

NOTICE  
Decision filed 03/21/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 180512-U

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 5-18-0512

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

ALAN D. MIDDLETON,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Marion County.
	)	
v.	)	No. 18-F-89
	)	
ALYSHA EAKER,	)	Honorable
	)	Michael D. McHaney,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.  
Justices Welch and Barberis concurred in the judgment.

**ORDER**

¶ 1 *Held:* Circuit court did not abuse its discretion by denying respondent’s motion to vacate and set aside default judgment that was entered after respondent failed to answer petitioner’s petition, notwithstanding successful service of petition and summons on respondent and repeated direction to respondent by clerk’s office to website for filing *pro se* pleadings.

¶ 2 The respondent, Alysha Eaker, appeals the September 24, 2018, order of the circuit court of Marion County that denied her motion to vacate and set aside a default judgment that granted the petitioner, Alan D. Middleton, shared decision-making responsibility for the parties’ minor child (D.D.E.) and the majority of parenting time with D.D.E. For the following reasons, we affirm.

¶ 3

## FACTS

¶ 4 On June 22, 2018, Alan filed a *pro se* petition to establish parentage of and to allocate parental responsibilities for D.D.E. The petition requested, *inter alia*, the circuit court to find it in D.D.E.'s best interests for Alan to be granted temporary and permanent parenting time and Alysha to be given either unrestricted or restricted parenting time. The petition further requested that an order be entered establishing a parent/child relationship between Alan and D.D.E. and for temporary and permanent decision-making authority to be allocated to both parties.

¶ 5 A summons was filed in the circuit court on June 26, 2018, informing Alysha that she was summoned and required to file an answer in the case or otherwise enter her appearance at the clerk's office within 30 days after service of the summons, not counting the day of service.<sup>1</sup> The summons stated, "IF YOU FAIL TO DO SO, A JUDGMENT OR DECREE BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT." (Emphasis in original.) The certificate of service appended to the summons indicates that Alan's petition and the summons were served on Alysha by leaving a copy at Alysha's home address with one Bryan Powell<sup>2</sup> on June 25, 2018, and also by mailing a copy of the petition and summons to Alysha at her home address on June 26, 2018.

¶ 6 A hearing on Alan's petition was conducted on August 7, 2018, where Alysha was not present, Alan appeared *pro se*, and the circuit court found Alysha to be in default. At

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<sup>1</sup>Neither an answer nor an entry of appearance by Alysha is present in the record on appeal submitted to this court.

<sup>2</sup>"Bryan Powell" was later discovered to be Alysha's brother, whose actual name is Bryan Powe.

the hearing, Alan testified that he is D.D.E.'s natural father and indicated his desire to be legally established as such. Alan testified inconsistently regarding his parenting time desires. He initially testified that he wanted D.D.E. to live with him the majority of the time but later testified that he wanted to see D.D.E. every other weekend. However, Alan testified that he had a parenting plan that set forth, *inter alia*, proposed parenting time between the parties, which the circuit court instructed him to file.

¶ 7 Alan filed the parenting plan the following day, August 8, 2018. Pursuant to the parenting plan, both parties were to have decision-making rights regarding D.D.E.'s education, health care, religion, and extracurricular activities. Also pursuant to the parenting plan, Alan was to have full-time parenting time and Alysha was to have parenting time every other weekend as well as one day through the week for a four-hour period and alternating holidays. On August 16, 2018, the circuit court entered an order of parentage and allocation of parental responsibilities. The order found Alysha not present and in default, established Alan as D.D.E.'s legal father by admission, and incorporated the terms of the parenting plan.

¶ 8 On August 22, 2018, Alan filed, *pro se*, an emergency petition for a modification of parenting time.<sup>3</sup> The petition and appended affidavit alleged that there had been a substantial change in circumstances since the entry of the August 16, 2018, order. Namely, Alan discovered that the living conditions where D.D.E. had been staying with Alysha were "horrible" and that D.D.E. was dirty, hungry, and had flea bites on her legs

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<sup>3</sup>The record on appeal does not reflect whether a ruling was ever made on this motion by the circuit court.

when Alan took custody of her the day after the August 16, 2018, order was entered. The petition alleged that 7 to 10 people lived in the small, two-bedroom home that was “smoked in and not properly taken care of.” The petition further alleged that D.D.E. was in danger by spending weekends at the home and Alan was unaware of the living conditions when he filed the petition for parentage and allocation of parental responsibilities and parenting plan. Accordingly, Alan requested that he have parenting time with D.D.E. at all times and that Alysha only have supervised parenting time with D.D.E. at Alan’s home with Alan present.

