MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Meleeka Clary-Ghosh, *et al.*,
Appellants-Defendants,

v.

Michael Ghosh,
Appellee-Plaintiff.

September 18, 2023

Court of Appeals Case No. 22A-PL-1411

Appeal from the Hamilton Superior Court

The Honorable Jonathan M. Brown, Judge

Trial Court Cause No. 29D02-1707-PL-6437

Memorandum Decision by Judge Riley.
Chief Judge Altice and Judge Pyle concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] In this consolidated appeal, Appellants-Defendants, Meleeka Clary-Ghosh[1] (Meleeka), MCM Fashions, LLC (MCM), Andrew Clary, Jr. (Andrew), and Luke Tooley, Jr. (Tooley) (collectively, the Defendants),[2] appeal the trial court's judgment in favor of Appellee-Plaintiff, Michael Ghosh (Ghosh), on his claims pursuant to the Indiana Uniform Fraudulent Transfer Act (UFTA).

[2] We affirm in part and reverse in part.

ISSUES

[3] The Defendants present this court with at least twenty-one separate claims, which we consolidate and restate as the following eight claims:

(1) Whether the trial court improperly denied Meleeka's and MCM's joint motion to dismiss for failure to state a claim;

(2) Whether the trial court's judgment as to Meleeka is clearly erroneous;

(3) Whether the trial court abused its discretion when it awarded punitive damages against Meleeka and MCM;

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[1] Meleeka was previously represented on appeal by attorney Mark Small, who formally withdrew his appearance after briefing was completed.

[2] Judgment was also entered against TCD Productions, LLC (TCD). TCD does not participate in this appeal.

(4) Whether the trial court abused its discretion when it ordered Meleeka and MCM to pay Ghosh's attorney's fees;

(5) Whether genuine issues of material fact existed precluding summary judgment in favor of MCM;

(6) Whether the trial court's judgment as to MCM is clearly erroneous;

(7) Whether Andrew and Tooley are procedurally defaulted from raising certain claims following this court's affirmance of the default judgments entered against them; and

(8) Whether Tooley's claim that he was entitled to a change of venue in related receivership proceedings is moot.

FACTS AND PROCEDURAL HISTORY

[4] Pursuant to our standard of review, we recite the facts most favorable to the trial court's judgment. Meleeka and Ghosh were formerly married. Andrew is Meleeka's brother, and Tooley is the father of Meleeka's two adult children who were born before she married Ghosh. This is the fourth appeal stemming from Ghosh's efforts to collect judgments he obtained against Meleeka in their divorce proceedings, which began on August 13, 2009, when Ghosh filed a petition for dissolution. The divorce proceedings were protracted and resulted in the entry of multiple judgments in Ghosh's favor against Meleeka, only five of which are relevant for our purposes. Those five judgments (the Judgments) totaled $36,600.91 and were entered as follows: (1) October 3, 2011, in the amount of $2,235.84; (2) October 3, 2011, in the amount $1,484.73; (3) October

3, 2011, in the amount of $1,880.34; (4) October 26, 2016, in the amount of $17,000.00 and (5) February 27, 2018, in the amount of $14,000.00. The Judgments accrued post-judgment interest of eight percent per year.

[5] On November 15, 2011, while the divorce proceedings were ongoing, Meleeka incorporated MCM with the Indiana Secretary of State. MCM was in the business of retail sales of women's clothing. In its incorporation filings, Meleeka was listed as MCM's registered agent, and Meleeka's personal residence was listed as MCM's principal office address. On August 14, 2013, articles of amendment were filed with the Indiana Secretary of State providing that Andrew and Tooley were members of MCM. On March 15, 2018, MCM was dissolved. From its inception on November 15, 2011, until its dissolution on March 15, 2018, MCM filed no state or federal tax returns and observed few corporate formalities. During MCM's existence, there were no amendments to its operating agreement or any other resolutions or documentation which provided Meleeka the authority to engage in business on behalf of MCM.

[6] During the corporate life of MCM and while the divorce proceedings were ongoing, Meleeka effectuated a series of transfers of vehicles to MCM. On July 11, 2013, she transferred a 2000 Mercedes Benz CLK 430 to MCM for $1.00 and a 2006 Suzuki AN400K3 motorcycle to MCM for $1.00. Also on July 11, 2013, Meleeka transferred a 2001 Mercedes Benz S500 to MCM for $1.00; this vehicle was subsequently traded in on May 2, 2015, in MCM's name for a 2007 BMW 750i. On July 23, 2013, Meleeka transferred a 2002 Chevrolet Venture to MCM for $1.00. Meleeka signed on behalf of MCM as the purchaser for all

these transfers. On November 6, 2014, Meleeka signed as the agent of MCM for the acquisition of a 2000 Dodge Durango and signed as MCM's agent when the Durango was traded in on April 27, 2015, for a 2005 Lexus GX 470.

[7] Ghosh pursued proceedings supplemental against Meleeka in the divorce case but was unsuccessful in satisfying the Judgments he then held against her. On July 11, 2017, Ghosh filed his Verified Complaint to Set Aside Fraudulent Transfers and Piercing the Corporate Veil/Alter Ego (the Complaint) that is the basis of the instant appeal. Ghosh named Meleeka and MCM as defendants and alleged that, in violation of the UFTA, Meleeka had fraudulently transferred the aforementioned vehicles to MCM, without receiving a reasonably equivalent value in exchange and that she had done so with the actual intent to prevent Ghosh from enforcing the Judgments and to make herself insolvent or appear to be insolvent. Ghosh also claimed that Meleeka had titled other vehicles in MCM's name. Ghosh further alleged that MCM was the alter ego of Meleeka and requested that MCM's corporate veil be pierced. Ghosh sought an order voiding the transfer of the vehicles to MCM and subjecting the vehicles to seizure to satisfy the Judgments, an injunction prohibiting Meleeka and MCM from further disposing of the vehicles, discovery of the assets of Meleeka and MCM, the appointment of a receiver for the vehicles and other assets owned by Meleeka and MCM, costs and reasonable fees, and any other appropriate relief.

