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ARGUMENT

I. The trial court erred in denying Appellant’s Motion for Relief from Judgment because the trial court abused its discretion in failing to set aside the Finding of Jurisdiction and Order of Disposition in that the trial court lacked jurisdiction to enter the underlying Finding of Jurisdiction and Order of Disposition since Appellant did not receive a Summons or a copy of the Petition as required by RSMo. § 211.101, Supreme Court Rule 115.01(c) and Supreme Court Rule 115.02.

Respondent in its brief states that, “The Appellant participated in the first step of a juvenile cause, the 72-hour hearing.” Respondent’s cites no references in legal file or the transcript for the proposition that Appellant participated in a 72-hour hearing. Indeed, nothing in the legal file supports this alleged “fact.” The docket sheet does not reflect that a 72-hour hearing was held. Instead, the docket sheet reflects that the juvenile petition was filed on December 13, 2001. (L.F. 14.) The first entry in the docket sheet reflecting a hearing was for the date of February 4, 2002. (L.F. 15.) Thus, the first hearing on the matter was held over one and a half months after the petition was filed. There is no evidence that there was a 72-hour hearing. Indeed, the requirement of a 72-hour hearing was not found in Rule 119.01.

Appellant’s responses to the other arguments raised by the Respondent in her brief are adequately briefed in Appellant’s Brief or subsequently in this brief, and, therefore, Appellant’s responses will not be repeated here.

II. The trial court erred in denying Appellant’s Motion for Relief from Judgment because the trial court abused its discretion in failing to set aside the Finding of Jurisdiction and Order of Disposition in that the trial court lacked jurisdiction to enter the underlying Finding of Jurisdiction and Order of Disposition since the actual notice of hearing received by Appellant was not reasonably calculated, under all the circumstances, to apprise him of the pendency of the action and afford him an opportunity to present his objections.

Respondent states that the notice that Appellant received was reasonable under the circumstances to apprise him of the pendency of the action and to afford him an opportunity to present his objections. In support of this argument, Respondent states that the following “factual” circumstances prove that the notice to Appellant was reasonable. 1) Appellant was involved in the case from the 72-hour hearing and beyond; 2) Appellant was already involved with the Juvenile Office and Division of Social Services regarding two other children from a different mother that were already heavily into the juvenile process; 3) Appellant participated in as many aspects of this case as possible from a jail cell; 4) The Juvenile Office made every attempt to accommodate Appellant’s incarceration status; 5) Appellant attended numerous hearings during the course of the juvenile case and made affirmative requests of the court.

One of the weaknesses in Respondent’s argument is that several of the “facts” cited are not found in the record. As indicated in Point I, the record does

not support a claim that there was a 72-hour hearing. The “fact” that he was already involved with the juvenile office and division of social services regarding two other children is also not supported by the record. Finally, there is no evidence in the record of the steps taken by the juvenile office to accommodate his incarceration status.

Another weakness in Respondent’s argument is that Respondent attempts to prove that the notice was reasonable under all the circumstances by using circumstances that occurred after the hearing occurred. Due process requires that the right to notice and opportunity to be heard must be granted at a meaningful time and in a meaningful manner. *Nixon v. Williamson*, 703 S.W.2d 526, 528 (Mo. App. 1986). Therefore, in order for any circumstance to be used to prove that the notice to Appellant was reasonable, the circumstance must have occurred no later than the time of the hearing. Otherwise, such a circumstance would not have occurred at a meaningful time in order to be considered as a circumstance tending to prove that the notice to Appellant was reasonable. In the list of “factual” circumstances cited by Appellant above, items three through five are circumstances that occurred after the hearing in question was held. Therefore, these circumstances cannot be used to prove that Appellant’s notice was reasonable since these circumstances did not occur at a meaningful time.

The only “fact” listed by Respondent that could have occurred prior to the February 4, 2002 hearing is the “fact” that Appellant was already involved with the juvenile office and division of social services regarding two other children.

Even if true, Respondent has not shown how this would prove that Appellant's notice in this case was reasonable. She has failed to prove how the similarities in that case, including the notices received in that case, tends to prove that the notice to Appellant in this case was reasonable.

III. The trial court erred in denying Appellant's Motion for Relief from Judgment based on waiver because the trial court abused its discretion in failing to set aside the Finding of Jurisdiction and Order of Disposition in that juvenile cases present public policy reasons not to follow the general rule that jurisdictional questions are deemed waived if not raised at the earliest opportunity.

