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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE: THE PATERNITY OF D.T.B., a child )  
born out of wedlock, ANDRE D. BARR, )  
 )  
Appellant-Respondent, )

vs. )

No. 71A04-0701-JV-61 )

PAULA J. FRISON, )  
 )  
Appellee-Petitioner. )

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APPEAL FROM THE ST. JOSEPH PROBATE COURT  
The Honorable Peter J. Nemeth, Judge  
And The Honorable Harold E. Brueseke, Magistrate  
Cause No. 71J01-9906-JP-609

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**July 3, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

In March 2000, the trial court entered a judgment establishing paternity in which Andre D. Barr was found to be the biological father of D.T.B. The judgment was entered in default, and Barr was granted standard visitation and ordered to pay child support. Thereafter, in November 2006, after having paid child support and acted as D.T.B.'s father for more than six years, Barr filed a complaint for relief from judgment, claiming he was never served with notice of the original paternity action. The trial court denied Barr's request for relief from judgment. Barr presents the following restated issue for review: Did the trial court abuse its discretion in refusing to grant relief from judgment based upon want of personal jurisdiction?

We affirm.

D.T.B. was born to Paula Frison (Mother) on April 4, 1997. Just over two years later, Mother filed a petition to establish paternity in Hezile Frison, Mother's then husband. Upon Hezile's request, the trial court ordered genetic testing, which ultimately excluded him as the child's father. Therefore, the paternity action was dismissed on September 7, 1999.

Mother filed her second paternity action on January 12, 2000, naming Barr as the putative father. Barr was living in Chicago in early 2000 when the paternity action was filed against him. The chronological case summary (CCS) indicates that the summons, notice of hearing, subpoena duces tecum, and subpoena were sent to Barr by certified mail, return receipt requested, on February 8, 2000. The CCS further indicates that he

was served with these documents by certified mail on February 28, 2000. Barr did not attend the paternity hearing on March 21, 2000, and a default judgment was entered against him that day.

Soon thereafter, Barr noticed that \$85 per week was being withheld from his paycheck.<sup>1</sup> When his payroll office informed him about the St. Joseph County support order, he called the St. Joseph Child Support Office and was told he needed to obtain a lawyer. For the next six years, Barr did nothing to challenge the paternity finding or the weekly child support payments that were being withheld from his paycheck. Moreover, following entry of the default judgment, Barr participated in D.T.B.'s life and acted as a father toward him.

Sometime in the summer of 2006, when D.T.B. was nine years old, Barr encouraged Mother to have the question of D.T.B.'s paternity adjudicated on a court television show presided over by a "Judge Hatchett." Mother refused to go on the television show. Therefore, without Mother's consent or the approval of the trial court, Barr obtained a DNA test kit through the mail, took sample from himself and D.T.B., and then sent the samples to an out-of-state laboratory for analysis. Ultimately, Barr received an unnotarized and uncertified DNA report that concluded he was not D.T.B.'s father.

Thereafter, on November 6, 2006, Barr filed his complaint for relief from judgment. In his complaint, Barr alleged in part:

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<sup>1</sup> Pursuant to the paternity order, Barr's weekly child support obligation was set at \$80 plus an additional \$5 for the support arrearage. These payments were made through the clerk of the court by way of an income withholding order.

[T]he circumstances of service of process were fraudulent in that [Barr] did receive a certified mailing tube in February, 2000, however, such mailing tube had no markings whatsoever that it was official Court pleadings or that it came from the St. Joseph Probate Court and that there was nothing contained in the mailing tube.

*Appellee's Appendix* at 21. Barr further alleged a meritorious defense “in that DNA testing was performed in July, 2006 and it was found that [Barr] cannot be the natural father of the child since [Barr] was excluded based on such DNA genetic testing.” *Id.*

The trial court held a hearing on Barr's request for relief from judgment on December 13, 2006. At the hearing, Barr admitted that he signed for and received a certified mailing tube in February 2000. Barr claimed, however, that he found nothing in the tube, which was already partially opened. He explained that he “was about to toss it,” but then decided to hold onto the tube because the return address and postmark did not correspond.<sup>2</sup> *Id.* at 38. Thus, Barr claimed that he did not learn of the paternity proceedings until child support began being withheld from his paychecks. Though he became aware of the paternity judgment soon after it was issued, Barr explained that his delay in challenging the judgment was due to financial difficulties.

At the conclusion of hearing, the trial court orally denied Barr's request for relief from judgment. Further, on December 19, the court issued a written order, which included findings of fact and conclusions of law, similarly denying the request. Barr now appeals.

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<sup>2</sup> The postmark was from South Bend, Indiana, and the return address indicated an address for an individual in Tullahoma, Tennessee.

