

Summary of SC89676, *In re the Marriage of Teresa M. Callahan and Gary W. Callahan, Teresa M. Callahan v. Gary W. Callahan*

Appeal from the St. Francois County circuit court, Judge Thomas L. Ray.

Attorneys: The husband was represented by Arthur G. Muegler Jr. of St. Louis, (314) 324-7739, and James E. Pennoyer of Farmington, (753) 756-6461; and the wife was represented by Benicia Baker-Livorsi of The Family Law Group LLC in St. Charles, (636) 947-8181.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man moved to set aside a default judgment against him in an action dissolving his marriage to his wife. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri reversed the trial court's decision overruling the man's motion without a hearing and remanded (sent back) the case for a hearing on the man's allegations. The man pleaded sufficient facts that, if proven, could establish a meritorious defense and good cause under the applicable rule. In a concurring opinion, Judge Mary R. Russell suggests that, in determining whether good cause exists in domestic cases such as this one, trial courts also should consider whether the parties were in a relationship of confidence and, if so, whether it was reckless for the moving party to rely on the other party's statements.

Facts: Teresa Callahan filed a petition to dissolve her marriage to Gary Callahan, but they continued to cohabit. He was served personally with the summons in August 2007 but never filed an answer or an entry of appearance in the circuit court. In October 2007, the court entered a default judgment against the husband. Finding the wife was disabled and unable to earn a sufficient income to meet her reasonable needs, the court gave her the marital home, about 136 acres of land, a portion of her husband's retirement fund, a cash-equalization judgment of more than \$74,600 plus statutory interest, and \$800 per month in non-modifiable maintenance. The next month, the husband moved to set aside the default judgment pursuant to Rule 74.05(d), alleging his wife fraudulently obtained the default judgment. He alleged that: the parties had agreed to use the same lawyer; his wife had been receiving his mail since July 2007 and destroying it; his wife told him the dissolution proceeding was ongoing; and, on the day of the default hearing, his wife told him she was going to a medical appointment when in fact she was going to court to obtain the default judgment. The husband further alleged the wife was not disabled and was able to earn sufficient money to meet her reasonable needs. The court overruled his motion without an evidentiary hearing. The husband appeals.

REVERSED AND REMANDED.

Court en banc holds: The court abused its discretion in overruling the motion to set aside the default judgment without a hearing because the husband timely filed a verified motion alleging facts that could establish a meritorious defense and good cause under Rule 74.05(d). It is undisputed that the husband filed his motion within a "reasonable time" under the rule – here, within 30 days after the default judgment was entered. Under section 452.335.1, RSMo 2000, a court may award maintenance only if the spouse is unable to meet her reasonable financial needs

with marital property or appropriate employment. Here, the husband's motion alleged that his wife was not disabled and was able to earn substantially more income than he – a fact that, if proven, could constitute a meritorious defense to the maintenance award. As to good cause, the husband alleged his wife intercepted legal notices relating to the dissolution proceeding – facts that, if proven, would support a finding that he did not ignore the summons intentionally or recklessly in disregard of the legal process.

Concurring opinion by Judge Russell: The author writes separately to suggest that, when determining if good cause has been pleaded such that an evidentiary hearing should be granted on a motion to set aside a default judgment, trial courts also should consider whether the parties had a relationship of confidence and, if so, what effect that may have had. Here, for example, the husband must show whether he was in a relationship of confidence with his wife, giving him good cause in failing to answer the petition timely, or whether he was reckless in relying on his wife's statements during this time. In non-domestic cases, however, it would be a mistake to condone reliance on an adverse party's statements of the nature alleged here.