

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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RONNIE PRESCOTT, A SINGLE MAN,  
*Petitioner,*

*v.*

HON. HENRY G. GOODAY JR., JUDGE OF THE  
SUPERIOR COURT OF THE STATE OF ARIZONA,  
IN AND FOR THE COUNTY OF PINAL,  
*Respondent,*

*and*

JARREL IMAN GAINES,  
*Real Party in Interest.*

No. 2 CA-SA 2015-0001  
Filed February 27, 2015

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED FOR PERSUASIVE AUTHORITY.  
*See Ariz. R. Sup. Ct. 111(a)(3), (c); Ariz. R. Civ. App. P. 28(a)(2).*

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Special Action Proceeding  
Pinal County Cause No. CV201401818

**JURISDICTION ACCEPTED; RELIEF GRANTED**

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COUNSEL

Cole & Leal, P.A., Casa Grande  
By Joseph M. Leal III  
*Counsel for Petitioner*

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Righi Law Group, P.L.L.C., Phoenix  
By Chris H. Begeman  
*Counsel for Real Party in Interest*

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**DECISION ORDER**

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

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E C K E R S T R O M, Chief Judge:

¶1 In this special action proceeding, Ronnie Prescott asks us to reverse the respondent judge’s ruling granting Jarrel Gaines’s motion to set aside a default judgment entered against him. “An order vacating entry of default is not appealable; therefore, review by special action proceedings is appropriate.” *Richas v. Superior Court*, 133 Ariz. 512, 513, 652 P.2d 1035, 1036 (1982).

¶2 An entry of default or default judgment may be set aside upon “good cause shown.” Ariz. R. Civ. P. 55(c), 60(c). The moving party has the burden to establish one of the grounds for relief under Rule 60(c), prompt action to set aside the default, and a meritorious defense. *Richas*, 133 Ariz. at 514, 652 P.2d at 1037. In support of his claim that his failure to answer Prescott’s complaint was excusable, Gaines asserted only that he was imprisoned at the time of service and was unaware of the proceeding. Prescott had served the complaint, pursuant to Rule 4.1(d), Ariz. R. Civ. P., to a woman living at Gaines’s apparent pre-incarceration residence. Gaines claimed such service was insufficient.

¶3 “As a general matter, whether a particular place constitutes a usual place of abode gives rise to a question of fact.” *Argent Mortg. Co., LLC v. Huertas*, 953 A.2d 868, 873 (Conn. 2008). Under Arizona law, “substituted service at the defendant’s ‘usual place of abode’ must be at the place where the defendant normally actually resides so that service will be ‘substantially . . . likely to bring home notice’ to the party affected.” *Bowen v. Graham*, 140 Ariz. 593, 597, 684 P.2d 165, 169 (App. 1984), quoting *Mullane v. Central*

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*Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950). “No hard and fast rule can be fashioned to determine what is or is not a party’s ‘dwelling house or usual place of abode’ within the rule’s meaning; rather the practicalities of the particular fact situation determine whether service meets the requirements of [Rule 4.1(d)].” *Scott v. G. A. C. Fin. Corp.*, 107 Ariz. 304, 306, 486 P.2d 786, 788 (1971), quoting *Nowell v. Nowell*, 384 F.2d 951, 953 (5th Cir. 1967). When the defendant has received actual notice, the requirements of Rule 4.1(d) are to be construed broadly, and when he or she has not received notice, strictly. *Id.*

¶4 A trial court has broad discretion in making this determination, but it must have “some substantial evidence to support” its decision. *Richas*, 133 Ariz. at 514, 652 P.2d at 1037, quoting *Lynch v. Ariz. Enter. Mining Co.*, 20 Ariz. 250, 252, 179 P. 956, 957 (1919). On the record before us, Gaines did not present an affidavit supporting his claim that he had been incarcerated and had not received actual notice. Likewise, he did not present any other evidence relating to his incarceration, to the woman who had accepted service, or to how the residence at which service was made was not his “usual place of abode” in the sense that he intended to return there. See, e.g., *Shurman v. Atl. Mortg. & Inv. Corp.*, 795 So. 2d 952, n.1 (Fla. 2001) (noting majority of jurisdictions allow service at residence to which prisoner intends to return); *Grant v. Dalliber*, 11 Conn. 234, 238-39; 62B Am. Jur. 2d Process § 205. Thus, because the respondent judge lacked evidence from which to determine that service had been insufficient or that Gaines had shown good cause for his failure to answer, it abused its discretion in setting aside the default judgment.

¶5 We therefore accept special action jurisdiction and grant relief. The trial court’s ruling setting aside the default is vacated.