

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

**DHS, DIVISION OF CHILD SUPPORT
SERVICES, ex rel.**

**A [REDACTED] G [REDACTED] P [REDACTED],
Petitioner,**

v.

**B [REDACTED] K [REDACTED] [REDACTED],
Respondent.**

**Docket No. [REDACTED]
[REDACTED]-OSAH-CSS-EST-67-Kennedy**

Agency Reference No. [REDACTED]



**ORDER DENYING RESPONDENT'S MOTION TO REOPEN AND VACATE
DEFAULT FINAL CHILD SUPPORT ORDER**

I. Introduction

On January 23, 2015, a Default Final Child Support Order was entered ordering Respondent to pay \$714 per month as current support beginning March 1, 2015, for the support of A [REDACTED] G [REDACTED] P [REDACTED].

On August 31, 2023, Respondent filed a Motion to Reopen and Vacate Default Final Child Support Order. A hearing was held on November 1, 2023. At the hearing, Supervisor Jordan Wells represented Petitioner; Patricia Shewmaker, Esq. and Bonnie Stinson, Esq. represented Respondent; and Anthony Zezima, Esq. represented the Custodial Parent M [REDACTED] P [REDACTED].

For reasons indicated, Respondent's Motion is **DENIED**.

II. Findings of Fact

In his Motion, Respondent asserts that he did not receive notice of the January 2015 hearing that resulted in the issuance of the Default Final Child Support Order. He further asserts that he has good cause for the eight (8) year delay in filing his Motion to Reopen and Vacate the Default Order.

Events of 2014-2015

On or about August 29, 2014, Petitioner referred to the Office of State Administrative Hearings (OSAH) a child support establishment case against Respondent to establish paternity and child support for A [REDACTED] G [REDACTED] P [REDACTED]. *See Exhibit C of Respondent's Motion.*

Respondent was personally served with both the Complaint for Child Support and an Order to Appear before Administrative Law Judge Amanda Baxter on November 5, 2014. *Testimony of Petitioner's Representative, Jordan Wells; Testimony of Respondent; See also Exhibit C of Respondent's Motion.*

On October 8, 2014, Respondent filed a Petition for Legitimation in the Superior Court of Gwinnett County. *See Exhibits B and L of Respondent's Motion.* The Custodial Parent filed her answer and counterclaim on October 28, 2014. *Id.*

On October 24, 2014, Respondent's then-attorney, Jung Wook Lee, Esq., submitted a request for continuance of the November 5, 2014, administrative court date before OSAH based on the pending legitimation action in the Superior Court. *See Exhibits D and L of Respondent's Motion.* There is no evidence in the record to establish whether notice of the rescheduled administrative court date was sent to Respondent and/or his then-attorney. Moreover, if notice was mailed to Respondent, it may have been mailed to a former address on [REDACTED] Road because Respondent moved into a new apartment located on [REDACTED] Parkway on or around September 12, 2014, but his address was not updated in Petitioner's system until August 2015. *Testimony of Wells; Testimony of Respondent; Respondent's Exhibits 13 and 14 tendered during the Motion hearing.*

A Default Final Child Support Order was issued on January 23, 2015, by Administrative Law Judge Amanda Baxter, after Respondent failed to appear at the rescheduled administrative

court date. *See Exhibit A of Respondent's Motion.*

On March 31, 2015, Petitioner sent a notice to Respondent's employer requesting they withhold child support payments of \$331.54 per bi-weekly pay period from Respondent's income to cover the support obligation. *See Exhibits E and L of Respondent's Motion.* It was at this time that Respondent learned of the Default Final Child Support Order. *Testimony of Respondent; See Exhibit L of Respondent's Motion, ¶ 7.*

In the legitimation action, bench trials were scheduled for November 25, 2014; April 21, 2015; June 22, 2015; and September 21, 2015. However, a final order was never entered. Instead, the bench trials were continued each time until the case was eventually closed based on Respondent's dismissal of his petition on September 28, 2015, and the Custodial Parent's dismissal of her answer and counterclaim on October 2, 2015. *See Exhibit B of Respondent's Motion.*

