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IN THE
COURT OF APPEALS OF INDIANA

County Materials Corp. and Central Processing Corp.,

Appellants/Cross-Appellees/Plaintiffs,

v.

Indiana Precast, Inc., Ryan S. Gookins, and Richard A. Rectenwal, III,

Appellees/Cross-Appellants/Defendants.

April 12, 2022

Court of Appeals Case No. 20A-PL-1683

Appeal from the Hancock Superior Court

The Honorable Marie Castetter, Judge

Trial Court Cause No. 30D01-1702-PL-219

Friedlander, Senior Judge.

[1] County Materials Corporation ("County") and Central Processing Corporation ("Central") (collectively, "the Purchasers") appeal the trial court's denial of their motion to correct error and motion for relief from judgment following the entry of final judgment and an award of attorney's fees in favor of Indiana Precast, Inc. ("Precast"), Ryan S. Gookins ("Gookins"), and Richard A. Rectenwal, III ("Rectenwal") (collectively, "the Precast parties").

[2] This is the second time this case has come to this Court. We initially affirmed the trial court's judgment. *Cnty. Materials Corp. v. Ind. Precast, Inc.*, 176 N.E.3d 526 (Ind. Ct. App. 2021) ("*County I*"). The Indiana Supreme Court vacated that opinion and remanded the case to this Court for reconsideration. *Cnty. Materials Corp. v. Ind. Precast, Inc.*, 177 N.E.3d 433 (Ind. 2021) ("*County II*"). We now affirm the trial court's judgment in part and reverse in part.[1]

Issues

[3] The Purchasers raise two issues, which we restate as:

I. Whether the trial court erred in denying the Purchasers' request to set aside its award of attorney's fees to the Precast parties.

II. Whether the trial court erred in denying the Purchasers' request to set aside the final judgment and order a new trial.[2]

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[1] We heard oral argument on March 14, 2022. We thank the parties for their presentations.

[2] In addition, the Precast parties request an award of appellate attorney's fees. We need not address this issue because we have determined that County prevails on one of its claims on appeal.

Facts and Procedural History

[4] County is a Wisconsin corporation, and Central is incorporated in Florida. County produces precast concrete structures, such as utility access structures, for construction projects. Central is a "management services corporation" that provides workers for several businesses, including County, under contract. Appellees' App. Vol. 6, p. 103. All of County's workers, including its executive officers, are in fact employees of Central who have been assigned to County. The Purchasers are owned by members of the same family and share office space in Wisconsin.

[5] Independent Concrete Pipe Company ("ICPC") made precast concrete structures, along with concrete pipes and related equipment. It owned plants in Indianapolis and Maxwell, Indiana. Gookins and Rectenwal were both long-time ICPC employees. Gookins was a salesperson, and Rectenwal drafted diagrams that ICPC's production teams used to make the concrete structures.

[6] In December 2014, County purchased ICPC's assets, including tangible property (such as inventory) and intangible assets (such as customer lists). County became the operator of ICPC's Indianapolis and Maxwell plants.

[7] At the time of the purchase, ICPC terminated its employees, and Central hired many of them. On December 10, 2014, Gookins, Rectenwal, and Central's other new employees appeared at the Maxwell plant for an employee onboarding process. On that day, Gookins and Rectenwal executed confidentiality agreements with Central. The agreements identified County as

the company for whom Gookins and Rectenwal were assigned to work by Central and further stated that they would be County's agents. In addition, the agreements provided that during their employment and for a twenty-four-month period afterwards, Gookins and Rectenwal would not disclose to others confidential information that would be detrimental to County's business interests. Finally, the agreements stated that when Gookins' and Rectenwal's employment at Central ended, they would be barred for twenty-four months from soliciting Central's employees to quit working for Central.

[8] Rectenwal also executed a non-competition agreement with Central that barred him from selling or marketing a product in competition with County's products for up to twelve months after his employment ended. In addition, the non-competition agreement contained a provision stating that after Rectenwal's employment ended, he would be barred for a twenty-four-month period from soliciting Central's employees to quit their jobs. Central also directed Gookins to sign a non-competition agreement, but he declined.

