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IN THE SUPREME COURT OF THE STATE OF IDAHO

2004 Opinion No. 61

SHELLEY A. MC GLOON, individually and in her capacity as guardian and natural parent of SEAN MC GLOON, a minor, and RYAN MC GLOON, a minor; and JOHN MC GLOON,	)	
Plaintiffs-Respondents,	)	**Docket No. 29450**
v.	)	
STEFANI MICHELLE GWYNN,	)	
Defendant-Appellant.	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Deborah A. Bail, District Judge.

The judgment of the district court is affirmed in part and vacated and remanded in part.

Elam & Burke, P.A., Boise, for appellant. Joshua S. Evett argued.

Sherer & Wynkoop, LLP, Meridian, for respondents. Stephen T. Sherer argued.

This case came to the Idaho Supreme Court after the district court ruled against Stefani Michelle Gwynn (Gwynn) for failing to defend herself in a lawsuit filed against her by the McGloons.

The McGloons sued Gwynn for injuries resulting from a rear-end auto collision. They were unable to deliver a copy of the lawsuit to Gwynn, so they sought and were granted permission by the district court to provide notice of the lawsuit by publication in a local area newspaper. After publishing the notice for three weeks, the McGloons asked the district court to rule against Gwynn because she had failed to answer and defend herself in the lawsuit. The district court subsequently ruled against Gwynn.

Elam & Burke, a law firm, represented Gwynn to argue only that Gwynn did not receive proper notice of the lawsuit because the publication in the newspaper had not been for a long enough period of time. The McGloons and Elam & Burke agreed that the notice in the newspaper was not for a long enough period of time and asked the district court to disregard its ruling against Gwynn, which it did. However, after this, because Gwynn still did not respond to the McGloons' lawsuit, the McGloons sought and again obtained the district court's permission to give notice of the lawsuit by publication. At the end of the correct time period required for notice by publication, the McGloons asked and received a ruling against Gwynn by the district court.

After its ruling, the district court held a hearing on the amount of damages to be awarded to the McGloons. Because Gwynn had failed to defend herself, she was not allowed, nor was Elam & Burke allowed, to participate in the damages hearing. At the end of the hearing, the district court entered judgment against Gwynn for the damages. Gwynn appealed to this Court arguing the district court's decision was incorrect.

The Judgment of the district court is affirmed in part and vacated and remanded in part. The district court's denial of the Motion to Set Aside the [second] Default was not an abuse of discretion because Gwynn failed to show a defense amounting to good cause. Because Gwynn's counsel was not a party to the action once the purpose of its special appearance was accomplished, I.R.C.P. 5(a) was not violated. There was not an I.R.C.P. 4(e)(1) violation in this case because there was no last known address likely to give Gwynn notice, and because the specific facts of this case show the McGloons went beyond what is required to serve process by publication. Because this Court adopts the general rule that a defaulted defendant, upon proper appearance or further needed compliance with Idaho Rules of Civil Procedure, is entitled to participate in damages hearings, the Default Judgment of the district court is void on the ground that Gwynn was entitled to participate in the damages hearing. This Court vacates and remands the Default Judgment for a new hearing only on the amount of damages to be awarded to the McGloons. Because the district court is affirmed in part and vacated and remanded in part, there is no prevailing party. As such, neither party is entitled to costs.