MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Certain Real Property Commonly Known as 2347 Wabash Ave, Gary Indiana, and John Taylor,

Appellants-Petitioners,

v.

Estate of Jearlean Marie Covington, By Its Personal Representative, Iris Jean Jordan,

Appellee-Plaintiff.

November 7, 2022

Court of Appeals Case No. 22A-CT-891

Appeal from the Lake Superior Court

The Honorable Bruce D. Parent, Judge

Trial Court Cause No. 45D11-1903-CT-258

Brown, Judge.

[1] John Taylor appeals the trial court's denial of his motions for relief from judgment and to set aside summary judgment under Ind. Trial Rule 60(B). We affirm.

Facts and Procedural History

[2] On December 11, 2018, Jearlean Marie Covington died. Taylor removed her automobile from the state of Indiana, money from her bank accounts and credit unions, and transferred ownership of Covington's house to himself with a quitclaim deed, filed the day before her death. On January 10, 2019, Iris Jordan was appointed the personal representative of Covington's estate (the "Estate") and subsequently learned of Taylor's actions.

[3] On March 1, 2019, the Estate filed a complaint against Taylor alleging he had converted Covington's real and personal property, and he filed an answer on March 22, 2019. On July 30, 2021, the Estate moved for summary judgment, Taylor did not respond, and the court entered summary judgment in favor of the Estate on October 6, 2021. On October 21, 2021, attorneys for the parties participated in a telephonic conference, and the court scheduled a damages hearing.

[4] On November 5, 2021, Taylor filed a Motion to Set Aside Order for Summary Judgment citing Ind. Trial Rule 60(B)(1) and his attorney's health issues. The trial court denied the motion, stating in its order that Taylor "failed to demonstrate to the Court a meritorious claim that, if the Court were to grant his motion to set-aside the judgment, demonstrates by evidence that [he] will

prevail at trial," and "had [counsel] notified the Court relative to these issues before the time for briefing had expired, this Court would have been in a better position relative to this motion." Appellant's Appendix Volume II at 49.

[5] On February 25, 2022, the court held a damages hearing, ordered Taylor to transfer the home back to the Estate, and awarded treble damages of $165,406.71 to the Estate and against Taylor for the value of the misappropriated vehicle and bank accounts.

[6] On March 14, 2022, Taylor filed a Verified Motion For Relief From Judgment Due To Newly Discovered Evidence Pursuant to Indiana Trial Rule 60(B)(2) stating that he had recently obtained a certified copy of Covington's birth certificate, he "had been trying to locate the birth certificate and birth place of the decedent, but was unsure where to look," and Covington's death certificate and funeral program corroborated that he was her stepbrother. Appellant's Appendix Volume III at 9. The court denied the motion, stating that it did not allege the evidence "could not have been discovered prior to the disposition of this case," did not meet the definition of newly discovered evidence, and the evidence "created a distinction without a difference; in either circumstance, the Court would have found that [Taylor] breached his fiduciary duty to the Decedent and the Estate, and misappropriated assets of the Estate." *Id.* at 17-18.

Discussion

[7] The first issue is whether the trial court abused its discretion in denying Taylor's motion pursuant to Ind. Trial Rule 60(B)(1). Taylor claims the trial court erred by not setting aside the entry of summary judgment. He argues that his counsel suffered from health issues which affected his ability to properly represent him.

[8] A grant of equitable relief under Ind. Trial Rule 60 is within the discretion of the trial court. *Logansport/Cass Cnty. Airport Auth. v. Kochenower*, 169 N.E.3d 1143, 1149 (Ind. Ct. App. 2021) (citing *KWD Industrias SA DE CV v. IPM LLC*, 129 N.E.3d 276, 280 (Ind. Ct. App. 2019) (internal citations omitted)). An abuse of discretion occurs when the trial court's judgment is clearly against the logic and effect of the facts and inferences supporting the judgment for relief. *Id.* When reviewing the trial court's determination, we will not reweigh the evidence. *Id.* The burden is on the movant to establish grounds for Ind. Trial Rule 60(B) relief. *Id.* (citing *Destination Yachts, Inc. v. Pierce*, 113 N.E.3d 645, 655 (Ind. Ct. App. 2018), *reh'g denied*).

