

A driver from State A and a bicyclist from State B were involved in a collision that caused the driver to incur \$150,000 in medical expenses. The driver filed a federal diversity action in State B based on negligence. The summons and complaint were served at the bicyclist's home, where the process server handed the documents to the bicyclist's 16-year-old daughter. The daughter failed to share those documents with the bicyclist who, unbeknownst to the driver, was in a coma. No one else was informed about the lawsuit.

After three months, no response had been filed so the clerk entered the bicyclist's default into the record. The court then entered a default judgment in favor of the driver.

Ten months after the entry of default judgment, the bicyclist awoke from the coma and learned about the default judgment. The bicyclist immediately hired a lawyer who filed a motion to set aside the default judgment based on excusable neglect. An affidavit from an eyewitness to the accident, who stated that the bicyclist did not swerve into the driver's lane as the driver claimed, was attached to the motion.

Is the court likely to grant the bicyclist's motion?

- A. No, because more than one year has passed since the driver filed his complaint.
- B. No, because the driver did not engage in misconduct.
- C. Yes, because service of process was improper.
- D. Yes, because the attached affidavit provides a meritorious defense.

Explanation:

Relief from final judgment

(FRCP 60(b))

Grounds for relief

- Mistake, inadvertence, surprise, excusable neglect
- Newly discovered evidence
- Fraud, misrepresentation, misconduct
- Void judgment (eg, lack of jurisdiction)
- Judgment:
 - satisfied, released, discharged
 - based on reversed or vacated judgment *or*
 - will violate equity if applied prospectively
- Other reason justifying relief (rare)

Time to file

Within one year

Within reasonable time

FRCP = Federal Rule of Civil Procedure.

A **default judgment** is a final judgment that is entered when the defendant has failed to **timely serve an answer**. A party can move for **extraordinary relief** from a default judgment (or any other final judgment) in **limited circumstances**. The motion must typically be filed within a reasonable time, but it must be **filed within one year** from the entry of judgment when asserting any of the following grounds for relief:

1. The judgment was due to the court's or party's mistake, inadvertence, surprise, or excusable neglect.
2. The movant discovered new evidence.
3. The nonmovant engaged in misrepresentation, misconduct, or fraud.

A motion based on mistake, inadvertence, surprise, or **excusable neglect** will be granted if the movant also demonstrates a **meritorious defense**.

Here, the bicyclist's failure to timely serve an answer was excusable because he was in a coma. And the affidavit attached to the bicyclist's motion provides a meritorious defense. That is because the eyewitness statement challenges the substance of the driver's claim (rather than merely raising a technical or procedural issue). Therefore, the court will likely grant the bicyclist's motion to set aside the default judgment.

(Choice A) A motion for extraordinary relief based on excusable neglect must be made within one year after the judgment was entered—not after the complaint was filed.

(Choice B) The driver did not engage in misconduct since he was unaware that the bicyclist was in a coma. However, the bicyclist may still obtain relief since his failure to file a timely answer was excusable.

(Choice C) [Service of process](#) is proper if it is delivered to the defendant's dwelling and left with a resident of suitable age and discretion. Most teenagers are of suitable age and discretion since they possess the limited capacity necessary to comprehend the situation. Therefore, service of process on the bicyclist's 16-year-old daughter was proper.

Educational objective:

A motion for extraordinary relief from a final judgment (eg, default judgment) based on mistake, inadvertence, surprise, or excusable neglect will be granted if the movant demonstrates a meritorious defense.

References

- Fed. R. Civ. P. 60(b)–(c) (extraordinary relief from judgment).
- 47 Am. Jur. 2d Judgments § 663 (2019) (meritorious-defense requirement).