[8] On February 23, 2018, Ghosh propounded discovery requests to MCM. On March 8, 2018, the Tooley Revocable Trust (Tooley Trust) was created. On

March 15, 2018, the same day that MCM was dissolved, Tooley transferred the 2000 Mercedes Benz CLK 430, the 2006 Suzuki AN400K3 motorcycle, the 2002 Chevrolet Venture, the 2007 BMW 750i, and the 2005 Lexus GX 470 to the Tooley Trust. To effectuate these transfers, Meleeka signed affidavits for certificates of title on behalf of MCM as agent or trustee, and she signed the certificates of gross retail and/or use tax exemptions on behalf of the Tooley Trust as its agent. The transfer of these five vehicles to the Tooley Trust was made for no consideration. MCM did not disclose these transfers to Ghosh in response to his written discovery requests; rather, MCM informed Ghosh the vehicles had been transferred to Tooley.

[9] On May 31, 2018, MCM filed a motion for summary judgment with an accompanying memorandum of law and designation of evidence. MCM argued that there were no genuine issues of material fact that its corporate veil could not be pierced because Meleeka was not an owner or member of MCM, Ghosh already held personal judgments against Meleeka, and Ghosh had never transacted business with MCM. On June 26, 2018, the trial court stayed the summary judgment proceedings pending further discovery.

[10] On July 8, 2018, Tooley incorporated TCD using an email address associated with MCM as its service of process and business address. TCD was apparently the corporate vehicle for the production of a movie written, directed, and starring Meleeka.

[11] On August 16, 2018, Meleeka and MCM filed a joint motion to dismiss, which they substituted for an amended motion on August 21, 2018. Meleeka and MCM argued, in relevant part, that because Ghosh sought to enforce the Judgments, his instant cause of action could only be brought as an Indiana Trial Rule 69 proceeding supplemental to the divorce proceedings, not as a new, unrelated lawsuit. On August 21, 2018, the trial court held a hearing on the amended motion to dismiss and issued its order concluding that Ghosh had asserted a "new and distinct cause of action against the Defendants" such that pursuing his claims against the Defendants in a proceeding supplemental in the divorce proceedings might not be appropriate. (Joint App. Vol. II, p. 54). The trial court ruled that Ghosh had stated a claim upon which relief could be granted and denied Meleeka's and MCM's joint amended motion to dismiss.

[12] On August 27, 2018, after receiving third-party discovery, Ghosh moved for leave to amend the Complaint to add Andrew, Tooley, and TCD as defendants. Ghosh re-asserted the Complaint's allegations and additionally alleged in his Amended Complaint that Andrew and Tooley were corporate members of MCM who were personally liable for the Judgments. Ghosh further alleged that, as a result of the Defendants' combined conduct, he had sustained "additional financial losses, including the costs, expenses, and attorney's fees associated with the Defendants' violations of the [UFTA.]" (Joint App. Vol. III, p. 118). Ghosh sought $84,567.13 in compensatory damages, requested that he be awarded punitive damages, costs, reasonable attorney's fees, any appropriate injunctive relief, and any other appropriate relief. Meleeka and

MCM opposed the amendment, but on January 3, 2019, the trial court granted Ghosh's motion to file his Amended Complaint to add the new defendants.

[13] After filing his Amended Complaint, on March 15, 2019, Ghosh filed separate motions seeking default judgments against all the Defendants. Days after the filing of the motions for default judgment, Meleeka and MCM answered the Amended Complaint and subsequently filed their opposition to default judgment being entered. Andrew and Tooley did not answer either the Complaint or the Amended Complaint. On May 1, 2019, the trial court entered default judgments against Andrew and Tooley and ordered them to each pay Ghosh $84,567.13 in compensatory damages plus interest, $75,000 in punitive damages plus interest, costs of the action, and reasonable attorney's fees. On December 4, 2019, after a hearing on costs and attorney's fees, the trial court entered an additional award of $3,600.25 against Andrew and Tooley, who both subsequently filed limited appearances and motions seeking to vacate the default judgments pursuant to Indiana Trial Rule 60(B)(6) and to dismiss the Amended Complaint pursuant to Indiana Trial Rule 12(B)(5). Andrew and Tooley argued that Ghosh had failed to properly serve them with summons, thereby depriving the trial court of personal jurisdiction over them and rendering the default judgments void. On July 2, 2019, and on December 19, 2019, the trial court denied Tooley's and Andrew's motions, respectively.

[14] Andrew and Tooley appealed the denial of their motions to vacate the default judgments against them. Both offered essentially the same arguments for reversal, namely, that they had not been properly served, the default judgments

should have been set aside because the allegations of the Amended Complaint could not support the entry of the default judgment, and the evidence was insufficient to pierce MCM's corporate veil. On May 15, 2020, this court affirmed the trial court's denial of Tooley's motions to vacate the default judgment and to dismiss the Amended Complaint in a memorandum opinion, *Clary-Ghosh v. Ghosh*, No. 19A-PL-1541, 2020 WL 2503929 (Ind. Ct. App. May 15, 2020). The Court held that Ghosh had properly served Tooley under Indiana Trial Rule 4.1(A)(3), the certificate of issuance of summons was properly entered in the chronological case summary, and that Tooley had waived his additional grounds for setting aside the default judgment by not raising them in his motion to vacate. As a result, the Court concluded that the default judgment had been properly entered against Tooley. On August 6, 2020, this court also affirmed the trial court's denial of Andrew's motions to set aside the default judgment and to dismiss the Amended Complaint based on essentially the same rationales in a memorandum opinion, *Clary v. Ghosh*, No. 20A-PL-67, 2020 WL 4516767 (Ind. Ct. App. August 6, 2020).

[15] While the appellate litigation regarding the default judgments against Andrew and Tooley was unfolding, proceedings concerning the appointment of a receiver were also underway. On May 22, 2019, Ghosh petitioned for the appointment of a receiver over the assets of Tooley, the Tooley Trust, Andrew, and TCD, and the trial court set a hearing on the petition for July 18, 2019. The receivership proceedings were delayed when Meleeka filed bankruptcy proceedings on July 17, 2019. On December 3, 2019, the trial court held a

hearing on Ghosh's receivership petition. After the hearing, the trial court granted Ghosh's request and appointed a receiver over the assets of TCD and Andrew. Tooley appealed, and on June 29, 2020, this court issued its memorandum decision reversing the appointment of the receiver due to the fact that Tooley had not been provided with adequate notice of the December 3, 2019, hearing. We remanded for a new hearing on Ghosh's receivership petition "as it applies to Tooley" and of which Tooley was to be provided notice. *Tooley v. Ghosh*, No. 19A-PL-3016, 2020 WL 3495297 at *6 (Ind. Ct. App. June 29, 2020).