[9] Rectenwal was a "Tech Admin 2" for County, continuing to draft diagrams for production teams just as he had done for ICPC. Appellants' App. Vol. III, p. 22. Central paid him a salary that was lower than ICPC's salary. Rectenwal resigned from Central in early February 2015, after less than two months of work. He went to work for Underground Pipe and Valve in South Bend, Indiana, where he worked in sales and sold products to numerous companies, including County. In addition, Rectenwal did drafting work for County as an independent contractor for several months after he quit.

[10] Central hired Gookins to be County's head of sales for Indiana. He complained to his supervisor and others about County's production processes, claiming that they were inefficient and alienated ICPC's former customers. Gookins quit Central in April 2015 and took a sales job with Utility Pipe Sales of Indiana ("Utility Pipe"). In that capacity, Gookins occasionally purchased products from County for resale.

[11] Subsequently, Gookins approached Bill Zausch, a co-owner of Utility Pipe, about entering the precast concrete structures industry. In the summer of 2015, Zausch joined Gookins and Rectenwal on a site visit to the Columbus, Indiana property of Horn Precast, a precast concrete structure manufacturer that was in bankruptcy. Zausch and others later purchased Horn Precast's assets. In January 2016, Zausch, Gookins, and Rectenwal, among others, incorporated Indiana Precast, a business that would make and sell precast concrete structures for construction projects. Zausch became Precast's president. Gookins became Precast's vice-president and owned a small amount of stock in the company. Rectenwal began working at Precast on February 8, 2016. He was Precast's general manager and also owned a small amount of stock in the company.

[12] In 2016, the Purchasers' managers noted that several key employees, including production supervisors, had quit working at the Maxwell facility and were working at Precast. County's productivity suffered during this time, and the Purchasers attributed this slowdown in part to the loss of these employees. The Purchasers also became concerned that Precast may have unfairly poached County's customers.

[13] In February 2017, the Purchasers sued the Precast parties, beginning this case. The Purchasers raised the following claims against each party:

> Gookins: breach of confidentiality agreement (by soliciting employees and disclosing trade secrets); breach of fiduciary duty of loyalty;[3] tortious interference with contractual relationships (Central employees); tortious interference with business relationships (Central employees and County customers).
>
> Rectenwal: breach of confidentiality agreement and breach of non-competition agreement (by soliciting employees, competing with County, and disclosing trade secrets); tortious interference with contractual relationships (Central employees); tortious interference with business relationships (Central employees and County customers).
>
> Precast: tortious interference with contractual relationships (Central employees); tortious interference with business relationships (Central employees and County customers).

Tr. Ex. Vol. I, pp. 34-40. The Purchasers further alleged the Precast parties had joined in a civil conspiracy to improperly solicit the Purchasers' employees and customers. Finally, the Purchasers requested an award of punitive damages against each of the Precast parties and an injunction prohibiting future solicitation of Central's employees.

[14] In April 2017, the Precast parties filed a motion to dismiss the Purchasers' complaint. The trial court denied the motion after a hearing.

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[3] The Purchasers, in describing the facts and circumstances of this count against Gookins, also accused Rectenwal and Precast of inducing certain employees to breach their fiduciary duties to Central.

[15] Next, the parties exchanged discovery requests and repeatedly accused each other of violating discovery rules. They filed cross-motions to compel discovery and for sanctions.[4]

[16] In December 2017, the Purchasers served nonparty discovery requests on Utility Pipe. On January 10, 2018, one of the Precast parties' attorneys notified the Purchasers that he also represented Utility Pipe. The attorney asked for a thirty-day extension to respond to the nonparty discovery requests, and the Purchasers agreed.

[17] On January 29, 2018, the Precast parties filed motions for summary judgment. Next, on February 16, the Precast parties moved to stay the Purchasers' nonparty discovery requests until after the trial court ruled on their motions for summary judgment. In turn, the Purchasers filed a cross-motion for partial summary judgment. The trial court granted the Precast parties' motion to stay nonparty discovery.

[18] On September 7, 2018, the trial court denied the parties' cross-motions for summary judgment. The jury trial was scheduled to begin on October 8, 2018.