The decision whether to set aside a default judgment is given substantial deference on appeal, and we are limited to determining whether the trial court abused its discretion. *Butler v. Shiphewana Auction, Inc.*, 697 N.E.2d 1285 (Ind. Ct. App. 1998). “A denial of the motion is presumptively valid and the movant must demonstrate that the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court.” *Bonaventura v. Leach*, 670 N.E.2d 123, 125 (Ind. Ct. App. 1996), *trans. denied*. Further, when a trial court issues findings of fact and conclusions of law pursuant to Indiana Trial Rule 52(A), we apply the following standard of review:

“We first determine whether the record supports the findings and, second, whether the findings support the judgment. The judgment will only be reversed when clearly erroneous, i.e. when the judgment is unsupported by the findings of fact and the conclusions entered upon the findings. Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them. To determine whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom, and we will not reweigh the evidence or assess witness credibility.”

*Thompson v. Thompson*, 811 N.E.2d 888, 912 (Ind. Ct. App. 2004) (quoting *Wyzard v. Wyzard*, 771 N.E.2d 754, 756-57 (Ind. Ct. App. 2002)), *trans. denied*.

On appeal, Barr challenges the trial court’s finding that he was properly served. Specifically, Barr argues the trial court abused its discretion in refusing to grant relief from judgment “where there exists some question as to whether [he] received notice of the original paternity proceedings filed against him.” *Appellant’s Brief* at 1. The following excerpt from his appellate brief summarizes his argument:

In the case at hand, the [CCS] reflects that [Barr] was served the summons and notice of hearing on February 28, 2000. Further, [Barr]

admits to signing the certified mailing return receipt. However, [Barr] also states that the mailing tube that allegedly contained the summons and notice of hearing was partially opened and that there was nothing in the tube. *If credence is given to [Barr's] testimony* then there is no service on [Barr] as he never received the summons or the notice of hearing.

*Id.* at 6 (emphasis supplied) (record citations omitted).

We do not dispute the general proposition that “a judgment entered where there has been no service of process is void for want of personal jurisdiction” and may be collaterally attacked under Trial Rule 60(B)(6) at any time. *Stidham v. Whelchel*, 698 N.E.2d 1152, 1155 n.3 (Ind. 1998). In this case, however, the evidence conflicts as to whether Barr was properly served, and the trial court had the discretion to discredit Barr’s self-serving and uncorroborated allegation, made six years after service, that the mailing tube was empty. *See Bonaventura v. Leach*, 670 N.E.2d at 127 (“[a]s for the contention that Bonaventura did not know of or approve the mail pickup/delivery system and thus Campbell’s signature on the certified letter was unauthorized, the trial court had the discretion to discredit Bonaventura’s testimony”). Therefore, we reject Barr’s bald invitation for us to reweigh the evidence and judge his credibility.

Moreover, even if we were to find Barr was not properly served, the evidence unequivocally establishes that he soon became aware of the paternity judgment and then waited over six years to challenge it. All the while, Barr acted as a father toward D.T.B. and sat idly by while weekly child support payments were being withheld from his paycheck. For over six years, Barr manifested an intention to treat the paternity order as valid, and his prior actions are inconsistent with his current position that the judgment is invalid. Therefore, Barr is estopped from asserting lack of personal jurisdiction as he

voluntarily submitted to the court's jurisdiction. *See Paternity of T.M.Y.*, 725 N.E.2d 997 (Ind. Ct. App. 2000) (while judgments rendered without personal jurisdiction are void and therefore nullities at inception, such judgments can be ratified/cured by the person over whom there must be jurisdiction), *trans. denied*.<sup>3</sup>

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.

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<sup>3</sup> In *Paternity of T.M.Y.*, 725 N.E.2d 997, we held that the father was estopped from raising a jurisdictional claim because he voluntarily submitted himself to the trial court's jurisdiction. We explained:

A person may be estopped from challenging a void judgment if that person has manifested an intention to treat a judgment as valid. *Jennings v. Jennings*, 531 N.E.2d 1204, 1206 (Ind. Ct. App. 1988). As this court stated in *Jennings* (quoting Restatement (Second) of Judgments § 66):

Relief from a default judgment on the ground that the judgment is invalid will be denied if:

- (1) The party seeking relief, after having had actual notice of the judgment, manifested an intention to treat the judgment as valid; and
- (2) Granting the relief would impair another person's substantial interest of reliance on the judgment.

531 N.E.2d at 1206.

In this case, Nickels voluntarily submitted himself to the trial court's jurisdiction by failing to contest the court's jurisdiction over his person and instead complying with the court's order in paying child support for over two years. Nickels' prior actions are inconsistent with his current position that the judgment is invalid. Furthermore, the interests of York and T.M.Y. would be greatly impaired as not only is some \$19,956.00 at stake but so is the identity of T.M.Y.'s father that was judicially established nearly eighteen years ago.

*Paternity of T.M.Y.*, 725 N.E.2d at 1003.