded in any event, the circuit court may resolve any remaining question concerning service as the record develops.

¶ 22 We reverse the order denying Spencer's motion to vacate, vacate the default allocation judgment, and remand for a hearing on the merits.

¶ 23 Reversed and remanded. Default allocation judgment vacated.