¶ 9 On August 30, 2018, Alan filed a motion to transfer venue to Washington County, where he resided with D.D.E.<sup>4</sup> On September 5, 2018, counsel entered an appearance on behalf of Alysha and filed a motion to vacate and set aside the default judgment. On September 18, 2018, counsel entered an appearance on behalf of Alan.

¶ 10 On September 21, 2018, Alan filed an emergency motion for temporary custody.<sup>5</sup> The motion alleged that D.D.E.’s physical, mental, moral, and emotional health were seriously endangered due to the living conditions described in Alan’s previously filed emergency petition, and requested that the circuit court grant Alan temporary sole custody and grant Alysha temporary supervised visits with no overnight visits.

¶ 11 On September 24, 2018, a hearing was held on the motion to vacate and set aside the default judgment. At the outset, Alysha’s counsel stipulated that Alysha received the

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<sup>4</sup>Dialog at a hearing on September 18, 2018, indicates that Alan intended to withdraw this motion. However, the record reflects neither a withdrawal of nor a ruling on the motion.

<sup>5</sup>The record does not reflect whether a ruling was ever made on this motion by the circuit court.

summons and a copy of the petition to establish parentage and allocate parental responsibilities, but emphasized that, pursuant to the affidavit appended to her motion to vacate and set aside, Alysha attempted to file a *pro se* response to Alan's petition at the clerk's office on three separate occasions before the deadline, but "I was unable to do so because I did not understand how to e-file a response, nor did I know what to put in a legal filing." Alysha further stated in her affidavit that she attempted to retain Land of Lincoln Legal Assistance Foundation to represent her prior to the deadline but "I was unable to get through their message system to speak with an attorney regarding this matter."

¶ 12 Alysha's counsel then called Kelsey Butler to the stand. Kelsey testified that she has been employed as a deputy clerk at the circuit clerk's office for 3½ years and she recalled Alysha coming to the office on three different occasions. Kelsey testified that she informed Alysha that she could not give her legal advice, but "each time I tried really hard to direct her to the web sites and explain that she has 30 days to answer the complaint." Kelsey explained that the clerk's office has a website that provides links and assistance with forms for *pro se* parties. Kelsey believed that Alysha made a good-faith effort to answer the petition on the three occasions, although she never had an answer in hand. Kelsey testified that the first time Alysha came to the clerk's office she had the petition and summons with her and the second and third times she had an application to waive fees.

¶ 13 Kelsey reiterated that she explained to Alysha that she had to go online to find the forms to answer the petition. She noted that the mode of practice at the clerk's office is

to direct *pro se* litigants to the website “then it’s up to them to go online and find the forms themselves.” She added that many people file *pro se* pleadings, and it is customary for *pro se* litigants to be able to successfully file and unusual for them to be unable to successfully file.

¶ 14 Blaine Middleton testified that he is Alan’s father. Blaine accompanied Alan and a police officer to retrieve D.D.E. from Alysha on August 17, 2018. Blaine testified that Alysha answered the door and when she learned that Alan was given custody of D.D.E. “she became very upset.” According to Blaine, Alysha indicated that “they can’t do this to me” because “I didn’t go.” Blaine testified that Alysha knew about the default date but did not attend the hearing.

¶ 15 At the conclusion of the hearing, the circuit court entered the following order by docket entry: “This court has carefully considered arguments of counsel and in the exercise of this court’s discretion the motion to vacate and set aside is denied. \*\*\*”

Alysha filed a timely notice of appeal.

