

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

T.T.,

Respondent,

v.

CHARLES BURGETT,

Appellant.

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**DOCKET NUMBER WD74467**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** June 26, 2012

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**APPEAL FROM**

The Circuit Court of Jackson County, Missouri  
The Honorable David M. Byrn, Judge

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**JUDGES**

Division Two: Howard, P.J., and Pfeiffer and Mitchell, JJ.

CONCURRING.

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**ATTORNEYS**

T.T.  
Kansas City, MO

Respondent, *pro se*,

Charles L. Burgett  
Kansas City, MO

Appellant, *pro se*.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

T.T., )  
)  
) **Respondent,** )  
) **OPINION FILED:**  
v. ) **June 26, 2012**  
)  
**CHARLES BURGETT,** )  
)  
) **Appellant.** )

**WD74467**

**Jackson County**

**Before Division Two Judges:** Victor C. Howard, Presiding Judge, and Mark D. Pfeiffer and Karen King Mitchell, Judges

T.T. filed an Adult Abuse/Stalking Petition for Order of Protection against Charles Burgett. After several *ex parte* orders of protection were returned *non est*, an amended Adult Abuse/Stalking *Ex Parte* Order of Protection was personally served on Burgett, setting the matter for a hearing on September 6, 2011. On September 1, 2011, Burgett filed a motion for continuance, which the trial court granted. On September 7, 2011, the trial court entered an eighth *Ex Parte* Order of Protection, which continued the hearing to September 21, 2011.

A hearing was held on September 21, 2011. Counsel for T.T. and T.T. appeared, but Burgett failed to appear. The trial court entered a default judgment, granting T.T. a full order of protection against Burgett. Burgett filed a verified motion to set aside the default judgment on September 29, 2011, claiming that he demonstrated good cause for failing to appear because he did not receive notice of the hearing date and that he had a meritorious defense. After a hearing on October 19, 2011, the trial court denied Burgett's motion to set aside the default judgment.

Burgett appeals.

**REVERSED AND REMANDED.**

**Division Two holds:**

In order for a default judgment to be set aside under Rule 74.05(d), Burgett bore the burden of demonstrating three elements:

First, Burgett was required to file the motion within a reasonable time—not to exceed one year after entry of the judgment. Default judgment was entered on September 21, 2011, and Burgett promptly filed his motion to set aside default judgment eight days later on September 29, 2011.

Second, Burgett was required to present facts—though at this stage, it was not Burgett’s burden to *prove* those averred facts to be true—constituting a meritorious defense. Burgett set forth allegations in his verified motion that support a meritorious defense.

Third, Burgett had the burden of proving that good cause existed for his failure to appear at the hearing. Burgett denies having received a copy of the eighth Order containing the rescheduled hearing date or otherwise receiving notice of the hearing date. The eighth Order required service of the Order by personal service or certified mail and there is no evidence in the record that Burgett was personally served with the eighth Order or that the eighth Order was mailed to him via certified mail; thus, we may conclude that he did not receive such notice.

Burgett carried his burden of proof on all three elements of Rule 74.05(d), and the trial court abused its discretion in denying Burgett’s motion.

**Opinion by: Mark D. Pfeiffer, Judge**

June 26, 2012

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.