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IN THE SUPREME COURT OF THE STATE OF IDAHO

ST. LUKE'S HEALTH SYSTEM, LTD; ST.
LUKE'S REGIONAL MEDICAL CENTER,
LTD; CHRIS ROTH, an individual;
NATASHA D. ERICKSON, MD, an
individual; and TRACY W. JUNGMAN, NP,
an individual,

Plaintiffs/Respondents,

vs.

DIEGO RODRIGUEZ, an individual,

Defendant/Appellant,

and

AMMON BUNDY, an individual; AMMON
BUNDY FOR GOVERNOR, a political
organization; FREEDOM MAN PRESS LLC,
a limited liability company; FREEDOM
MAN PAC, a registered political action
committee; and PEOPLE'S RIGHTS
NETWORK, a political organization and an
unincorporated association,

Defendants.

Docket No. 51244-2023

Ada County Case No. CV01-22-06789

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS APPEAL**

Plaintiffs/Respondents, St. Luke's Health System, Ltd., St. Luke's Regional Medical Center, Ltd., Chris Roth, Natasha D. Erickson, M.D., and Tracy W. Jungman, NP ("St. Luke's Parties"), by and through their attorneys of record, Holland & Hart LLP, hereby submit this Memorandum in Support of their Motion to Dismiss Appeal.

I. INTRODUCTION

Diego Rodriguez's appeal must be dismissed. This Court has made clear that an appellant's failure to move to set aside a default judgment bars appeal. Mr. Rodriguez failed to so move.

II. BACKGROUND

The St. Luke's Parties commenced this defamation lawsuit to remedy the ongoing harm and threat of violence against them posed by the widespread lies about child trafficking and kidnapping spread by Mr. Rodriguez, Ammon Bundy, and their related business entities. Declaration of Jennifer Jensen ("Jensen Decl."), ¶ 2.

The lawsuit resolved after a trial on damages and injunctive relief, entry of a permanent injunction, and entry of default judgment against all defendants.¹ *Id.* Default judgment was entered August 29, 2023. *Id.*

¹ The court entered default judgment against Mr. Rodriguez as a sanction for his pattern of misconduct during the course of the litigation. Jensen Decl., ¶ 3. Mr. Rodriguez filed an appearance and participated in the lawsuit to some extent. *Id.* But he violated discovery obligations and court orders. *Id.* There is also a pending I.R.C.P. 75 warrant of attachment against him, issued when the district court found probable cause that Mr. Rodriguez was violating the protective order barring threatening, harassing, and intimidating potential witnesses. *Id.*

Mr. Rodriguez did not move the district court to set aside the default judgment. *Id.*, ¶ 4, Ex. A (Docket Report). On October 4, 2023, Mr. Rodriguez filed a Notice of Appeal. *Id.*, ¶ 5, Ex. A.

III. ARGUMENT

A. AN APPEAL OF A DEFAULT JUDGMENT IS BARRED IF THE APPELLANT FAILED TO MOVE TO SET ASIDE THE DEFAULT JUDGMENT IN THE DISTRICT COURT.

“Although a judgment by default is a final judgment, no appeal lies directly from such a ruling.” *Dominguez v. Evergreen Resources, Inc.*, 142 Idaho 7, 13-14, 121 P.3d 938, 944-45 (2005). Rather, a party may only challenge a default judgment on appeal if he has first moved to set aside the default judgment in the district court and received an adverse ruling. *Id.* (holding appellant’s failure to move to set aside the default judgment barred its appeal); *see also E. Idaho Econ. Dev. Council v. Lockwood Packaging Corp. Idaho*, 139 Idaho 492, 496, 80 P.3d 1093, 1097 (2003) (holding cross-appellants’ failure to file a brief and affidavit in support of their motion to set aside default precluded their appeal after judgment was entered against them).

There is good reason for this rule. A motion to set aside a default judgment is a fact-intensive inquiry subject to the district court’s discretion. *See Shelton v. Diamond Int’l Corp.*, 108 Idaho 935, 937, 703 P.2d 699, 701 (1985) (A motion to set aside a default judgment invokes “both the fact-finding and law-applying function of the trial court.”) (internal quotation marks omitted); *Suitts v. Nix*, 141 Idaho 706, 708, 117 P.3d 120, 122 (2005) (motion to set aside a default judgment reviewed for abuse of discretion).

First, the movant must demonstrate at least one basis for relief from the judgment under Idaho Rule of Civil Procedure 60(b), any of which requires evidence in support: mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, void judgment, or satisfaction or release of the judgment. *See I.R.C.P. 55(c)* (“The court . . . may set aside a default

judgment under Rule 60(b).”); I.R.C.P. 60(b) (providing bases for relief from a final judgment). Second, the movant must plead facts that, if established, would constitute a “meritorious defense” to the action. *Idaho State Police ex rel. Russell v. Real Property Situated in County of Cassia*, 144 Idaho 60, 62, 156 P.3d 561, 563 (2007). “Factual details must be pled with particularity.” *Id.* (internal quotation marks omitted).

Without a motion to set aside the default judgment, the matter is simply not ripe for appeal. *See Dominguez*, 142 Idaho at 14, 121 P.3d at 945 (holding that “failure to move the trial court to set aside the judgment by default bars [an] appeal to this Court”); *Mountainview Landowners Coop. Ass’n v. Cool*, 142 Idaho 861, 865, 136 P.3d 332, 337 (2006) (“It is well established that in order for an issue to be raised on appeal, the record must reveal an adverse ruling which forms the basis for an assignment of error.”).

B. MR. RODRIGUEZ DID NOT MOVE TO SET ASIDE THE DEFAULT JUDGMENT.

Mr. Rodriguez did not file a Rule 60 motion to seek relief from the default judgment entered against him. *See Jensen Decl.*, ¶ 4, Ex. A. Accordingly, he did not submit evidence of any Rule 60(b) basis to set aside the default judgment, nor did he plead with particularity a meritorious defense. *See id.* There is nothing for the Court to review.

The law is clear. Mr. Rodriguez’s appeal must be dismissed.

IV. CONCLUSION

For all the foregoing reasons, the St. Luke’s Parties request that this Court dismiss Diego Rodriguez’s appeal.

DATED: February 5, 2024.

HOLLAND & HART LLP

By: */s/ Jennifer M. Jensen*

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 2024, I caused to be filed via iCourt and served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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