[16] On August 7, 2020, upon remand from his appeal of the appointment of a receiver, Tooley filed a motion for a change of venue pursuant to Indiana Trial Rule 76(C)(3), which Ghosh opposed on August 10, 2020. At the conclusion of his argument in opposition, Ghosh stated that, in order to obviate any uncertainty over whether Rule 76(C)(3) permitted a change of venue on remand, Ghosh notified the trial court that he would not pursue the appointment of a receiver as to Tooley. On August 10, 2020, Tooley amended his petition for venue change. On August 25, 2020, the trial court summarily denied Tooley's motion for change of venue. The chronological case summary of the underlying cause does not indicate that Ghosh ever sought the appointment of a receiver over Tooley's assets.

[17] In October 2020, the parties restarted the proceedings on MCM's motion for summary judgment. On October 16, 2020, Ghosh filed his response in opposition to summary judgment and designation of evidence. No hearing was

held on MCM's summary judgment motion. On December 28, 2020, the trial court issued its summary order denying MCM's motion for summary judgment.

[18] On December 6, 2021, the trial court convened a two-day bench trial on Ghosh's Amended Complaint. Only Ghosh testified at trial. The evidence showed that Meleeka paid the registration fees and insurance premiums for the transferred vehicles from bank accounts in her name or using bank accounts to which she had access. After their transfer, insurance statements for the vehicles were sent to Meleeka's home address. Ghosh had seen Meleeka in possession of most of the vehicles after they had purportedly been transferred to other entities. Documents from Tooley's 2019 bankruptcy proceedings in Massachusetts that were admitted into evidence showed that he had stated under oath that he had transferred five of the vehicles to the Tooley Trust to avoid collection by Ghosh. Evidence was also admitted showing that MCM was largely bereft of corporate record keeping and was undercapitalized, Meleeka had established bank accounts in MCM's name in which she comingled her money with MCM's and which she used to pay her personal expenses, Meleeka had listed MCM as her employer in a 2015 credit application, and that Meleeka had executed purchase agreements and initiated a lawsuit on MCM's behalf. Ghosh also showed that, since October 12, 2011, Meleeka had filed for either Chapter 7 or Chapter 13 bankruptcy protection on three occasions. Ghosh's attorney had his fee affidavit entered into evidence and made representations to the trial court pertaining to his hourly fee and additional hours he had incurred preparing for and conducting the trial.

Following the presentation of the evidence, Meleeka requested that the trial court enter Indiana Trial Rule 52 special findings.

[19] On April 1, 2022, the trial court issued its judgment in favor of Ghosh. In support of its judgment, the trial court entered 101 findings of fact and conclusions thereon, including the following:

> 55. From the evidence presented, it appears [Meleeka] has retained possession or control of at least one of the [v]ehicles over the past several years, despite the [v]ehicles being transferred to other entities or individuals. Ghosh and [Meleeka] have been involved in litigation since the time of their divorce under various causes of action. No evidence was presented showing the significance of the assets transferred in relation to all assets owned by [Meleeka], and in fact, [Meleeka] filed for bankruptcy protection under Chapter 7 and Chapter 13 since the decree of dissolution and other judgments were entered. [Meleeka] and MCM did not present any evidence indicating the value given for the transferred assets was approximately close to fair market value. [Meleeka] declared herself to be insolvent with the filing of the bankruptcy petitions.
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> 56. Though many of the transfers occurred prior to the instant litigation, the transfers occurred after the dissolution decree was entered.
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> * * * *
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> 77. Said [v]ehicles have and continue to be possessed and used exclusively by [Meleeka].
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> 78. Tooley transferred the vehicles in order to avoid collection from Ghosh.

* * * *

> 96. Here, [Meleeka] effectuated the transfer of the [v]ehicles from MCM to the Tooley Trust on March 15, 2018, while this case was pending. The transfer of the [v]ehicles and dissolution of MCM occurred shortly after discovery requests were sent by Ghosh to MCM. The transfer of the [v]ehicles left MCM insolvent. The transfer of the [v]ehicles from MCM to a trust in the name of Tooley, father of two children shared with [Meleeka], were for no consideration. Finally, [Meleeka] has maintained and continues to maintain personal control over the transferred [v]ehicles for her own use and benefit.
>
> 97. Other factors that are considered by a court when determining fraudulent intent consist of: [MCM's] lack of corporate formalities followed, failure to file tax returns, lack of corporate meetings, lack of corporate minutes and notes and concealment of the transfers.
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> 98. Here, MCM provided no documentation which demonstrated that it followed any of the corporate formalities of filing tax returns, conducting meetings, maintaining minutes or notes, etc. In addition, in MCM's response to Ghosh's discovery, it concealed the transfers of the [v]ehicles by stating that they were to Tooley, when in fact they were to a trust established prior to the dissolution of MCM. It was only after obtaining discovery from a non-party, the BMV, that the true nature of the transfers was revealed.

(Joint App. Vol. II, pp. 64, 66, 70-71) (record citations omitted). The trial court found that Ghosh had met his burden of proof that the transfers of the vehicles from Meleeka to MCM and from MCM to the Tooley Trust were fraudulent and were done with the purpose of frustrating Ghosh's ability to collect the

Judgments from Meleeka. The trial court further concluded that Ghosh had shown that MCM was the alter ego of Meleeka such that MCM's corporate veil would be pierced.

[20] As relief, the trial court voided the transfers of the vehicles and ordered that the vehicles were to be turned over to the Hamilton County Sheriff's Department for sale, with the net proceeds to be applied to satisfy its judgment. The trial court ordered Meleeka and MCM to pay Ghosh $31,000 in punitive damages, jointly and severally. In addition, the trial court awarded Ghosh $31,000 in attorney's fees, to be paid by Meleeka and MCM jointly and severally.

[21] On May 2, 2022, the Defendants filed a joint motion to correct error which they amended on May 11, 2022. The Defendants argued Ghosh's cause of action and recovery were barred by Meleeka's multiple bankruptcy proceedings; the award of actual damages was erroneous because the UFTA limited the amount to the lesser of the value of the transferred assets or Ghosh's claims; Ghosh had failed to prove the value of the transferred assets as required by the UFTA; the judgments entered against the Defendants were improperly inconsistent because those entered against Meleeka and MCM were joint and several while the judgments entered against Andrew and Tooley were not; the trial court did not state an adequate basis for its calculation of punitive damages; and the trial court's award of attorney's fees was improper because the UFTA does not provide for an award of attorney's fees. On May 26, 2022, the trial court held a hearing on the Defendants' motion. On June 15, 2022, the trial court denied the motion to correct error as to Meleeka and MCM without entering findings

of fact and conclusions thereon. The trial court ordered the motion to correct arguments offered by Andrew and Tooley to be stricken as untimely.

