STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Estate of Sherry Cline Tilley,
by and through Jesse Graybeal,
Candice Cline, Bradley Graybeal, and
Ernest Cline, Individually and as Co-Administrators
of the Estate of Sherry Cline Tilley,
Plaintiffs Below, Petitioners

v.) No. 22-0333 (McDowell County 2009-C-30)

Justin Justice,
Defendant Below, Respondent

MEMORANDUM DECISION

Petitioners, who are the adult children of Sherry Cline Tilley and the co-administrators of her estate, appeal the Circuit Court of McDowell County's March 11, 2022, order that set aside a prior default judgment ruling against respondent Justin Justice.[1] The circuit court applied the equitable doctrine of laches and set aside the default judgment after finding that petitioners' original lawyer prejudiced respondent by failing to timely submit a draft of the default judgment order to the circuit court.

It is well established in our law that a party (like respondent) is not entitled to any equitable relief (like laches) when the party comes to the court with "unclean hands." As we discuss below, respondent engaged in inequitable conduct to evade legal responsibility in this case by ignoring service of petitioners' complaint against him as well as numerous communications regarding the lawsuit. Additionally, respondent admits that if the lawyer had promptly submitted the draft default judgment order and the circuit court had entered that order, then respondent would have further evaded responsibility by seeking either bankruptcy protection or by structuring his assets in someone else's name so as to avoid paying any judgment. On this record, and considering the briefs and oral arguments of the parties, we affirm the circuit court's finding that defendant was in default but reverse the circuit court's application of laches to preclude petitioners from pursuing any judgment on that default. Because of the clarity of our law precluding the use of laches to protect a party with unclean hands, we find that this case satisfies the "limited circumstances" requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure and is appropriate for partial reversal and remand by memorandum decision.

[1] Petitioners are represented on appeal by Stephen P. New, Amanda J. Taylor, and Clinton W. Smith. Respondent appears by his counsel, Timothy P. Lapardus.

The complaint in this case alleges that, on August 29, 2008, respondent was racing his vehicle on a public road against another individual, Wendell K. Russell. The vehicles exceeded eighty miles per hour in a fifty-five-mile-per-hour zone. Mr. Russell crossed into the oncoming lane and struck a vehicle driven by Sherry Cline Tilley. Ms. Tilley died months later from the severe injuries she sustained in the collision and left her children, the petitioners, as her heirs.

In March 2009, the petitioners' lawyer filed the aforementioned complaint against respondent. The complaint also included claims against other defendants, namely Mr. Russell and the manufacturers of Ms. Tilley's vehicle. A private investigator filed an affidavit with the circuit court stating that, on April 10, 2009, he served a copy of the complaint upon respondent himself at respondent's home. Respondent was either twenty or twenty-one years old at the time, and he lived in the home with his older brother and father. Respondent did not answer or otherwise respond to the complaint.

The other defendants in the case answered petitioners' complaint. Litigation ensued and papers, like deposition notices (including one for respondent's testimony) and certificates showing service of discovery, were exchanged by the parties. The papers listed respondent as a party to the lawsuit, and copies of at least a dozen papers were mailed to respondent's address. It seems respondent did not comply with his deposition notice. Petitioners later settled all of their claims against the other defendants.

In August 2010, petitioners served respondent with a motion for default judgment and a notice of hearing by certified mail at his mailing address; respondent's older brother signed for the mail. In October 2010, petitioners served a renewed motion for default judgment and a notice of hearing by certified mail; respondent's father signed for the mail.

Rule 55 of the West Virginia Rules of Civil Procedure (1998) outlines the process for entries of default and default judgments. Stated succinctly, "[a] default relates to the issue of liability and a default judgment occurs after damages have been ascertained." Syl. pt. 2, *Cales v. Wills*, 212 W. Va. 232, 569 S.E.2d 479 (2002). Rule 55 provides that *default* on a claim may be entered when a plaintiff shows that a defendant has "failed to plead or otherwise defend" against the claim and is not an unrepresented "infant, incompetent person, or convict." These facts may be established "by means of an affidavit or by other competent proof." 10A Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Civ. § 2682 (4th ed. 2023). Once liability by default has been established, the circuit court may, in its discretion, "conduct such hearings" to determine whether to enter a full *judgment* "on the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter[.]" Rule 55(b)(2). *See generally*, Syllabus, *Farley v. Econ. Garage*, 170 W. Va. 425, 294 S.E.2d 279 (1982) ("Where a default judgment has been obtained under Rule 55(b)(2) of the West Virginia Rules of Civil Procedure, a trial court is required to hold a hearing in order to ascertain the amount of damages if the plaintiff's claim involves unliquidated damages."); *Drumheller v. Fillinger*, 230 W. Va. 26, 32 n.24, 736 S.E.2d 26, 32 n.24 (2012) (Because a hearing under Rule 55(b)(2) "is subject to the discretion of the trial court, it would be within the trial court's authority to empanel a jury for the purpose of determining damages should the court deem it necessary.").