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[4] Judge Terry K. Snow, while presiding over a June 20, 2018 discovery dispute hearing, described the parties' conduct as follows:

> My overall is [sic] impression is that both sides have done a great job of trying to slow things down, get in the way, not produce, not cooperate. Which the rules are based on the idea that there is going to be cooperation and professionalism between counsel. I'm not seeing that. I'm seeing a ton of documentation being filed, responses being filed very quickly. Disparaging comments being made about the other side. That's not professional, that's not how you get things done.

Tr. Vol. II, p. 94.

The Purchasers requested leave to serve nonparty discovery, and the court granted that request.

[19] On October 3, 2018, the Purchasers filed a motion to continue the trial and for sanctions, claiming they had just received documents from Utility Pipe that the Precast parties also had in their possession and should have disclosed in discovery months ago. Among other documents received from Utility Pipe, the Purchasers received emails from Gookins that he had sent from the same email account and at the same time as other emails that he had previously produced. The Precast parties objected to the motion, arguing that their prior discovery responses had not been "intentionally deficient." Appellants' App. Vol. II, p. 157. The trial court denied the Purchasers' request to continue the trial.

[20] The jury trial began on October 8, 2018. On that same day, the Purchasers filed a motion for sanctions and a request to instruct the jury to draw adverse inferences against the Precast parties arising from their alleged discovery misconduct. Later in the trial, the trial court denied the Purchasers' motion for sanctions and request for a jury instruction, concluding the Precast parties' delay in producing discoverable information had not been intentional.

[21] During the Purchasers' case in chief, they presented evidence that County had suffered $384,506.64 in damages due to the Precast parties' unfairly poaching employees. After the Purchasers ended their case-in-chief, the Precast parties moved for judgment on the evidence. The trial court granted the motion as to all of Central's claims. The trial court further granted the Precast parties'

motion as to County's claim for punitive damages, but otherwise denied the motion. Subsequently, the jury returned a verdict in favor of the Precast parties on County's remaining claims.

[22] Next, the Purchasers filed a motion to correct error. The trial court denied the Purchasers' motion to correct error, and they filed a Notice of Appeal, beginning a case under Cause Number 19A-PL-268.

[23] In the meantime, each of the Precast parties filed separate motions for attorney's fees, claiming that all but one of the Purchasers' claims "were frivolous, groundless, unreasonable *and* litigated in bad faith."[5] Appellees' App. Vol. 5, pp. 155, 183, 212 (emphasis added). The Purchasers moved to dismiss or stay the motions for attorney's fees, claiming this Court had jurisdiction over the case due to the pending appeal. The trial court denied the Purchasers' motion and held a hearing on the Precast parties' attorney's fees requests.

[24] On April 23, 2019, the court granted the Precast parties' requests in three separate orders. In each of the orders, the court determined that the Purchasers had presented claims that were frivolous, unreasonable, and groundless and had continued to litigate those claims after they were identifiable as such. The court subsequently vacated its orders due to the pending appeal.

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[5] Gookins' motion for attorney's fees did not include the Purchasers' claim that he had breached the employee non-solicitation clause of his confidentiality agreement.

[25] On May 31, 2019, this Court dismissed the appeal in Cause Number 19A-PL-268. Next, the Precast parties moved the trial court to reinstate the prior fee orders. The trial court granted the Precast parties' request after a hearing, once again determining that all of the Purchasers' claims (except the one for which Gookins had not requested attorney's fees) "were frivolous, unreasonable, *and* groundless *and* continued to litigate claims that were clearly frivolous, unreasonable, *and* groundless *and* litigated the claims in bad faith" against the Precast parties. Appellants' App. Vol. II, pp. 99-100, 104, 109 (emphasis added). Finally, the court ordered the parties to agree upon the amount of fees owed within fourteen days or, if the parties were unable to agree, to request an evidentiary hearing.

[26] Subsequently, the parties failed to reach an agreement. The trial court held an evidentiary hearing and, on December 23, 2019, issued a final judgment in favor of the Precast parties, determining that the Purchasers were jointly and severally liable to the Precast parties for $655,642.66 in attorney's fees.