[22] The Defendants now appeal.[3] Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Meleeka's Claims

I. *Joint Motion to Dismiss*

[23] Meleeka contends that the trial court improperly denied the joint motion to dismiss the Complaint[4] for failure to state a claim upon which relief could be granted. A motion under Rule 12(B)(6) merely tests the sufficiency of the plaintiff's claim and not the facts supporting the claim. *Bellwether Props., LLC v. Duke Energy Ind., Inc.*, 87 N.E.3d 462, 466 (Ind. 2017). We conduct our review of such matters de novo. *Residences at Ivy Quad Unit Owners Ass'n v. Ivy Quad Dev., LLC*, 179 N.E.3d 977, 981 (Ind. 2022). As part of our de novo review, we take the facts alleged in the complaint as true, consider all the allegations of the complaint in the light most favorable to the non-moving party, and draw every reasonable inference in the non-moving party's favor. *Id*. Ultimately, our task is to determine whether the non-movant has alleged some factual scenario in which a legally actionable injury has occurred. *Id*. We may affirm a trial

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[3] On July 22, 2022, the motions panel of this court consolidated the Defendants' four separate appeals into the instant appeal.

[4] Meleeka and MCM did not reassert their motion to dismiss after Ghosh filed his Amended Complaint.

court's Rule 12(B)(6) dismissal of a complaint "if it is sustainable on any basis in the record." *Thornton v. State*, 43 N.E.3d 585, 587 (Ind. 2015).

[24] The gravamen of Meleeka's argument is that Ghosh's Complaint sought to enforce the Judgments procured in their divorce proceedings, and, therefore, that he was required to bring his UFTA claims as a Trial Rule 69 proceedings supplemental instead of filing a new cause of action. This argument implicates Trial Rule 69(E) (Execution, Proceedings Supplemental to Execution, Foreclosure Sales), which provides that "[n]otwithstanding any other statute to the contrary, proceedings supplemental to execution may be enforced by verified motion or with affidavits in the court where the judgment is rendered[.]" Proceedings supplemental must be brought in the trial court that issued the underlying judgment. *See Borgman v. Aikens*, 681 N.E.2d 213, 217 (Ind. Ct. App. 1997) (observing that despite the use of the word "may" in Rule 69(E), the Civil Code Study Commission interpreted the rule to specifically mean that the court rendering the underlying judgment retains jurisdiction over a proceedings supplemental), *trans. denied*.

[25] This court rejected the same argument made by Meleeka in *Rice v. Commissioner, Indiana Department of Environmental Management*, 782 N.E.2d 1000 (Ind. Ct. App. 2003). After continued regulatory violations and violations of an injunction IDEM had obtained against Rice, who was the operator of three small water and sewer utilities, Rice and the utilities were found to be in contempt and were ordered to pay more than $121,336 in civil penalties, for which they were held jointly and severally liable. *Id*. at 1001-02. Rice had

transferred thirty-nine residential lots in a Huntington County subdivision to Cal.-Ind., a company owned solely by Rice's son, for one dollar. *Id*. at 1002. IDEM filed a Complaint to Avoid Fraudulent Conveyances pursuant to the UFTA in Huntington County and procured a judgment against Rice and his co-defendants. *Id*. A year and a half later, Rice and his co-defendants moved to set aside the Huntington County judgment, arguing that the Huntington County trial court lacked subject matter jurisdiction because IDEM was required pursuant to Trial Rule 69 to bring their action as a proceedings supplemental that could only be heard by the Allen County trial court that issued the underlying judgment. *Id*. at 1003. The trial court denied their motion to set aside, and, on appeal, we affirmed the trial court. *Id*. at 1005. After comparing a proceedings supplemental and an action brought under the UFTA and examining the cases that have analyzed the propriety of filing either a proceedings supplement or a separate fraudulent conveyance action, we concluded that a proceedings supplemental and a separate UFTA cause of action "are both equitable remedies available to frustrated creditors, such as IDEM in the present action." *Id*.

[26] Meleeka acknowledges *Rice* but asserts that our decision predates an Indiana supreme court decision with which it conflicts, *Rose v. Mercantile National Bank of Hammond*, 868 N.E.2d 772 (Ind. 2007). In *Rose*, creditor Mercantile initiated a proceedings supplemental against two shareholders of the debtor corporation in which it alleged fraudulent transfers based on the fact that the debtor corporation had been sold to a third party approximately one month after the

underlying judgment was entered. *Id*. at 773-74. Mercantile later amended its proceedings supplemental to bring a claim pursuant to the Crime Victims' Compensation Act (CVCA). *Id*. at 774. The trial court entered summary judgment for Mercantile and awarded treble damages and attorney's fees. *Id*. at 774-75. Our supreme court noted that "judgment creditors commonly invoke proceedings supplemental to bring fraudulent transfer actions" but concluded that Mercantile's filing of the CVCA claim seeking new damages did not fit the purpose for proceedings supplemental because "[p]roceedings supplemental are appropriate only for actions to enforce and collect existing judgments, not to establish new ones." *Id*. at 776-77. Therefore, the *Rose* court concluded that the trial court had incorrectly allowed Mercantile to add the CVCA claim, observing that

> [w]e think it prudent policy that any action to assist in collection of an original judgment, i.e. a proceeding supplemental, must be filed under the same cause number as the original action. Conversely, any action that may result in imposition of a new judgment should be filed under a new cause number.

Id. at 777.