The circuit court held a hearing on October 25, 2010, to consider petitioners' motion for default judgment, but respondent did not appear. Petitioners' lawyer appeared at the hearing, and

he represented that service had been properly made, as evidenced by the private investigator's affidavit in the court file. The lawyer also stated that he had no knowledge respondent was "an insane or incompetent person or convict[.]" Based on the lawyer's proffer, the circuit court stated that it would find respondent in default on petitioners' claims. However, the circuit court suggested that petitioners' lawyer "might just want to go ahead and supplement this by preparing an Affidavit for Default Judgment[.]"

After the circuit court declared respondent to be in default, petitioners' lawyer asked the court for a judgment on the amount of damages respondent was required to pay petitioners. The circuit court told the lawyer that he could "just proffer the evidence." The lawyer then read off the sum of all of Ms. Tilley's medical bills, another sum for her funeral expenses, and finally her lost wages, amounts which the circuit court added up to $1,519,534. The circuit court then declared it would award petitioners total damages of $3,750,000; at the lawyer's request, the circuit court announced that $500,000 of that total would be punitive damages. At the end of the October 2010 hearing, petitioners' lawyer agreed to draft the default judgment order for the circuit court.

The circuit court does not appear to have received a draft order from the lawyer until November 2019, just over nine years later. Moreover, the draft order contained conclusions that are at odds with findings stated by the circuit court at the default judgment hearing. In particular, the draft order increased the sum of Ms. Tilley's medical bills and the punitive damage award, and awarded petitioners a total of $4,750,000, which is a million dollars more than ordered by the circuit court at the 2010 hearing. Despite the errors, the circuit court signed the default judgment order, as drafted by the lawyer, on November 20, 2019.

In March 2021, petitioners' original lawyer apparently discovered his errors because he mailed two drafts of "corrected" orders to the circuit court. The circuit court rejected those "corrected" drafts after finding that they too were riddled with errors. Petitioners then hired new counsel. Following a hearing with the new lawyer, the circuit court declared that it would draft its own "corrected" default judgment order. The circuit court also noted that petitioners' original lawyer had failed, after the October 2010 hearing, to submit an affidavit that respondent was not incarcerated, an incompetent person, or an infant, as required by Rule 55. The circuit court refused to act further until the original lawyer produced the affidavit, saying, "I really made this order contingent upon him filing an affidavit to that effect . . . He's never done that." On October 6, 2021, petitioners' original lawyer complied with the directive and submitted the affidavit.

On November 10, 2021, the circuit court entered its own amended and corrected default judgment order. It found that respondent was in default for failing to answer petitioners' complaint, and it awarded petitioners judgment against respondent for $3,750,000 ($500,000 of which was punitive damages) plus prejudgment interest. The circuit court ordered that the circuit clerk mail a copy of the corrected order to respondent at the mailing address contained in the court record since 2009. Because respondent no longer uses that address, a postal employee who saw the circuit clerk's envelope at the post office intercepted it and delivered it to respondent's current address. Respondent claims that this was the first time he learned of petitioners' 2009 lawsuit.

On December 8, 2021, respondent moved to set aside the amended and corrected default judgment order on the ground of laches, as well as under Rule 60(b) of the Rules of Civil Procedure

(1998).[2] Respondent argued that the delay by petitioners' original lawyer in obtaining a default judgment order prejudiced respondent. Specifically, respondent alleged that he was destitute in 2009-10. Through "good faith in living and his industry," respondent declared that he now has significant income and assets. Respondent asserted that in 2010 (when the circuit court initially declared him to be in default), he could have discharged any judgment (including punitive damages) in bankruptcy. Alternatively, over the years he would have hidden or shielded his newly gained assets from judgment by putting them in another person's name. Because of the lawyer's procrastination, respondent argued those means of avoiding legal responsibility for the 2009 death of Ms. Tilley are no longer available.

