

IN THE DISTRICT COURT OF BOURBON COUNTY, KANSAS

SUSAN WALKER f/k/a SUSAN
BANCROFT,

Plaintiff,

Case No. BB-2025-CV-000015

vs.

BOARD OF COUNTY COMMISSIONERS
OF BOURBON COUNTY, KANSAS,

Defendant.

**DEFENDANT BOURBON COUNTY'S
MOTION TO SET ASIDE DEFAULT JUDGMENT**

COMES NOW Defendant Board of County Commissioners of Bourbon County, Kansas (“Defendant”), by and through the undersigned counsel, and for its Motion to Set Aside Default Judgment pursuant to K.S.A. 60-260(b), states as follows:

1. Plaintiff obtained default judgment on May 8, 2025, by order of this Court.
2. Plaintiff alleges she served Defendant on March 3, 2025, by certified mail to the County Treasurer Patty Love.
3. Defendant was notified of the judgment by virtue of counsel for Plaintiff emailing the County with the judgment attached and seeking to negotiate collection of the judgment.
4. However, service by certified mail was signed for by an employee of the County and was not subsequently given to the treasurer.
5. Additionally, the Petition was never received by the Bourbon County County Counselor.
6. Upon receipt of the Judgment from Plaintiff’s counsel, the Defendant promptly notified its attorney, who then reached out to the undersigned seeking assistance in this matter.

7. K.S.A. § 60-304(d) dictates that service on counties can only be accomplished “by serving one of the county commissioners, the county clerk **or the county treasurer.**” However, the return of service shows it was accepted not by the treasurer, but by another employee of the County. Accordingly, service was never properly effectuated.

8. Kansas law is unequivocal that an answer is only required upon receipt of service of the summons and the petition, and that notice, or knowledge of a lawsuit *must* come from the process of service. Because service was never effected on Defendant, the default judgment should be set aside, and personal jurisdiction should be deemed to have attached on the date on which undersigned counsel entered his appearance in the case.

9. However, if Defendant was required to respond to the Petition based on proper service, its inaction was the result of mistake, inadvertence, surprise, or excusable neglect.

10. “The Kansas Supreme Court has said that excusable neglect, for the purposes of K.S.A. 60–260(b)(1), ‘is not susceptible to clear definition. What constitutes excusable neglect under the statute must be determined on a case-by-case basis under the facts presented.’” *Morton Cty. Hosp. v. Howell*, 51 Kan. App. 2d 1103, 1112 (2015) (quoting *Jenkins v. Arnold*, 223 Kan. 298, 299 (1978)). However, “[i]nexcusable neglect’ is closely akin to ‘reckless indifference.’ It implies something more than the unintentional inadvertence or neglect common to all who share the ordinary frailties of mankind.” *Jenkins*, 223 Kan. at 299.

11. In the present instance, Counsel was unaware there was a lawsuit pending in district court, and therefore could not adequately defend the County’s interests. It is clear that while the petition was received by an employee of the County, the petition was never forwarded to the treasurer or counsel for the County. Compounding the issues further is the fact that Plaintiff is the elected Clerk of the County – and is the person that normally would address lawsuits filed on

behalf of the County and ensure that counsel was properly notified. Because this situation is unusual, any mistake or neglect should be considered excusable.

12. Additionally, “[t]he exercise of judicial discretion requires that a judge have due regard for what is just and fair under existing circumstances and that he not act in an arbitrary, fanciful, or unreasonable manner.” *Jenkins v. Arnold*, 223 Kan. 298, 299 (1978).

13. Setting aside the default judgment in this case would be just and fair, given the Defendant was not served in accordance with Kansas law. This deprived the Defendant of the opportunity to respond to the allegations against it, as it never properly received those allegations. Moreover, the Defendant was not aware that Plaintiff even moved for default judgment, as Plaintiff did not serve that, or any other, motion on the Defendant.

14. Kansas Supreme Court Rule 118(d) also mandates “the party seeking relief must notify the party against whom relief is sought of the amount of money for which judgment will be taken. Notice must be given by return receipt delivery, or as the court orders, at least 14 days before the date judgment is sought.” Defendant never received the required notice, and therefore entry of the Default Judgment was procedurally improper.

15. Moreover, Kansas courts have found that both a “meritorious defense” and “the premise that the law disfavors default judgments . . . fit within the category of ‘any other reason justifying relief.’” *Garcia v. Ball*, 303 Kan. 560, 567 (2015).

16. Defendant states it has a meritorious defense to the claims contained in Plaintiff’s Petition. Defendant denies the allegations contained in Plaintiff’s Petition, asserts that Plaintiff failed to perform under an express contract and asserts failure of consideration under the express contract.

17. In Kansas, “[d]efaults are not favored in law but become necessary when the inaction of a party frustrates the orderly administration of justice.” *Jenkins*, 223 Kan. at 299, 573 P.2d at 1016. The Supreme Court of Kansas has observed that it is well established that “the law dislikes default judgment.” *Garcia*, 303 Kan. at 568. “The section of the Kansas Code of Civil Procedures permitting entry of a default judgment is a deterrent to the strategy of delay.” *Reliance Ins. Companies v. Thompson-Hayward Chem. Co.*, 214 Kan. 110, 116, 519 P.2d 730, 734 (1974).

18. There was no strategy of delay here, Defendant simply was never aware Plaintiff filed any allegations in this case. The moment Defendant became aware Plaintiff filed a complaint, the undersigned counsel was notified, he reviewed the relevant documents, and entered his appearance. Defaults are necessary when a party refuses to act. Here, Defendant was unaware that any action was required.

19. Finally, “[i]n determining whether to set aside a default judgment, a court should resolve any doubt in favor of the motion so that cases may be decided on their merits.” *Jenkins*, 223 Kan. at 299, 573 P.2d at 1016. Should there be any doubt about whether service was proper, whether neglect in this instance was excusable, or whether setting aside default is the fair outcome in this instance, those doubts should be resolved in favor of the Defendant.

WHEREFORE Defendant Board of County Commissioners of Bourbon County, Kansas respectfully prays this Court for an Order setting aside Default Judgment, and for any further such relief as the Court deems just, fair and appropriate.

Respectfully submitted,

**FISHER, PATTERSON, SAYLER &
SMITH, LLP**

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify the above and foregoing was filed with the Court through its electronic filing system on May 14, 2025, causing notice to be sent electronically to:

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