[27] We discern no conflict between *Rice* and *Rose*. While *Rose* approved of bringing fraudulent conveyance claims in a proceedings supplemental, the *Rose* court did not hold that a judgment creditor *must* bring fraudulent conveyance claims through a proceedings supplemental. We also observe that, here, Ghosh sought to pierce MCM's corporate veil, which is a different type of claim than one simply attempting to collect on a previously-entered judgment. *See Reed v. Reid*,

980 N.E.2d 277, 301 (Ind. 2012) (holding that to pierce the corporate veil is to disregard the corporate entity to prevent fraud or injustice to third parties). A United States District Court of Southern Indiana decision examining *Rose* concluded that, while Indiana courts and federal courts applying Indiana law had assumed that a corporate veil piercing claim could be brought through a proceedings supplemental, such a claim is extremely fact-sensitive, requires a full trial on the merits, and is not sufficiently like the in rem fraudulent transfer theory in *Rose* to permit its adjudication as part of a proceedings supplemental, which is meant to be an expedited procedure limited in scope. *See Houston v. C.G. Sec. Servs., Inc.*, No. 1:12-cv-00328-WTL-DML, 2018 WL 7133584 at *2 (S.D. Ind. May 3, 2018) (denying judgment creditor Houston's motion to pierce C.G.'s corporate veil and concluding that Houston must litigate her claim through a new complaint under a new cause number). We find this reasoning persuasive as to the benefits, but not the necessity, of bringing a new cause of action in UFTA claims involving piercing the corporate veil. Therefore, we find no error in the trial court's denial of the joint motion to dismiss.

II. *Sufficiency of the Evidence*

[28] Meleeka challenges the evidence supporting the trial court's judgment. At Meleeka's request, the trial court entered Indiana Trial Rule 52(A) special findings of fact and conclusions thereon. Therefore, we deploy a two-tiered standard of review in which we will affirm if the evidence supports the findings and the findings support the judgment. *Wysocki v. Johnson*, 18 N.E.3d 600, 603 (Ind. 2014). When conducting our review, we neither reweigh the evidence,

nor do we reassess the credibility of the witnesses. *Marion Cnty. Auditor v. Sawmill Creek, LLC*, 964 N.E.2d 213, 216 (Ind. 2012). We consider the evidence most favorable to the judgment, with all reasonable inferences drawn in favor of the judgment. *Stout v. Underhill*, 734 N.E.2d 717, 719 (Ind. Ct. App. 2000), *trans. denied*. We will not set aside the trial court's findings or judgment unless they are clearly erroneous. *Wysocki*, 18 N.E.3d at 603. Findings of fact are clearly erroneous only where they enjoy no factual support in the record, and a judgment is clearly erroneous if it applies an incorrect legal standard to properly-found facts. *Id*.

[29] Meleeka's first challenge to the evidence is a one-sentence argument: "The Indiana Court of Appeals and the Madison Circuit Court have issued orders that affect the sums involved in arrearages, and [Ghosh] could be without a debt upon which to base this action." (Meleeka's Br. p. 18). In contravention to Appellate Rule 46(A)(8)(a), Meleeka does not support this argument with any citations to the record or even specify what orders issued by the courts form the basis of her argument. Without more, we cannot conclude that this argument is anything but conjecture, and we do not address it further.

[30] Meleeka also argues that, in order to recover, Ghosh was required under the UFTA to prove the specific value of the fraudulently transferred vehicles but that he did not. Meleeka directs our attention to the UFTA's subsection 32-18-2-18(b)(1), which provides as follows:

> Except as otherwise provided in this chapter, the creditor may recover judgment for the value of the asset transferred . . . or the

> amount necessary to satisfy the creditor's claim, whichever is less.

[31] Meleeka's argument on this point is also cursory in nature, as she simply asserts that it was Ghosh's "burden to establish a value for each of the vehicles he alleged were fraudulently transferred. He presented no such evidence." (Meleeka's Br. p. 18). In this section of her argument, Meleeka sites an Indiana Southern District decision, *Walro v. Hatfield*, No. 1:16-cv-03053-RLY-DML, 2017 WL 2772335 at *17-18 (S.D. Ind. June 27, 2017). However, that decision does not contain pages "*17-18" because it is only thirteen pages long, and the decision does not discuss this issue. *See id*. We conclude that Meleeka has waived this argument by failing to support it with cogent legal authority. *See* Ind. App. Rule 46(A)(8)(a); *see also Wilkes v. Celadon Grp.*, 177 N.E.3d 786, 790 (Ind. 2021) ("To avoid waiver on appeal, a party must develop a cogent argument.").

[32] Meleeka's last challenge to the evidence supporting the judgment is that Ghosh failed to prove that she transferred the vehicles with the requisite intent. In order to prevail on a UFTA claim as alleged in the Amended Complaint, a plaintiff must prove by a preponderance of the evidence that the debtor made the transfer "with actual intent to hinder, delay, or defraud any creditor of the debtor[.]" Ind. Code § 32-18-2-14(a)(1); (c). The UFTA further provides that, in determining whether the debtor acted with fraudulent intent, a fact-finder may consider "among other factors," whether

> (1) the debtor retained possession or control of the property transferred after the transfer;
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> (2) the transfer or obligation was disclosed or concealed;
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> (3) before the transfer was made or the obligation was incurred, the debtor had been sued or threatened with suit;
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> (4) the transfer was of substantially all the debtor's assets;
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> (5) the debtor absconded;
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> (6) the debtor removed or concealed assets;
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> (7) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
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> (8) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred; and
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> (9) the transfer occurred shortly before or shortly after a substantial debt was incurred.

I.C. § 32-18-2-14(b). None of these factors is determinative of fraudulent intent, and "there is no set formula or threshold number of factors that warrant a finding of fraudulent intent." *Shri Rukmani Balaji Mandir Trust v. Michigan City*, 170 N.E.3d 247, 254 (Ind. Ct. App. 2021). The trier of fact must consider the evidence as a whole and within the context of the case to determine if fraudulent intent exists. *Id*.

[33] Here, after Ghosh had initiated acrimonious divorce proceedings against Meleeka, she incorporated MCM and transferred several vehicles to the

corporation, despite its business being the retail sale of women's clothing.[5] These transfers were made for nominal consideration. While the instant case was pending and less than a month after Ghosh had served discovery requests on MCM, Meleeka effectuated the transfer of vehicles from MCM to the Tooley Trust. The transfer of the vehicles to the Tooley Trust were concealed by Meleeka's alter ego, MCM, when MCM responded to Ghosh's discovery requests. Tooley admitted in his bankruptcy proceedings that the transfers from MCM to the Tooley Trust were done to frustrate Ghosh's attempts to collect, and Meleeka presented no evidence at trial, let alone any evidence tending to show a non-fraudulent reason for these transfers. After the transfers, as shown by Ghosh's testimony, Meleeka continued to personally use the vehicles, and she paid for their registration and insurance. Meleeka sought bankruptcy protection in 2011, 2019, and 2020, and, as a result, held herself out to be insolvent. With this evidence, Ghosh proved at least factors (1), (2), (3), and (8), as enumerated in the UFTA. We conclude that, considering the evidence as a whole and within the context of the divorce proceedings, as well as Ghosh's protracted efforts to collect against Meleeka, the trial court's conclusion that Meleeka made the transfers at issue with "with actual intent to

[5] In 2014 and 2015, Meleeka filed three certificates of assumed business names with the Indiana Secretary of State which indicated that MCM assumed the names of MCM Limousines LLC, MCM Limousine's/Transportation's LLC, and Peppy Limo Trans. There is no evidence in the record that MCM ever engaged in providing transportation services.

hinder, delay, or defraud" Ghosh and his attempts to collect the Judgments was not clearly erroneous. I.C. § 32-18-2-14(a)(1); *Wysocki*, 18 N.E.3d at 603.