After hearing testimony from respondent, the circuit court entered an order on March 11, 2022, that upheld its finding that respondent was in default; however, the order otherwise granted respondent's motion to set aside the default judgment. Regarding the *default*, it is undisputed that respondent failed to plead, appear, or otherwise defend against the allegations contained in petitioners' complaint. Rule 4(d)(1) of the Rules of Civil Procedure (1998) provides that service of a complaint on an individual is proper when it is delivered "to the individual personally" or to "the individual's dwelling place or usual place of abode to a member of the individual's family who is above the age of sixteen (16) years[.]" The affidavit of the private investigator established that respondent was served personally with the complaint. Respondent claimed to the circuit court that the private investigator erred and must have delivered the complaint to his wayward older brother, who looked just like respondent; however, even if this is true, service was nonetheless accomplished because the complaint was delivered to respondent's dwelling place or usual place of abode to a family member above the age of sixteen. Based on the evidence, the circuit court properly concluded that its prior grants of *default* by respondent on the allegations of liability in the complaint were correct and refused to set them aside. Petitioners and respondent do not challenge on appeal the conclusion of the circuit court that respondent was in default, and so that portion of the order is affirmed.

As to its prior entry of *judgment* against respondent, the circuit court determined that its prior orders were not enforceable. The circuit court concluded that the delays by petitioners' original lawyer in presenting an affidavit and a draft order were unreasonable, that "neither of these objectives were completed in a remotely timely manner," and that the draft orders submitted by the lawyer were riddled with errors. The circuit court further found that respondent would suffer prejudice from the lawyer's dilatory actions because respondent had substantially improved his position, going from being young and "judgment proof" to acquiring significant assets unprotected by the laws of bankruptcy during the delay. Applying Rule 60(b)(6) of the Rules of Civil Procedure, the circuit court found the equitable doctrine of laches applied to "justify[] relief from the operation" of its prior default judgment ruling. Accordingly, the circuit court ruled that any prior judgment in favor of petitioners was barred by the doctrine of laches and, therefore, unenforceable.

[2] As part of the default judgment process, Rule 55(c) provides that, "For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." *See generally*, Syl. pt. 4, *Hardwood Grp. v. Larocco*, 219 W. Va. 56, 631 S.E.2d 614 (2006) (discussing "good cause" under Rule 55(c)).

Petitioners now appeal the circuit court's application of laches in its March 11, 2022, order, and we review this part of the order for an abuse of discretion. "A motion to vacate a judgment made pursuant to Rule 60(b), W.Va.R.C.P., is addressed to the sound discretion of the court and the court's ruling on such motion will not be disturbed on appeal unless there is a showing of an abuse of such discretion." Syl. pt. 5, *Toler v. Shelton*, 157 W. Va. 778, 204 S.E.2d 85 (1974).

The circuit court determined that the actions (or inaction) of petitioners' original lawyer triggered the equitable doctrine of laches against petitioners' claims. "[L]aches is an equitable doctrine based on the maxim that equity aids the vigilant, not those who slumber on their rights." *Banker v. Banker*, 196 W. Va. 535, 547, 474 S.E.2d 465, 477 (1996). This Court has applied laches where there has been "a delay in the assertion of a known right which works to the disadvantage of another, or [where] such delay . . . warrant[s] the presumption that the party has waived his right." Syl. pt. 2, *Bank of Marlinton v. McLaughlin*, 123 W. Va. 608, 17 S.E.2d 213 (1941). Put succinctly, "[t]he elements of laches consist of (1) unreasonable delay and (2) prejudice." *Province v. Province*, 196 W. Va. 473, 473 S.E.2d 894 (1996).