Respondent and the Custodial Parent dismissed their claims in the Superior Court based on Respondent having signed a Surrender of Rights/Final Release for Adoption on July 30, 2015, with the expectation that the Custodial Parent's spouse, D██████ M██████, would adopt the child. *Testimony of Respondent; See also Exhibits F¹, G and L of Respondent's Motion.* The Surrender documentation provides that if Mr. M██████ did not complete the adoption, then Respondent

wish[ed] the child returned to me, and I expressly acknowledge that this provision applies only to the limited circumstances that the child is not adopted by the person or persons designated herein and further that this provision does not impair the validity, absolute finality, or totality of this surrender under any circumstances other than the failure of the designated person or persons to adopt the child and that no other provision of this surrender impairs the validity, absolute finality, or totality of this surrender once the revocation period [of ten days] has elapsed.

Id.

¹ Respondent's Exhibit F was introduced as Respondent's Exhibit 6 during the Motion hearing.

The Custodial Parent agreed to close the existing child support case with Petitioner upon receipt of the Surrender of Rights/Final Release for Adoption, and she, in fact, did so on August 10, 2015. The request for closure documentation indicates the basis for requesting closure to be “stepparent adoption.” *Testimony of Jordan Wells; Testimony of Respondent; Testimony of Custodial Parent; See Exhibits H² and I of Respondent’s Motion.* Shortly thereafter, Petitioner sent a notice to Respondent’s employer to terminate the withholding of child support from his income, which led Respondent to believe that the adoption would be proceeding and that he would no longer be obligated to pay child support under the Default Final Child Support Order. *Testimony of Respondent; See also Exhibits J and L of Respondent’s Motion.*

Respondent testified that he did not know until in or around June 2023 that A [REDACTED] had not been adopted. *Testimony of Respondent; See also Exhibit L of Respondent’s Motion.* However, according to the Custodial Parent, she reached out to him on at least three occasions and made comments that could have led Respondent to question whether A [REDACTED] had been adopted. The Custodial Parent first reached out to Respondent in 2016 to let him know that she had separated from her spouse. She reached out again in 2019, to ask if he would like to have a relationship with A [REDACTED] because she did not have a father-figure in her life, and Respondent replied that he would only if they went through the court system. The Custodial Parent was concerned that Respondent would seek custody if they went through the court system so she did not contact him again until 2023 when she decided to inquire once more if Respondent would want to have a relationship with his daughter so she could have a father. *Testimony of Custodial Parent.*

² Respondent’s Exhibit H was introduced as Respondent’s Exhibit 7 during the Motion hearing.

Events 2023

In April 2023, the Custodial Parent contacted Respondent to ask if he wanted to see A[REDACTED]. *See Exhibit L of Respondent's Motion.* In June 2023, Respondent learned that Mr. M[REDACTED] never adopted A[REDACTED]. *Id.* The following month, on July 19, 2023, Respondent filed a Petition for Legitimation of Child and Legal Custody in the Superior Court of Gwinnett County. *See Exhibits K and L of Respondent's Motion.* The Custodial Parent filed a counterclaim for unpaid child support totaling \$68,870.64 in principal and \$16,793.28 in interest through August 1, 2023, prompting Respondent to file the pending Motion to Reopen and Vacate Default Final Child Support Order. *Testimony of Respondent; See also Exhibit L of Respondent's Motion.* Respondent asserts that he reasonably believed that his child support obligation was terminated in 2015 following the surrender of rights and discussion of Mr. M[REDACTED] adopting A[REDACTED]. He further asserts that the Custodial Parent at no time from Fall 2015 to Summer 2023 notified him that the adoption had not been completed, or pursued child support and that he should not now be held accountable for eight (8) years of unpaid support. *Testimony of Respondent.*

III. Conclusions of Law

Applicable Rule

Office of State Administrative Hearings Rule 30 provides that a default order may be entered against a party who fails to appear at the scheduled hearing time after proper notice was duly issued. Ga. Comp. R. and Regs. 616-1-2-.30(1)(a). It further provides that, within ten (10) calendar days of the entry of a default judgment, the party against whom the default judgment was issued may file a written motion requesting that the default judgment be vacated or modified. Ga. Comp. R. and Regs. 616-1-2-.30(4). The Court may accept an untimely motion if the party seeking to set aside the default judgment establishes good cause for the delay in filing. *Id.* Moreover, the

Court may open a default previously entered if the party's failure was the result of providential cause or excusable neglect, or if the Court determines from all of the facts that a proper case has been made to open the default. Ga. Comp. R. and Regs. 616-1-2-.30(5).