[34] Despite the evidence supporting the trial court's judgment, Meleeka contends that there was insufficient evidence that she had retained control or possession of the vehicles after the transfers. Meleeka supports this argument with citations to Ghosh's testimony that he had not seen some of the vehicles at issue for two or three years, and, indeed, that he had never seen two of the vehicles. However, Ghosh had observed three of the vehicles at issue in Meleeka's possession within the week before trial, his testimony that she possessed several of the vehicles two or three years prior to trial was still evidence that she possessed them after the fraudulent transfers, and Ghosh also showed Meleeka's continued control over the vehicles through evidence that she paid for their registration and insurance. Meleeka's argument is unpersuasive, as it requires us to reweigh the evidence and to consider evidence that does not support the trial court's judgment, which is contrary to our standard of review. *Marion Cnty. Auditor*, *LLC*, 964 N.E.2d at 216; *Stout*, 734 N.E.2d at 719.

[35] The remainder of Meleeka's argument consists of listing each of the factors enumerated in Indiana Code section 32-18-2-14(b) and stating that Ghosh presented no evidence to prove each factor. We are not persuaded by this argument, as it does not address the evidence which we have already concluded supports the trial court's finding of fraudulent intent on Meleeka's part, and it ignores the fact that the determination of intent under the UFTA is not formulaic and does not require evidence on each of the enumerated factors.

Shri Rukmani Balaji Mandir Trust, 170 N.E.3d at 254. Accordingly, we do not disturb the trial court's judgment.

III. *Punitive Damages Under the UFTA*

[36] Meleeka next contends that the trial court erred when it awarded Ghosh punitive damages. Meleeka's challenge is two-fold. She argues that the UFTA's purpose is to remove obstacles to the collection of a judgment and that punitive damages are inconsistent with that goal. Meleeka further contends that the trial court did not sufficiently explain its rationale for imposing punitive damages in this case. We address each of these arguments in turn.

[37] It does not appear that any Indiana court or any federal court applying Indiana law has determined whether punitive damages are permitted under the UFTA. Inasmuch as resolution of this issue requires us to interpret the UFTA, those are matters that we review de novo. *Service Steel Warehouse Co., L.P. v. U.S. Steel Corp.*, 182 N.E.3d 840, 842 (Ind. 2022). When we engage in statutory construction, our goal is to discern and give effect to the legislature's intent in enacting the statute. *Holcomb v. Bray*, 187 N.E.3d 1268, 1285 (Ind. 2022). "We examine the statute as a whole, avoiding interpretations that depend on selective reading of individual words that lead to irrational and disharmonizing results." *Lake Imaging, LLC v. Franciscan Alliance, Inc.*, 182 N.E.3d 203, 207 (Ind. 2022). Our starting point is the language of the statute itself, and we first determine whether a statute is clear and unambiguous. *Holcomb*, 187 N.E.3d at 1285. When faced with an unambiguous statute, we need not apply any rules of construction, and we simply accord words their plain meaning. *Ind. Off. of*

Utility Consumer Counselor v. S. Ind. Gas & Elec. Co., 200 N.E.3d 915, 919 (Ind. 2023).

[38] Our supreme court discussed the nature of punitive damages in depth in *Cheatham v. Pohle*, 789 N.E.2d 467, 471 (Ind. 2003), and observed that "[t]he purpose of punitive damages is not to make the plaintiff whole or to attempt to value the injuries of the plaintiff." Rather, punitive damages "have historically been viewed as designed to deter and punish wrongful activity. As such, they are quasi-criminal in nature." *Id*. The *Cheatham* court also recognized that "state legislatures have broad discretion in authorizing and limiting the award of punitive damages, just as they do in fashioning criminal sanctions" and observed that our General Assembly could have eliminated punitive damages entirely, as other states have done, but that our legislature has chosen to take a middle ground by retaining the possibility of punitive damages and their potential to punish defendants while also placing restrictions on the amount a plaintiff may benefit from the award.[6] *Id*.

[39] In Indiana, punitive damages are a creation of common law. *Andrews v. Mor/Ryde Intern., Inc.*, 10 N.E.3d 502, 505 (Ind. 2014); *Erie Ins. Co. v. Hickman*,

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[6] Indiana Code section 34-51-3 et seq. applies to the award of punitive damages in a civil action. The statute requires that a plaintiff must prove by clear and convincing evidence all the facts relied upon to support the award of punitive damages. I.C. § 34-51-3-2. The statute further limits the amount that may be awarded to not more than three times the amount of compensatory damages or $50,000, and it mandates that seventy-five percent of any punitive damages award be allocated to the State for deposit into the violent crimes victims compensation fund. I.C. § 34-51-3-4; -6. The punitive damages statute does not specifically address the UFTA.

605 N.E.2d 161, 162 (Ind. 1992) (approving of a jury instruction on punitive damages that the jury could make the award if it found by clear and convincing evidence that the defendant "acted with malice, fraud, gross negligence or oppressiveness which was not the result of a mistake of fact or law, honest error or judgment, overzealousness, mere negligence, or other human failing" such that the imposition of punitive damages would "serve to punish the defendant and to deter it and others from like conduct in the future"). The UFTA incorporates principles of common law into the statute. I.C. § 32-18-2-20 ("Unless superseded by this chapter, the principles of law and equity . . . supplement this chapter.").

[40] The UFTA's remedies provision provides that a creditor bringing successful claims may obtain a host of types of relief, including avoidance of the fraudulent transfer or obligation, attachment against the transferred asset, an injunction against further disposition of the debtor's assets, and the appointment of a receiver. I.C. § 32-18-2-17(1)-(3). The UFTA's remedies provision also states that "[s]ubject to applicable principles of equity and in accordance with applicable rules of civil procedure" a creditor may obtain "[a]ny other relief the circumstances require." I.C. § 32-18-2-17(3)(C). Meleeka does not contend that the UFTA's remedies catch-all provision is ambiguous, and we do not find it to be so. The catch-all provision is open-ended, and, reading it together with the UFTA's incorporation of Indiana's common law, we conclude that it was our legislature's intent to allow for the imposition of punitive damages upon successful UFTA claims in order to

punish those who have violated the statute and to act as a deterrent to future fraudulent conduct.

