

STATE OF INDIANA)
)SS:
COUNTY OF RIPLEY)

RIPLEY CIRCUIT COURT
GENERAL TERM 2011

MELISSA BREWINGTON,)
 Petitioner,)
vs.)
DANIEL BREWINGTON,)
 Respondent)

[REDACTED]

MOTION TO DISMISS

Comes now Petitioner, Melissa Brewington, by and through counsel, Angela G. Loechel, and moves the Court to dismiss the Motions to Set Aside Decree filed by Matthew P. Brewington and Sue A. Brewington based upon the following:

I. Matthew P. Brewington and Sue A. Brewington do not have standing to move the Court for Relief from Judgment under T.R. 60 as they have not timely intervened in this action in accordance with T.R. 24, nor have they moved the Court within a reasonable time for relief from judgment in accord with T.R. 60.

A. Matthew P. Brewington and Sue A. Brewington are not parties in this action.

B. Neither Matthew P. Brewington nor Sue A. Brewington have ever attempted to intervene in this action in accord with T.R. 24.

C. Any attempt to now intervene in this action by either Matthew P. Brewington or Sue

A. Brewington would now be untimely as:

i. Petitioner's Petition for Dissolution of Marriage was filed in this action on January 8, 2007.

ii. Sue Brewington was deposed in this action concerning the trust and other issues on June 3, 2008, by Angela G. Loechel, counsel for Petitioner.

- iii. Sue Brewington testified in this action at the Final Hearing in this matter concerning the trust and other issues on or about June 2, 2009.
- iv. The Judgment and Final Order on Decree of Dissolution of Marriage in this action was entered August 18, 2009. Matthew P. Brewington and Sue Brewington waited one and one-half (1 ½) years after said entry to file their pending motions.
- v. The preliminary title search of the real estate that showed the entry of the Judgment and Final Order on Decree of Dissolution in this action and attached to movants' pleadings was performed on September 16, 2009. As such, Matthew P. Brewington and Sue Brewington waited one (1) year and five (5) months after being made aware of said judgment to file their pending motions.
- vi. The trial court's decision was upheld on appeal by the Indiana Court of Appeals on July 20, 2010. See, Clerk of Courts On Line Docket, attached hereto as Exhibit A.
- vii. The Indiana Supreme Court has denied the Petition to Transfer of Jurisdiction on December 16, 2010. See, Exhibit A.

2. Matthew Brewington and Sue Brewington have not alleged any reason justifying relief from operation of the judgment in this action in accord with T.R. 60, as they are not indispensable parties with respect to the division of the Daniel P. Brewington Revokable Trust Agreement as alleged.

A. The judgment lien placed upon the trust as a result of this action only operates as to any amounts that Respondent, Daniel Brewington, is entitled to from the trust.

B. Respondent, Daniel Brewington, is responsible for the removal of the lien that

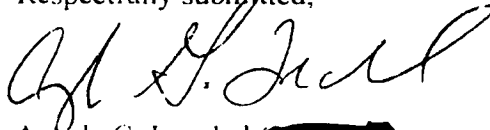
has resulted from the Judgment in this action. Respondent, Daniel Brewington, has the power to satisfy this lien at any time, by paying to Petitioner, Melissa Brewington, the monies owed to her by virtue of the Decree entered in this action.

3. Both Matthew P. Brewington and Sue Brewington are barred from pursuing said Motions based upon the principles of waiver, collateral estoppel, and res judicata, given their failure to timely intervene in this action under T.R. 24, their failure to file their Motion for Relief from Judgment within a reasonable time under T.R. 60, and their failure to allege a valid reason justifying relief from judgment along with a meritorious claim or defense in accord with T.R. 60.

4. Petitioner believes this motion to be frivolous, not brought in good faith, and in an attempt to harass Petitioner.

WHEREFORE, Petitioner requests this Court to order that the Motions to Set Aside Decree filed by Matthew P. Brewington and Sue A. Brewington are dismissed with prejudice, and for movants to be ordered to pay the reasonable attorney fees incurred by Petitioner in responding to this action.

Respectfully submitted,



Angela G. Loechel ([REDACTED])
Attorney for Petitioner

[REDACTED]
[REDACTED]
[REDACTED]