[27] On January 22, 2020, the Purchasers filed a combined motion to correct error under Trial Rule 59 and motion for relief from judgment under Trial Rule 60(B)(3) (fraud or other misconduct), basing their request for relief in part on approximately one hundred pages of emails and attachments sent and received by Gookins, Rectenwal, other Precast personnel, and outside parties. *See* Appellants' App. Vol. III, pp. 35-142. The Purchasers received the documents from the Precast parties in January 2020 in connection with a pending, related federal lawsuit. The Purchasers claimed that the Precast parties had failed to

previously produce the documents, even though they were responsive to the Purchasers' discovery requests. The Purchasers later supplemented their motion, adding a claim for relief under Trial Rule 60(B)(2) (newly discovered evidence).

[28] The Precast parties filed a response to the Purchasers' combined motion. They argued that the newly discovered emails were "cumulative" of emails that had already been discovered, Appellees' App. Vol. 16, p. 9, and that they had previously responded to the Purchasers' discovery requests "in good faith." *Id.* at 24. But the Precast parties did not at that time dispute the Purchasers' assertion that the newly discovered documents were responsive to the Purchasers' discovery requests and had not been previously produced.

[29] On June 23, 2020, the court held a hearing on the Purchasers' motions. During the hearing, the Precast parties conceded that, with respect to the documents the Purchasers had attached to their motion to correct error and motion for relief from judgment: "There's no question some of these documents weren't produced in discovery." Tr. Vol. V, p. 228. They instead disputed whether the documents were responsive to the Purchasers' discovery requests and claimed that any failure to produce responsive documents was unintentional.

[30] On September 10, 2020, the trial court issued an order denying the Purchasers' motion to correct error and motion for relief from judgment. The Purchasers filed a Notice of Appeal on September 15, 2020.

Discussion and Decision

I. The Attorney's Fees Award

[31] The Purchasers claim that the trial court should have set aside the award of attorney's fees to the Precast parties. Indiana follows "the American Rule," whereby parties are required to pay their own attorney's fees absent an agreement between the parties, statutory authority, or other rule to the contrary. *Lockett v. Hoskins*, 960 N.E.2d 850, 852 (Ind. Ct. App. 2012). Indiana Code section 34-52-1-1 (1998) allows the trial court to award attorney's fees to a prevailing party in a civil case if the losing party:

> (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;
>
> (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or
>
> (3) litigated the action in bad faith.

[32] Subsections (b)(1) and (b)(2) focus on the legal and factual basis of the claim or defense and the arguments supporting the claim or defense. *Mitchell v. Mitchell*, 695 N.E.2d 920 (Ind. 1998). In contrast, subsection (b)(3)—"litigated the action in bad faith"—by its terms requires scrutiny of the motive or purpose of the non-prevailing party. *Id.*

[33] The terms "frivolous," "unreasonable," and "groundless" are defined as follows:

> A claim is 'frivolous' if it is made primarily to harass or maliciously injure another; if counsel is unable to make a good faith and rational argument on the merits of the action; or if counsel is unable to support the action by a good faith and rational argument for extension, modification, or reversal of existing law. A claim is 'unreasonable' if, based upon the totality of the circumstances, including the law and facts known at the time, no reasonable attorney would consider the claim justified or worthy of litigation. A claim or defense is groundless if no facts exist which support the legal claim relied on and presented by the losing party.

Dunno v. Rasmussen, 980 N.E.2d 846, 850-51 (Ind. Ct. App. 2012) (citations omitted). Further, "bad faith" is demonstrated "where the party presenting the claim is affirmatively operating with furtive design or ill will." *Kitchell v. Franklin*, 26 N.E.3d 1050, 1057 (Ind. Ct. App. 2015), *trans. denied*.

[34] In general, we review a trial court's decisions on both motions to correct error and motions for relief from judgment for an abuse of discretion. *Knowledge A-Z, Inc. v. Sentry Ins.*, 891 N.E.2d 581 (Ind. Ct. App. 2008), *trans. denied*. But, with respect to awards of attorney's fees, the Purchasers have argued, and the Precast parties conceded at oral argument, that a different standard applies. As a panel of this Court determined:

> Initially, we review the trial court's findings of fact under the clearly erroneous standard. We then review de novo the trial court's legal conclusion that a party either (1) brought an action or defense on a claim or defense that is frivolous, unreasonable or groundless, or (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable or groundless, or (3) litigated the action in bad faith. Finally, we review the trial court's decision to award

> attorney fees and the amount thereof under an abuse of discretion standard.