Other elements must also be considered by a court before applying laches. For one, a defendant may not seek the protection of the laches doctrine when the defendant comes to the court with "unclean hands." The unclean hands rule was not devised, and is not applied, "for the benefit of either litigant, but exist[s] for the purpose of maintaining the dignity and integrity of the court acting only to administer equity." *Wheeling Dollar Sav. & Tr. Co. v. Hoffman*, 127 W. Va. 777, 780, 35 S.E.2d 84, 86 (1945). The defense of unclean hands "requires no pleading." *Id.* at 779, 35 S.E.2d at 86. "[T]his Court may, *sua sponte,* invoke the doctrine of unclean hands to invoke an equitable and just result." *Foster v. Foster*, 221 W. Va. 426, 431, 655 S.E.2d 172, 177 (2007). The unclean hands doctrine dictates that, "[w]henever and if it is made to appear to the court that by reason of fraudulent or other unconscionable conduct, the [defendant] has lost his right to invoke a court of equity, the court will, on the motion of a party, or its own motion, wash its hands of the whole." *Wheeling Dollar*, 127 W. Va. at 779, 35 S.E.2d at 86. "Equity will not, at the suit of a wrongdoer, lend its aid in extricating him from a position where his own fraudulent or illegal conduct has placed him." Syl. pt. 1, *Jones v. Evans*, 123 W. Va. 394, 15 S.E.2d 166 (1941). For another, a defendant seeking to assert the doctrine of laches must show that he or she lacked knowledge or notice that the plaintiff would assert the disputed claim. *See, e.g.*, 30A C.J.S. *Equity* § 146 (2024) ("in order to bar a suit on the grounds of laches," there must be a "lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he or she bases his or her suit"); *Cohen v. Krantz*, 643 N.Y.S.2d 612, 614 (1996) ("To establish laches, a party must show . . . lack of knowledge or notice on the part of the offending party that the complainant would assert his or her claim for relief"); *Pyle v. Ferrell*, 147 N.E.2d 341, 344 (Ill. 1958) (laches requires "lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit").

The record shows that respondent had knowledge or notice that petitioners were pursuing their claims arising from the death of their mother. The circuit court found respondent was properly served with petitioners' complaint. Furthermore, at least a dozen papers noting respondent's status as a defendant in petitioners' lawsuit (including a notice for respondent's deposition) were mailed to respondent. Two motions for default judgment were sent by certified mail, one signed for by respondent's brother and the other by his father, and respondent admits he lived at the same residence with his brother and father. The circuit court expressed disbelief for respondent's

testimony that he lacked any knowledge or notice of petitioners' claims.[3] Respondent knew, or by all accounts should have known, that petitioners alleged as the basis for their suit that he engaged in wrongdoing that resulted in the death of their mother; respondent ignored the allegations anticipating that the legal system would somehow pass him by. Further, respondent claims that if petitioners had obtained a default judgment earlier, then he would have actively avoided legal responsibility for Ms. Tilley's death by filing for bankruptcy or putting assets in the names of other people. We cannot permit the use of equity to effectively ratify such deceptive conduct or to otherwise extricate respondent from the position in which his own unconscionable actions have placed him.

Additionally, we apprehend that the circuit court's ruling reflects discord between the court and petitioners' original lawyer, and not the claims by petitioners against respondent. The lawyer disrespected the circuit court's dictates. But, concomitantly, Rule 41 of the Rules of Civil Procedure (1998) provides that when a circuit court reviews its docket and finds an action has been pending "for more than one year" and "there has been no order or proceeding," the action may be dismissed from the docket. How neither the circuit court nor the lawyer recognized that an order had neither been presented to the court nor entered for nine years is confounding. Nevertheless, the doctrine of laches effectively applies to a two-party relationship, that is, a plaintiff who delays asserting a claim against an unsuspecting defendant. Respondent has not presented us with any authority applying laches when a third party, such as a presiding judge, is directly interposed into the relationship. Broadly speaking, like other government officials, judges are not chargeable with laches. *See generally*, 30A C.J.S. *Equity* § 144. Further, judges have numerous express and inherent powers to compel lawyers for parties to act. We are not aware of any legal authority permitting a judge to apply laches to a party based upon the litigation delay or misconduct of the party's lawyer *toward the judge*. To be clear, we perceive that petitioners have proceeded with "clean hands," and so we find that, on this record, it was an abuse of discretion for the circuit court to apply the doctrine of laches and to use Rule 60(b) to preclude petitioners from pursuing a default judgment against respondent.

Accordingly, we remand this case to the circuit court for further proceedings regarding the entry of judgment on respondent's default. We note that, at the 2010 hearing, petitioners' original lawyer proffered sums of petitioners' classes of damages without presenting the circuit court with actual evidence or due process frameworks. *See*, *e.g.*, Syl. pts. 3 & 4, *Garnes v. Fleming Landfill, Inc.*, 186 W. Va. 656, 413 S.E.2d 897 (1991). Moreover, the circuit court's prior judgment orders did not account for petitioners' settlements with other defendants or discuss the impact of intervening legislative changes to common law rules regarding several liability. *See generally*, W. Va. Code § 55-7-13c (2015). These issues are for the circuit court to address on remand. *See* W. Va. R. Civ. P. Rule 55(b)(2).

For the foregoing reasons, we affirm, in part, reverse, in part, and remand.