[9] Ind. Trial Rule 60(B) provides, "[o]n motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons: (1) mistake, surprise, or excusable neglect;" or "(2) any ground for a motion to correct error, including without limitation newly discovered evidence, which by due diligence could not have been discovered in time to move for a motion to correct errors under Rule 59." Rule 60(B) further provides that "[a] movant filing a motion for reasons (1) [or] (2) . . . must allege a meritorious claim or defense."

[10] Even assuming any neglect by Taylor's counsel was excusable, Taylor has not demonstrated that he is entitled to relief under Ind. Trial Rule 60(B), as the rule requires a movant to allege a meritorious claim or defense. The Indiana Supreme Court has held "Rule 60(B)'s requirement of a meritorious defense . . . merely requires a prima facie showing of a meritorious defense, that is, a showing that will prevail until contradicted and overcome by other evidence," and the movant "need only present evidence that, if credited, demonstrates that a different result would be reached if the case were retried on the merits and that it is unjust to allow the judgment to stand." *Outback Steakhouse of Fla., Inc. v. Markley*, 856 N.E.2d 65, 73-74 (Ind. 2006) (citation and quotation marks omitted). This Court has held that, to successfully allege a meritorious claim or defense pursuant to Ind. Trial Rule 60(B), a party "must state a factual basis for his purported meritorious claim or defense." *Logansport/Cass Cnty. Airport Auth.*, 169 N.E.3d at 1149. We noted that "mere conclusory statements will not suffice under the Rule" and that "such allegations may be satisfied when the moving party 'state[s] enough facts to give a court an opportunity to measure whether the claim or defense has any potential.'" *Id.* at 1148-1149 (citing 12 MOORE'S FEDERAL PRACTICE, § 60.24[2] (3d ed. 1997)). It is for the trial court to determine whether the moving party has made such a prima facie showing. *Id.* at 1149. Here, Taylor's motion to set aside the entry of summary judgment alleged that his trial counsel "experienced health issues which interfered with his ability to respond to the Motion for Summary Judgment" and requested "an opportunity to conduct discovery and respond to [the Estate's] motion for summary judgment." Appellant's Appendix Volume II at

40-41. He did not allege a meritorious claim or defense. We find that Taylor did not allege any evidence that, if credited, would demonstrate that a different ruling on summary judgment would be reached or allege any "facts to give a court an opportunity to measure whether the claim or defense has any potential." *See Logansport/Cass Cnty. Airport Auth.*, 169 N.E.3d at 1148-1149 (citing 12 MOORE'S FEDERAL PRACTICE, *supra*, at § 60.24[2]). Thus, Taylor did not allege a meritorious claim or defense, and we cannot conclude the court erred in denying his motion on this basis.

[11] The next issue is whether the court abused its discretion in failing to consider newly discovered evidence. Taylor argues that the evidence that he is Covington's stepbrother was newly discovered and would produce a different result because he "is now a closer heir than a distant cousin [and] may be in a position to challenge the estate as to be a personal representative and/or setting aside any alleged will." Appellant's Brief at 13.

[12] Subsection (B)(2) of Ind. Trial Rule 60 provides relief from a judgment for "newly discovered evidence." *Outback Steakhouse of Fla., Inc.*, 856 N.E.2d at 85. Relief from judgment based upon newly discovered evidence requires a showing that the newly discovered evidence is material, is not merely cumulative or impeaching, was not discoverable by due diligence, and would reasonably and probably alter the result. *Id.*

[13] The record reveals that, during the damages hearing, Jordan testified on cross-examination that Taylor was Covington's stepbrother. In his motion, Taylor

alleged that Covington's death certificate and funeral program stated that he was her stepbrother. He further argues that he had been trying to locate the birth certificate, "but was unsure where to look." Appellant's Appendix Volume III at 9. We cannot say Taylor has demonstrated that the alleged newly discovered evidence could not have been discovered by due diligence in time for him to move for a motion to correct error under Rule 59.

[14] Even assuming the information that Taylor was Covington's stepbrother qualified as newly discovered evidence, we cannot say that reversal is warranted. Taylor claimed that the entry of summary judgment against him and subsequent award of damages should be set aside "because they were brother and sister" and "the decedent's rightful heirs should not be deprived of their rightful heirship." *Id.* at 10. Taylor does not allege that his kinship with Covington is a defense to the Estate's claims or that the evidence, if credited, would result in a different outcome. We cannot conclude the court erred in denying Taylor's motion for relief for judgment on this basis.

[15] For the foregoing reasons, we affirm the trial court.

[16] Affirmed.

Altice, J., and Tavitas, J., concur.