[41] Having concluded that the trial court had the authority to enter a punitive damages award in this case, we turn to Meleeka's contention that the trial court did not adequately state its reason for doing so. Underpinning this argument is Meleeka's implication that the trial court was required to enter findings of fact and conclusions thereon in support of its award of punitive damages. Meleeka does not direct our attention to any legal authority to support this requirement, and there is nothing within the punitive damages statute that requires a trial court to enter findings in support of its award. Rather, the punitive damages statute merely provides that damages must not be greater than three times the compensatory damages awarded or $50,000. I.C. § 34-51-3-4. In addition, in *Stroud v. Lints*, 790 N.E.2d 440, 443 (Ind. 2003), the trial court entered a punitive damages award after a bench trial with a finding that the damages were "appropriate" without entering any findings of fact or conclusions thereon specifying its rationale for the award. The *Stroud* court found no fault with this and held that the "trial court's findings of historical fact–for example what the defendant did and what its motive was–and its conclusion that the evidence warrants imposition of punitive damages are reviewed on appeal just as other sufficiency issues." *Id*. Meleeka does not develop any separate argument challenging the evidence supporting the trial court's imposition of punitive damages. Accordingly, we find no error in the substance or the form of the trial court's award of punitive damages.

IV. *Attorney's Fees Under the UFTA*

[42] Meleeka's last argument is that the trial court erred when it ordered her to pay, jointly and severally with MCM, $31,000 in attorney's fees. As a general rule, we review a trial court's award of attorney's fees for an abuse of discretion. *R.K.W. Hones, Inc. v. Hutchinson*, 198 N.E.3d 405, 414 (Ind. Ct. App. 2002), *trans. denied*. An abuse of discretion occurs when the award is clearly against the effect of the facts and circumstances before the court. *Id*. To the extent that resolution of this issue entails interpretation of the UFTA, those are matters that we review de novo. *Service Steel Warehouse Co., L.P.*, 182 N.E.3d at 842.

[43] Indiana has long followed the American Rule regarding the award of attorney's fees, pursuant to which each party pays its own attorney's fees. *Lafayette Rentals, Inc. v. Low Cost Spay-Neuter Clinic, Inc.*, 207 N.E.3d 1222, 1232 (Ind. 2023). As a result of our adherence to the American Rule, "in the absence of statutory authority or an agreement between the parties to the contrary–or an equitable exception–a prevailing party has no right to recover attorney fees from the opposition." *Loparex, LLC v. MPI Release Tech., LLC*, 964 N.E.2d 806, 816 (Ind. 2012) (footnote omitted).

[44] Meleeka contends that the UFTA does not provide express statutory authority for the imposition of an award of attorney's fees to the prevailing party; Ghosh counters that such an award is permissible under the UFTA's remedies catch-all provision that provides for "[a]ny other relief the circumstances require." I.C. § 32-18-2-17(3)(C). In light of Indiana Code section 32-18-2-20, the provision of the UFTA incorporating Indiana common law, and in recognition of Indiana's

traditional adherence to the American Rule, we agree with Meleeka that the UFTA does not authorize the award of attorney's fees to a creditor. Ghosh does not contend that any equitable exception or any provision of Indiana's general recovery statute, Indiana Code section 34-52-1-1, applies here. We also observe that Ghosh did not assert a claim of fraud so as to authorize an award of attorney's fees under Indiana Code section 34-24-3-1 ("Pecuniary loss as a result of property offenses"). Therefore, we conclude that the trial court's order that Meleeka pay Ghosh's attorney's fees jointly and severally with MCM was an abuse of its discretion, and we reverse the trial court's $31,000 award of attorney's fees.

MCM's Claims

[45] MCM contends that the trial court erred when it denied its joint motion to dismiss, imposed punitive damages, and awarded Ghosh attorney's fees. The arguments and legal authority MCM offers in support of these claims are virtually identical to those offered by Meleeka. Therefore, we reach the same conclusions on those issues as we did with respect to Meleeka, namely, we uphold the trial court's denial of the joint motion to dismiss and its imposition of punitive damages, but we reverse the trial court's order that MCM pay Ghosh $31,000 jointly and severally with Meleeka. We now turn to MCM's additional claims.

V. *Summary Judgment*

[46] MCM asserts that the trial court erred when it denied MCM's motion for summary judgment. Summary judgment is appropriate if the designated evidence "shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Ind. Trial Rule 56(C). We review both the grant or denial of summary judgment de novo and apply the same standard as the trial court. *Kerr v. City of South Bend*, 48 N.E.3d 348, 352 (Ind. Ct. App. 2015).

[47] MCM cites the standard of review for summary judgment and some general law pertaining to piercing the corporate veil, but it does not develop any argument that there was no genuine issue of material fact precluding summary judgment on that issue. Therefore, MCM has waived that claim by failing to develop a cogent argument. Ind. App. Rule 46(A)(8)(a); *Wilkes*, 177 N.E.3d at 790.

[48] The remainder of MCM's argument challenging the trial court's summary judgment ruling consists of two sentences: "[E]ven if MCM [] was the alter ego of [Meleeka], MCM [] was voluntarily dissolved on March 15, 2018. Consequently, there were no assets to attach, and Ghosh should thus not be allowed to proceed against MCM []." (MCM Br. p. 12). We do not address this argument, as MCM waived it by not raising it in its summary judgment filings in the trial court. *See Anderson v. Four Seasons Equestrian Ctr.*, 852 N.E.2d 576, 581 n.7 (Ind. Ct. App. 2006) (finding an issue offered by Anderson on appeal waived and not considering it because "[i]t is well[-]settled that

arguments not presented to the trial court on summary judgment are waived on appeal"), *trans. denied*. In an effort to circumvent the effect of its waiver, MCM asserts in its reply that we should address this issue as a fundamental error. However, MCM provides us with no authority for its proposition that a party's failure to raise an argument during summary judgment proceedings constitutes fundamental error, and we are aware of none. We find no error in the trial court's denial of MCM's motion for summary judgment.