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[3] Respondent repeatedly said that he never saw any legal mail because his father and brother had access to the mailbox, were unreliable, and never conveyed mail to him. The circuit court replied to respondent, "[Y]ou know, people are kind of curious and nosy, and it seems like if you were to get a lot of documents from lawyers, it seems like they'd want to say Justin, what's going on? . . . Why are all these lawyers sending you mail?"

Affirmed, in part, reversed, in part, and remanded.

ISSUED: May 1, 2024

CONCURRED IN BY:

Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn

DISSENTING:

Chief Justice Tim Armstead

Armstead, Chief Justice, concurring, in part, and dissenting, in part:

In this case, it is important to note a couple of key facts. First, petitioners were successful in having respondent declared in default in this action in October 2010, resulting in the circuit court indicating its willingness to award petitioner the sum of $3,750,000, without petitioner having to go to trial. All petitioners' original counsel had to do to obtain a judgment for petitioner in this amount was to perform two simple tasks: (1) prepare an Affidavit for Default Judgment as required by Rule 55 of the West Virginia Rules of Civil Procedure representing that respondent was not incarcerated, an incompetent person or an infant, and (2) draft a default judgment order for entry by the circuit court.

The second key fact is that petitioners' original counsel did not immediately prepare these documents as directed by the circuit court. In fact, petitioners' original counsel took no steps to follow the circuit court's direction and prepare the documents for more than ***NINE YEARS***! Petitioner left $3,750,000 on the table for almost a decade by failing to perform two very simple tasks, all the while respondent moved forward with his life. Because I believe that the circuit court's decision applying laches to petitioners' original lawyer's inaction was both legally and factually sound, I respectfully dissent as to the court's reversal on this issue.

As the majority decision noted:

> The circuit court determined that the actions (or inaction) of petitioners' original lawyer triggered the equitable doctrine of laches against petitioners' claims. "[L]aches is an equitable doctrine based on the maxim that equity aids the vigilant, not those who slumber on their rights." *Banker v. Banker*, 196 W. Va. 535, 547, 474 S.E.2d 465, 477 (1996). This Court has applied laches where there has been "a delay in the assertion of a known right which works to the disadvantage of another, or [where] such delay . . . warrant[s] the presumption that the party has waived his right." Syl. pt. 2, *Bank of Marlinton v. McLaughlin*, 123 W.Va. 608, 17 S.E.2d 213 (1941). Put succinctly, "[t]he elements of laches consist of (1) unreasonable delay and (2) prejudice." *Province v. Province*, 196 W. Va. 473, 473 S.E.2d 894 (1996).

Such unreasonable delay and resulting prejudice are precisely what the circuit court determined were present here. The circuit court correctly found that the nine-year delay in seeking a court order was unreasonable and such delay, coupled with prejudice to respondent in that he would have been able to discharge at least a portion of the judgment through bankruptcy, warranted the application of laches.

Importantly, the circuit court applied the doctrine of laches, not to the granting of default, but to the inaction of the lawyer in tendering (1) an "affidavit setting forth that [respondent] is not an infant, incompetent person, or convict" and, (2) "[s]ubmitting to the [c]ourt with a reasonable time a proposed final order." As already stated, petitioners' original attorney completed neither of these tasks, which the circuit court found were "not unduly difficult or complicated."

The majority decision excuses petitioners' original counsel's undue delay by concluding that respondent had "unclean hands," thus precluding the grant of default judgment for petitioners' negligence. *C.f., Wheeling Dollar Sav. & Tr. Co. v. Hoffman*, 127 W. Va. 777, 779, 35 S.E.2d 84, 86 (1945) ("Whenever and if it is made to appear to the court that by reason of fraudulent or other unconscionable conduct, the [defendant] has lost his right to invoke a court of equity, the court will, on the motion of a party, or its own motion, wash its hands of the whole."). The problem with the majority's reasoning, however, is twofold. First, no party to this case had clean hands. As already stated, petitioner waited more than NINE YEARS to file the paperwork necessary for the circuit court to enter the order granting default judgment. When petitioners' original counsel finally got around to doing what he had been ordered to do, he submitted an inaccurate and inflated order that increased the damages in excess of a million dollars. The majority's reliance on the doctrine of unclean hands to resolve this matter in petitioners' favor turns a blind eye to the fact that petitioners' original counsel forfeited the right to claim petitioners' hands were clean nine years earlier when he failed to follow the court's direction and file the appropriate documents.

