

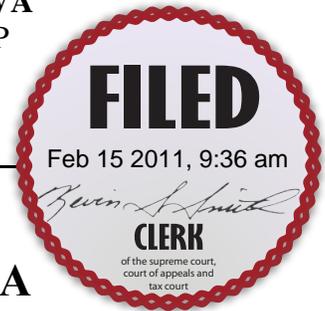
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**IN THE  
COURT OF APPEALS OF INDIANA**

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STYLIAN KALTSAS, )

Appellant, )

vs. )

No. 49A02-1006-DR-676

PAUL HARRY KALTSAS, )

Appellee. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Timothy W. Oakes, Judge  
The Honorable Caryl F. Dill, Magistrate  
Cause No. 41D13-9604-DR-433

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**February 15, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

STATEMENT OF THE CASE

Stylian Kaltsas (“Stella”) appeals the trial court’s order granting summary judgment to Paul Harry Kaltsas (“Paul”) on her motion to set aside the 1996 decree dissolving the parties’ marriage.

We affirm.

ISSUE

Whether the trial court erred in granting Paul’s motion for summary judgment.

FACTS

On April 12, 1996, Paul filed a petition for dissolution of marriage. His petition alleged that Stella’s residence was unknown; he submitted an affidavit to that effect; and he sought service by publication. An affidavit of publication established service by publication on April 18, April 25, and May 2, 1996. The trial court held the final hearing on July 9, 1996. On July 25, 1996, it issued the decree of dissolution, finding *inter alia* that there were “no retirement or pensions of this marriage.” (App. 39).

On August 20, 2009, Stella filed her verified motion to set aside the decree of dissolution. She alleged that when Paul had filed his petition for dissolution “he knew [her] whereabouts.” *Id.* at 45. Also, with respect to the decree’s statement of “no retirement or pensions of this marriage,” she alleged that it “may not have been true as” Paul was then a member of the military and “it is not know [sic] whether he had a vested interest in a military pension at that time.” *Id.*

On March 5, 2010, Paul filed a motion for summary judgment. Paul's motion argued that Stella's motion to set aside was untimely, as not being brought within one year of the judgment; or even within one year of her learning about it. He designated Stella's deposition testimony that "between May 6<sup>th</sup> and August 8<sup>th</sup> of 2008," she had learned of the dissolution." *Id.* at 50. Paul further argued that Stella had failed to allege a meritorious claim or defense as to the existence of marital pension/retirement assets. He designated his own deposition testimony that at the time of the 1996 dissolution, he lacked the necessary years of military service to entitle him to a military pension and had no "other accrued retirement benefits from any other source of employment." *Id.* at 51.

In response, Stella's counsel argued that her delay was "not unreasonable" under the circumstances. *Id.* 55. As to any marital military pension rights as of 1996, her counsel argued the lack of "documents admitted or designated confirming" the fact established by Paul's deposition testimony. *Id.* An affidavit from Stella was also submitted, asserting that she had "believed [she] still was his wife" until "2009."<sup>1</sup> *Id.* at 57, 58. However, her affidavit makes no assertions whatsoever as to an entitlement by Paul to a pension at the time of the 1996 dissolution.

On May 26, 2010, the trial court heard arguments on Paul's motion. At the conclusion of the hearing, it concluded that Stella's "filing was not timely, and even [if it were found] timely, . . . there is no claim of meritorious defense." (Tr. 17). Accordingly,

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<sup>1</sup> This statement contradicts her deposition testimony, as well as her counsel's response to Paul's motion for summary judgment. Both indicated her knowledge of this fact between May 6 and August 8, 2008.

the trial court granted Paul's motion for summary judgment and denied Stella's motion to set aside the dissolution decree.

### DECISION

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Bushong v. Williamson*, 790 N.E.2d 467, 474 (Ind. 2003). We apply the same standard as the trial court when reviewing decisions of summary judgment. *Filip v. Block*, 879 N.E.2d 1076, 1080 (Ind. 2008). Our review of a summary judgment motion is limited to those materials designated to the trial court. *Mangold v. Ind. Dep't of Natural Resources*, 756 N.E.2d 970, 973 (Ind. 2001). The moving party bears the burden of showing that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. *Dreaded, Inc. v. St. Paul Gurdian Ins. Co.*, 904 N.E.2d 1267, 1270 (Ind. 2009). Once the movant satisfied this burden, the burden then shifts to the non-moving party to designate and produce evidence of acts showing the existence of a genuine issue of material fact. *Id.*

Stella sought to set aside the dissolution decree, *i.e.*, she sought relief from judgment pursuant to Indiana Trial Rule 60(B). According to her motion, Paul "knew" her whereabouts. (App. 45). Thus, she appears to allege that Paul committed "fraud" or "misrepresentation" in that regard, or that she "was served only by publication and . . . without actual knowledge of the action and judgment." T.R. 60(B)(3), and (4). A motion for relief from judgment "shall be filed . . . not more than one year after the judgment . . . for reasons . . . (3) [and] (4)." T.R. 60(B). In addition, the movant seeking to set aside a

judgment “for reasons . . . (3), [and] (4), . . . must allege a meritorious claim or defense.”

*Id.*

The trial court found that Stella’s motion was not timely. It is undisputed that her motion was not filed within one year of the 1996 judgment but, in fact, thirteen years later. Moreover, designated evidence establishes that Stella waited more than a year after she was aware of the dissolution decree before filing her motion to set aside.

Stella’s appeal does not appear to challenge the trial court’s conclusion that her motion to set aside was not timely. Rather, she directs our attention to a statement by the trial court after it had found her motion “not timely” and that she had “no claim of meritorious defense.” (Tr. 17). Specifically, the trial court noted that Stella was “only seeking to reopen this to conduct somewhat of a fishing expedition.” *Id.* Stella argues that this statement establishes that the trial court gave “influence as to the weight of the evidence and [her] difficulty in proving her case of trial instead of examining whether or not there was a genuine issue of material fact.” Stella’s Br. at 3. We are not persuaded.

Even if there was a material question of fact as to whether Stella’s motion to set aside was timely, Trial Rule 60(B) requires that she show a meritorious claim. Specifically, Stella was required to “make a prima facie showing of a meritorious claim, ‘that is, a showing that will prevail until contradicted by other evidence.’” *Munster Community Hosp. v. Bernacke*, 874 N.E.2d 611, 614 (Ind. Ct. App. 2007) (quoting *Outback Steakhouse of Florida v. Markley*, 856 N.E.2d 65, 73 (Ind. 2006)). She needed to “present evidence that, if credited, demonstrates that a different result would be

reached if the case were retried on the merits and that it is unjust to allow the judgment to stand.” *Id.*

Here, as the movant for summary judgment, Paul submitted designated evidence that at the time of the dissolution decree in 1996, he had no entitlement to pension or retirement benefits. Thus, Paul’s designated evidence established that there were no material questions of fact in this regard. The burden then shifted to Stella to designate and produce evidence showing the existence of a genuine issue of material fact. *Dreaded*, 904 N.E.2d at 1270. Stella did not do so. Thus, she “cannot show” that she was “substantially prejudiced” in presentation of her case in the 1996 dissolution action, and the “otherwise final judgment” should not be set aside. *Outback Steakhouse*, 856 N.E.2d at 73.

We find no error here.

Affirmed.

BAILEY, J., and NAJAM, J., concur.