Appellant seeks to distinguish *In the Interest of D.L.D.*, 701 S.W.2d 152 (Mo. App. 1985) by contending that that the motion filed by the father in that case did not equal an entry of an appearance. This is contradictory to the position taken early in Respondent's brief. Earlier in Respondent's brief she cites *State v. Weinstein*, 411 S.W.2d 267, 273 (Mo. App. 1967) which states that, "any action on the part of a defendant, except to object to the jurisdiction over his person which recognizes the case as in court, will constitute a general appearance." The motion filed by the father *In the Interest of D.L.D.*, 701 S.W.2d 152 (Mo. App. 1985) was an application for the return of the child filed 10 days after the petition was filed by the juvenile office. *In the Interest of D.L.D.*, 701 S.W.2d at 156. Certainly, this was an action on the part of that father other than one to object to jurisdiction. Therefore, the father in *In the Interest of D.L.D.* did make a general appearance

before arguing that jurisdiction was defective. This case cannot be distinguished from *In the Interest of D.L.D.* on that basis.

Respondent further argues that a parent in a termination of parental rights case cannot have his parental rights terminated by a simple procedural error, since the court's decision is based upon not only the Division's evidence, but the parent's evidence as well. What Respondent's argument misses is that by the time the parent gets to the termination of parental rights hearing, his actions have already been proven in the original action. If the parent makes a procedural error by making a general appearance, whatever facts were determined by the Court in the previous hearing can no longer be controverted because he is deemed to have waived any defects in that hearing. It does not matter how badly the parent's due process rights have been violated nor does it matter that the "facts" may in truth be false. The parent does not have a chance for a "do over" because the fact is already proven and can no longer be controverted.

Juvenile cases are indeed different than other civil cases. These are cases involving children, not money damages or property rights. A parent's thoughts are focused on restoring their relationship with their child and not with the nuances of civil procedure. Therefore, a parent is motivated to take those actions in court that they believe will restore the relationship with their child the quickest whether those actions are filing motions or participating in hearings.

If the rule in juvenile cases is that every action taken by a parent before complaining about a lack of due process constitutes a general appearance, then

those parents on the lower socio-economic scale are especially doomed. They will be considered to have waived all of their due process rights simply by asking for court-appointed counsel. Thus, they will have been deemed to have lost their rights before they have the opportunity to obtain counsel to find out those rights.

Because of the profound importance of the relationship of a parent and a child, it is imperative that all facts used as a basis to affect that relationship be made in hearings held after a parent has received notice and an opportunity to be heard that satisfies due process scrutiny. Yes, it may require an additional hearing to determine whether a parent actually received notice and, if not, whether the juvenile office could have proved its case had the parent been given an opportunity to be heard. However, does the State of Missouri not owe an obligation to its children to only terminate their relationship with their biological parents after findings have been made consistent with due process principles? Or is a procedural error simply sufficient?

CONCLUSION

For the above-stated reasons, Appellant, Craig Gresham, respectfully submits to this Court that: (i) because the facts show that he was deprived of due process by failure to serve him with a copy of the summons and juvenile petition; (ii) because the facts demonstrate that even the notice that was furnished to Appellant failed to provide him with notice reasonably calculated, under all the circumstances, to apprise him of the pendency of the juvenile action and to afford him an opportunity to present his objections; and (iii) because the facts show that Appellant did not waive his rights to proper notice and due process; the trial court erred in denying the Appellant relief from the February 21, 2002 Finding of Jurisdiction and Order of Disposition in that the same was void for lack of jurisdiction.

Accordingly, the Appellant respectfully requests that:

1. This Court determine that Appellant was denied his right to due process when he did not receive a copy of the summons and juvenile petition containing the allegations raised against him before the hearing of February 4, 2002 as required by statute and corresponding Supreme Court Rules;
2. This Court determine that Craig Gresham was denied his right to due process in receiving a generic notification of the hearing of February 4, 2002 that did not make reference to the al-

legations against him nor inform him that his parental rights might be restricted in the hearing;

3. This Court determine that Craig Gresham did not waive his right to object to the Finding of Jurisdiction and Order of Disposition by his subsequent appearances before the trial court; and
4. That this Court reverse the finding of the trial court and determine that Appellant was entitled to relief from the Finding of Jurisdiction and Order of Disposition of February 21, 2002 because it was void for lack of jurisdiction.

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CERTIFICATE OF COMPLIANCE

COMES NOW Verna L. Haun of Douglas, Haun & Heidemann, P.C.
counsel for Appellant, Craig Gresham, and states that Appellant's Reply Brief
filed this day with the Supreme Court:

Includes the information required by Rule 55.03,

Complies with the limitations contained in Rule 84.06(b); and

Contains 1,956 words.

That the floppy disk submitted to the Court is virus-free.

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CERTIFICATE OF SERVICE

The undersigned certifies that a complete copy of Appellant's Reply Brief and one copy of Appellant' Reply Brief on disk was served upon:

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by enclosing the same in envelopes addressed to each of the above-mentioned parties at their addresses as disclosed in the pleadings of record herein and shown above, with first class postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Bolivar, Missouri on September 2, 2006.

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APPENDIX

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