

**IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
1st DIVISION**

BENJAMIN SIMPSON

PLAINTIFF

VS.

CASE NO. 23DR-19-1084

JUSTINE SIMPSON

DEFENDANT

MOTION TO SET ASIDE DECEMBER 19, 2019 ORDER AND BRIEF IN SUPPORT

Comes now the Defendant, Justine Simpson, by and through her attorney, Jennifer E. Glover, and for her Motion states as follows:

1. According to the docket entries contained on Court Connect, Plaintiff filed a Complaint for Divorce and a Motion for Emergency Custody and Order Requiring the Children to be Returned to the State of Arkansas on November 26, 2019.
2. According to the docket entries contained on Court Connect, on or about December 2, 2019 a hearing was scheduled in this matter for December 19, 2019.
3. According to the docket entries contained on Court Connect, a Notice of Hearing was filed in this matter on December 2, 2019.
4. According to the docket entries contained on Court Connect, an Order was entered in this matter on December 19, 2019 wherein Plaintiff was awarded custody of the parties' children and Defendant was ordered to return them to his custody in the State of Arkansas.
5. At no time has Defendant been served with a Notice of Hearing notifying her of the December 19, 2019 hearing. At no time has Defendant been served with any pleadings filed in this matter.
6. Plaintiff filed an Affidavit of Non Service on December 3, 2019 wherein it was

alleged that service was attempted at an address in Indiana, the home of the Defendant's father. However, Defendant's father informed the server that Defendant did not reside at the location. The Affidavit makes no claims that papers were left with Defendant's father.

7. Plaintiff has since filed an Affidavit in support of Warning Order which indicates that Defendant resides at an address completely different than the one listed in the Affidavit of Non Service.

8. Ark. R. Civ. P. 6 (c) requires that a Notice of Hearing be served "not later than twenty days before the time specified for the hearing."

9. Defendant was never notified of the hearing set on December 19, 2019. Defendant was not given an opportunity to appear and provide testimony in her own defense. The Court took testimony only from Plaintiff and possibly his witnesses. Defendant was not afforded an opportunity to object to any testimony given, review any evidence presented, cross examine any witnesses, present any evidence on her own behalf, or present any case of her own. The Court was not able to hear testimony from Defendant that Plaintiff was emotionally and verbally abusive throughout the marriage and that this abuse occurred in front of the minor children. The Court was unable to hear that Plaintiff brought Defendant to Arkansas, isolated her from her family, left her with no vehicle, no access to money, and then perpetrated the abuse upon her. The Court was unable to hear testimony regarding Plaintiff's ongoing, daily alcohol abuse. The Court was unable to hear recordings of the Plaintiff screaming at Defendant in front of the minor children. The Court was unable to see pictures of the doors Plaintiff kicked in at the marital home. The Court was unable to hear testimony about Plaintiff's lack of supervision of the minor children. Instead, because Defendant was not afforded any notice of these proceedings or the hearing, the Court was only able to hear Plaintiff's version of events.

10. Defendant's custodial rights are fundamental rights protected by both the federal and state constitutions. Custody has been granted to Plaintiff without any notice to Defendant. Furthermore, Defendant's due process has been violated by holding a hearing without any notice to her and without giving her any opportunity to counter allegations made by Plaintiff and to present her own case. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Villanueva v. Valdivia*, 2016 Ark. App. 107, 4, 483 S.W.3d 308, 310–11 (2016).

11. Defendant respectfully requests that this Court set aside the Order entered on December 19, 2019 as she was not provided notice as required by Ark. R. Civ. P. 6 and as her due process rights were violated in holding a hearing with no notice to Defendant wherein she was afforded no right to present a defense or present her own case before her custodial rights were taken away.

WHEREFORE, Defendant, Justine Simpson, prays that this Court set aside the Order entered on December 19, 2019; for attorney's fees and costs; and for all other relief to which she is entitled.

Respectfully Submitted,

By: /s/ Jennifer E. Glover
Jennifer E. Glover, 2015126
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CERTIFICATE OF SERVICE

I, Jennifer E. Glover, hereby certify that on this 18th day of February, 2020, a copy of the foregoing pleading has been served via the Court's electronic filing and document management system consistent with the provisions of Section 7 of Administrative Order No. 21 upon the following:

Victor "Trey" Wright, III
Wright Law Firm
111 Center Street
Suite 1200
Little Rock, Arkansas 72201

By: /s/ Jennifer E. Glover