Secondly, and more critically, the majority's decision mistakenly focuses it clean hands analysis on the wrong time period and the wrong course of inaction. The circuit court did not apply laches to set aside the entry of default. Indeed, neither the circuit court nor the majority here disturbed the entry of default. Instead, the circuit court applied laches to the inexcusable delay of *petitioner* in obtaining *default judgment*.

While the majority mentions respondent's failure to respond to the motion for default judgment, the majority decision relies primarily on the inaction by respondent *prior to* the circuit court's finding of default in order to reach its conclusion that respondent had unclean hands:

> The record shows that respondent had knowledge or notice that petitioners were pursuing their claims arising from the death of their mother. The circuit court found respondent was properly served with petitioners' complaint. Furthermore, at least a dozen papers noting respondent's status as a defendant in petitioners' lawsuit (including a notice for respondent's deposition) were mailed to respondent.

These actions supporting the majority decision's unclean hands argument are *exactly why* the circuit court granted default judgment against respondent in the first instance and have absolutely no bearing on what petitioners' original lawyer failed to do after default was ordered. Yet, the majority decision concludes that the actions of respondent *prior to* the grant of default, which are

irrelevant to petitioners' subsequent efforts to obtain default judgment, somehow outweigh petitioners' undue and prejudicial delay in taking the necessary steps to obtain default judgment. Respondent has already been, in effect, "punished" for his inaction by having default entered against him. The majority would punish respondent a second time, while ignoring petitioners' inaction and delay, by precluding respondent from availing himself of a laches defense.[4]

Additionally, the majority decision states that it is "not aware of any legal authority permitting a judge to apply laches to a party based upon the litigation delay or misconduct of the party's lawyer *toward the judge.*" Such statement ignores that petitioner not only failed to follow the direction of the circuit judge to prepare the affidavit and order, but by doing so, also failed to follow the procedure set forth in Rule 55 of the West Virginia Rules of Civil Procedure. Indeed, the majority decision expressly states:

> The circuit court also noted that petitioners' original lawyer had failed, after the October 2010 hearing, to submit an affidavit that respondent was not incarcerated, an incompetent person, or an infant, as required by Rule 55. The circuit court refused to act further until Lawyer produced the affidavit, saying, "I really made this order contingent upon him filing an affidavit to that effect . . . He's never done that."

Moreover, in other contexts, the United States Supreme Court has plainly recognized that a lawyer's misconduct is directly imputed to the client:

> There is certainly no merit to the contention that dismissal of petitioner's claim because of his counsel's unexcused conduct imposes an unjust penalty on the client. Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'

Link v. Wabash R. Co., 370 U.S. 626, 633-34 (1962). We have also recognized that a lawyer's misdeeds are imputed to clients. *See generally Murray v. Roberts*, 117 W. Va. 44, 183 S.E. 688 (1936) (Plaintiff bears the impact of a misunderstanding with her attorney about filing certain papers and concluding that the court did not abuse its discretion in refusing to reinstate the case

[4] In light of the fact that petitioners' original counsel not only failed to timely file the affidavit and proposed default judgment order as directed by the circuit court, and ultimately filed an incorrect and untimely order nine years later that inflated the damages to be awarded by one million dollars, I am perplexed by the majority's statement "[t]o be clear, *we perceive that petitioners have proceeded with* '*clean hands*,' and so we find that, on this record, it was an abuse of discretion for the circuit court to apply the doctrine of laches and to use Rule 60(b) to preclude petitioners from pursuing a default judgment against respondents." (Emphasis added). The majority's finding that respondent lacked "clean hands," but that petitioner proceeded with "clean hands" is certainly not supported by the record before us.

because the showing made by the plaintiff was insufficient); *Bell v. Inland Mut. Ins. Co.*, 175 W.Va. 165, 173, 332 S.E.2d 127, 135 (1985) ("[C]ounsel's disregard of his professional responsibilities can lead to extinction of his client's claim" under West Virginia Rule of Civil Procedure 37.)

The facts in this case are clear. The circuit court properly determined that the entry of default was proper, and I concur with the majority's decision to affirm that holding. However, having obtained an entry of default, petitioners' original counsel failed to take the steps required to obtain a *default judgment* – including steps necessary to comply with Rule 55 and the express direction of the circuit court – for more than nine years. The circuit court did not err in finding that such undue delay was prejudicial to respondent and warranted the application of laches to preclude default judgment. Accordingly, I would affirm the order of the circuit court in this regard and, therefore, respectfully dissent from the majority's reversal of the circuit court as to the application of laches.