VI. *Sufficiency of the Evidence*

[49] MCM contends that the evidence did not support the trial court's judgment. We apply the same standard of review of the trial court's Trial Rule 52(A) findings of fact and conclusions thereon cited above in addressing Meleeka's challenges to the evidence supporting the judgment.

[50] MCM contends that Ghosh failed to independently prove its fraudulent intent pursuant to any common law indicia of fraudulent intent or under the factors set forth in Indiana Code section 32-18-2-14(b)(1)-(9), referenced above. MCM's argument misses the mark because the trial court's judgment was not based on MCM's independent violation of the UFTA separate from Meleeka's actions. Rather, the trial court found that MCM was the alter ego of Meleeka, and, as a result, it allowed Ghosh to pierce MCM's corporate veil. MCM does not contend that the evidence presented at trial was insufficient to support the piercing of its corporate veil. Therefore, we do not disturb the trial court's judgment.

Andrew's Claims

VII. *Procedural Default*

[51] Andrew offers the following substantive arguments on appeal:

- Ghosh's recovery in this matter is limited to $18,000;
- The trial court should not have entered default judgment against him in order to prevent inconsistent judgments;
- The transfers at issue in this case could not be fraudulent because Meleeka transferred the vehicles before she owed Ghosh any debt and because the property was exempted through Meleeka's bankruptcy proceeding;
- Ghosh's cause of action was precluded by res judicata because he offered the same claims in his unsuccessful proceedings supplemental in the divorce action;
- The facts as alleged in the Complaint do not support the default judgment entered against him; and
- The cause should be remanded for a hearing on punitive damages.

[52] We conclude that Andrew is procedurally defaulted from bringing these claims. On May 1, 2019, the trial court entered its default judgment against Andrew and awarded Ghosh $84,567.13 in compensatory damages plus interest, $75,000 in punitive damages plus interest, costs of the action, and reasonable attorney's fees which were determined on December 4, 2019. Andrew motioned to set aside the default judgment pursuant to Trial Rule 60(B), but he did not raise any of the claims he now asserts on appeal. On December 19, 2019, the trial court denied Andrew's Trial Rule 60(B) motion to set aside the default judgment. Trial Rule 60(C) provides that the denial of a Rule 60(B) motion "shall be deemed a final judgment, and an appeal may be taken

therefrom as in the case of a judgment." *See also* Ind. Appellate Rule 2(H)(3) (defining a final judgment as a judgment "deemed final under Trial Rule 60(C)"). This court has jurisdiction over final judgments. Ind. Appellate Rule 5(A). Therefore, contrary to Andrew's assertions on appeal, the trial court's denial of his motion to vacate the default judgment was a final judgment, and this court had subject matter jurisdiction over his appeal. On August 6, 2020, we affirmed the trial court's denial of Andrew's motions to vacate the default judgment and to dismiss the Amended Complaint, and we held that the default judgment against Andrew was valid. Therefore, Andrew is procedurally barred from bringing these claims now because he did not bring them in his Trial Rule 60(B) motion, Andrew has already appealed from the denial of his motion to vacate the default judgment, and the Indiana Appellate Rules do not provide for successive appeals.

[53] In support of his contention that these claims are properly before us, Andrew quotes from our opinion in *Comer-Marquardt v. A-1 Glassworks, LLC*, 806 N.E.2d 883, 888 (Ind. Ct. App. 2004), in which we observed that "a defaulting defendant may take advantage of a defense that is common to it and a non-defaulting codefendant." However, that observation was made in the context of our review of the denial of a motion to vacate a default judgment and was part of the basis for our conclusion that if a defaulting party's liability is completely premised on the liability of a non-defaulting co-defendant, final judgment should not be entered against the defaulting party unless the non-defaulting party is found liable. *Id*. Thus, the passage cited by Andrew merely

stands for the proposition that the defaulting party may share in the success of the non-defaulting party as to final judgment; our decision in *Comer-Marquardt* did not provide a mechanism for a defaulted party to circumvent the effect of a default judgment, the Indiana Trial Rules, or the Indiana Rules of Appellate Procedure. *See id.* Andrew's citation to Judgments, 30 Am. Jur. 284, section 204, is unpersuasive for the same reason–it merely states the same limited and unavailing principle that a mutual defense among joint co-defendants "if successful inures to the benefit of the defaulting defendants, with the result that final judgment must be entered not merely in favor of the answering defendant, but also in favor of the defaulting defendants." We observe that even if this body of law were somehow applicable here, none of the issues presented by Andrew are successful defenses in which he may share. Accordingly, we do not address the substance of Andrew's claims.

Tooley's Claims

[54] On appeal, Tooley raises arguments identical to those raised by Andrew, and we resolve those issues in the same manner as we did Andrew's claims. We next address the only additional claim offered by Tooley.

VIII. *Change of Venue*

[55] Tooley asserts that he was entitled to a change of venue upon remand from this court after we reversed the appointment of a receiver as to him. However, any issue based on the trial court's denial of Tooley's motion for change of venue in the receivership proceedings is moot because, upon remand, Ghosh did not pursue the appointment of a receiver as to Tooley, and on August 12, 2021, the

trial court terminated the receivership over the assets of Andrew and TCD. *See Matter of A.C.*, 198 N.E.3d 1, 9 (Ind. Ct. App. 2022) ("An issue is moot when no effective relief can be rendered to the parties before the court."), *trans. denied*. In addition, Tooley does not explain why his contention that the trial court was deprived of jurisdiction pending a ruling on his motion for change of venue, purportedly voiding "[e]verything that the judge did after [Tooley] filed his motion for change of judge [sic]," entitles him to any relief in light of the default judgments that had already been entered against him which were upheld on appeal and the mootness of the underpinning of his argument. (Tooley's Br. p. 28). Consequently, we find no error.

CONCLUSION

[56] Based on the foregoing, we hold that the trial court properly denied the joint motion to dismiss, its judgment was not clearly erroneous, the UFTA permits the award of punitive damages, the trial court properly denied MCM's motion for summary judgment, Andrew's and Tooley's claims attacking the substance of the judgments are procedurally barred, and Tooley's claim regarding his motion for change of venue is moot and otherwise without merit. However, because we conclude that the UFTA does not authorize the award of attorney's fees, we reverse the trial court's order that Meleeka and MCM pay Ghosh $31,000 in attorney's fees.

[57] Affirmed in part and reversed in part.

[58] Altice, C.J. and Pyle, J. concur