¶ 16 ANALYSIS

¶ 17 The sole issue on appeal is whether the circuit court erred by denying Alysha’s motion to vacate and set aside the default judgment that was entered in favor of Alan. Alysha brought her motion to vacate and set aside the default judgment pursuant to section 2-1301(e) of the Code of Civil Procedure, which provides: “The court *may in its discretion*, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable.” (Emphasis added.) 735 ILCS 5/2-1301(e)

(West 2018). The very language of the section makes clear that setting aside a default judgment is discretionary. We acknowledge that “[i]n exercising that discretion, courts must be mindful that entry of default is a drastic remedy that should be used only as a last resort” and that “[t]he law prefers that controversies be determined according to the substantive rights of the parties.” *In re Haley D.*, 2011 IL 110886, ¶ 69.

¶ 18 Nevertheless, “[t]he decision to grant or deny a motion to vacate a default judgment lies within the sound discretion of the trial court, and we will reverse only if the trial court abused its discretion.” *Marren Builders, Inc. v. Lampert*, 307 Ill. App. 3d 937, 941 (1999). “A trial court has abused its discretion when it acts arbitrarily without the employment of conscientious judgment or if its decision exceeds the bounds of reason and ignores principles of law such that substantial prejudice has resulted.” *Id.* “The primary concern in ruling on a motion to vacate is whether substantial justice is being done between the litigants and whether it is reasonable under the circumstances to proceed to trial on the merits.” *Id.*

¶ 19 Applying these principles and in light of the latitude given to the circuit court, we cannot say the circuit court erred by denying Alysha’s motion to set aside and vacate the default judgment, because it did not act arbitrarily without the employment of conscientious judgment nor did its decision exceed the bounds of reason and ignore principles of law such that substantial prejudice resulted. See *id.* Nor can we say that substantial justice was not done between the parties or that it would have been reasonable to compel Alan to proceed to trial. See *id.*

¶ 20 Alysha stipulated that she was served the summons and petition to establish parentage and allocate parental responsibilities. The summons Alysha received plainly stated that she was required to file an answer within 30 days, and stated in all capital letters: “IF YOU FAIL TO DO SO, A JUDGMENT OR DECREE BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT.” (Emphasis in original.) Kelsey Butler testified that Alysha showed up at the clerk’s office three times. All three times Kelsey emphasized to Alysha the importance of filing an answer to the petition within 30 days, and all three times she directed Alysha to the website which *pro se* litigants use to file pleadings. The clerk’s office made it a practice to direct *pro se* litigants to the website, but Kelsey stated that “it’s up to them to go online and find the forms themselves.” She testified that many *pro se* litigants successfully file via the website and it is unusual for them to be unable to file. Indeed, Alan proceeded through much of the litigation *pro se* and managed to successfully file the necessary pleadings.

¶ 21 Alysha stated in her affidavit that she attempted three times, unsuccessfully, to file an answer because she did not understand how to e-file, and attempted to retain Land of Lincoln Legal Assistance Foundation to assist her but failed to do so because she had difficulty with the telephone messaging system. Kelsey Butler opined that Alysha made a good-faith attempt to file an answer. Notwithstanding these facts, we cannot say the circuit court’s denial of Alysha’s motion to vacate was an abuse of discretion.

¶ 22 We further note that Alysha’s *pro se* status at the relevant time was of no consequence to the outcome. “*Pro se* litigants are presumed to have full knowledge of



applicable court rules and procedures, including procedural deadlines with respect to filing motions.” *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528 (2001). Alysha points out that she did not receive notice of the default proceeding held on August 7, 2018. However, Illinois law states that a defendant, having failed to enter an appearance, answer, or otherwise plead, is not entitled to notice of subsequent hearings. See *Kaput v. Hoey*, 124 Ill. 2d 370, 380 (1988) (citing Ill. S. Ct. R. 104(b) (eff. Jan. 1, 1970)). Alysha’s counsel stipulated the same at the September 24, 2018, hearing.

¶ 23 Given these facts, we find that the circuit court did not abuse its discretion by denying Alysha’s motion to vacate and set aside the default judgment nor did this ruling result in a substantial injustice between the parties. Accordingly, we affirm the circuit court’s decision.

¶ 24 **CONCLUSION**

¶ 25 For the foregoing reasons, the September 24, 2018, order of the circuit court of Marion County is affirmed.

¶ 26 Affirmed.