Analysis

Although Respondent has met his burden to prove that he did not receive notice of the January 2015 hearing, he has not established good cause for the delay in filing his Motion to Reopen and Vacate the Default Order. Respondent learned of the Default Final Child Support Order in or around March 2015, when Petitioner served an Income Deduction Order on his employer and child support payments began to be deducted from his income. Four months later, on July 30, 2015, Respondent signed a Surrender of Parental Rights to allow the Custodial Parent's then-spouse to adopt A[REDACTED]. There is no evidence that at any time from March 2015 when Respondent first learned of the Default Order until July 30, 2015, when he signed the Surrender of Parental Rights that he took any steps to set aside the Default Final Child Support Order. Instead, it seems Respondent focused on a pending legitimation action in the Superior Court of Gwinnett County and an opportunity to potentially terminate his support obligation altogether by consenting to A[REDACTED] being adopted rather than taking any steps to set aside the administrative establishment Default Order.³

³ Respondent may have believed he had no reason to file a Motion to Vacate Default after signing the Surrender of Parental Rights on July 30, 2015 and may have reasonably proceeded under the assumption that the adoption would take place and that his obligation had ceased with the termination of the Income Deduction Order in August 2015; however, events that took place four (4) months after Respondent learned of the Default Order does not provide a good cause basis for not taking any action to file a Motion to Vacate Default when he first learned of it on or around March 31, 2015. Additionally, some of the issues/arguments raised regarding whether the Respondent should be obligated to pay the past-due child support when it appears that the Custodial Parent did not take any action for eight (8) years to enforce the child support order or to ensure that the Respondent was clearly made aware that A[REDACTED] had not been adopted are better suited to be addressed by the Superior Court under equitable considerations that are not applicable in the administrative process or in consideration of a Motion to Reopen and Vacate the Default Final Child Support Order.

Order

Based on the evidence presented, the Court finds that Respondent did not receive notice of the January 2015 hearing. Had Respondent filed a timely Motion to Vacate Default after learning in March 2015 of the Default Final Child Support Order that had been entered against him, the undersigned likely would have granted the Motion and reset the hearing. However, Respondent did not file a timely Motion to Vacate upon learning of the default judgment. Instead, Respondent signed a Surrender of Parental Rights approximately four (4) months later and incorrectly believed that his support obligation ended upon Petitioner terminating the Income Deduction Order that had been previously sent to Respondent's employer. Eight (8) years later, when Respondent learned that the adoption had not been completed and the Custodial Parent counterclaimed for unpaid child support in the legitimation action filed by Respondent is when Respondent filed his Motion to Reopen and Vacate the Default Final Child Support Order. To grant Respondent's untimely Motion, the Court must conclude that Respondent had good cause for the delay in filing. Ga. Comp. R. & Regs. 616-1-2-.30(4).

After careful consideration, the Court concludes that Respondent has not established good cause for the delay in filing. Although Respondent may have believed that his child had been adopted and that his child support obligation had been terminated sometime after July 30, 2015, he has not established good cause for the delay in filing from March 2015 when he first learned of the default judgment and July 2015 when he signed the Surrender of Parental Rights.

Based on the foregoing, the Court **HEREBY DENIES** Respondent's Motion to Reopen and Vacate Default Final Child Support Order. Any issues or arguments, especially those that are equitable in nature, as to the calculation of any arrears is not before this Court but, rather, may be addressed before the Superior Court under the pending legitimation and countersuit action.

SO ORDERED, this 28th day of November, 2023.

Ana Kennedy

Ana Kennedy
Administrative Law Judge