Kahn v. Cundiff, 533 N.E.2d 164, 167 (Ind. Ct. App. 1989), *aff'd*, 543 N.E.2d 627 (Ind. 1989). We will not reverse for clear error unless we are left with a definite and firm conviction that a mistake has been made. *Smyth v. Hester*, 901 N.E.2d 25 (Ind. Ct. App. 2009), *trans. denied*.

[35] "Indiana courts have long received motions under Trial Rule 59(A)(1) with 'great caution' because courts place 'a high value on finality of judicial resolutions.'" *Faulkinbury v. Broshears*, 28 N.E.3d 1115, 1122 (Ind. Ct. App. 2015) (quoting *Speedway SuperAmerica, LLC v. Holmes*, 885 N.E.2d 1265, 1271 (Ind. 2008)). Similarly, motions for a new trial predicated upon newly discovered evidence are viewed with disfavor. *Hawkins v. Cannon*, 826 N.E.2d 658 (Ind. Ct. App. 2005) (quotation omitted), *trans. denied*.

[36] Beginning with Central, the record demonstrates that it is distinct and separate from County. As such, the Purchasers each bore the burden of separately proving the elements of their claims against the Precast parties. *See* Ind. Trial Rule 20(A)(2) (plaintiffs may join in one action, but they may only obtain judgment "according to their respective rights to relief").

[37] Proof of damages was an element of each of the claims Central presented at trial. *See Fowler v. Campbell*, 612 N.E.2d 596 (Ind. Ct. App. 1993) (discussing elements of breach of contract); *SJS Refractory Co., LLC v. Empire Refractory Sales, Inc.*, 952 N.E.2d 758 (Ind. Ct. App. 2011) (discussing damages calculation for

breach of fiduciary duty of loyalty); *Levee v. Beeching*, 729 N.E.2d 215 (Ind. Ct. App. 2000) (discussing elements of tortious breach of contractual relationship); *McCullough v. Noblesville Schs.*, 63 N.E.3d 334 (Ind. Ct. App. 2016) (discussing elements of tortious interference with business relationship), *trans. denied*.

[38] Despite the necessity of proving damages, Central conceded during trial in response to questions from the trial court that, as far as Central's claims were concerned, "financial damages would not be" at issue.[6] Tr. Vol. V, p. 31. After the trial court dismissed Central from the case via a directed verdict, the Purchasers' counsel further argued to the jury:

> Those contracts for Central Processing and County Materials have rights under, clearly gave (inaudible) with regard to both parties. But at the end of the day, the truth is that the harm was to County Materials. And you have to have not just breach but harm to succeed on a claim. And so you can see too, in this case, Utility Pipe is not a party either. The judge didn't think they should be a party either and they, just like Central Processing, who leases employees to County Materials, Utility Pipe leases employees to Indiana Precast. So basically this came down to the business that benefiting [sic], Indiana Precast, that's why they're the defendants and the business that was harmed, County Materials. So the Judge is entitled to do that, to streamline the case. To make it focused for you guys, so you only have to look at the issues that really matter. So it's not a matter that he found that there's no uh, liability or no breach to Central Processing,

[6] Central instead insisted that its claim for injunctive relief remained to be decided by the trial court. Central has not raised any issues related to injunctive relief in this appeal.

> it's just that there's no harm. County Materials is the one who suffered the harm. That's why they're still in this case.

Id. at 77-78.

[39] Under these circumstances, Central made a judicial admission that it had not suffered any damages as a result of the Precast parties' actions. A judicial admission is a voluntary and knowing concession of fact by a party or a party's attorney occurring at any point in a judicial proceeding. *Stewart v. Alunday*, 53 N.E.3d 562 (Ind. Ct. App. 2016). A judicial admission is conclusive upon the party making it and relieves the opposing party of the duty to present evidence on that issue. *Weinberger v. Boyer*, 956 N.E.2d 1095 (Ind. Ct. App. 2011), *trans. denied*. The trial court's grant of judgment on the evidence to the Precast parties was a direct consequence of Central's admission that its claims were unsupported by any damages, despite litigating its claims for well over a year up to, and during, trial. And the trial court's subsequent award of attorney's fees to the Precast parties was supported by the same admission.

[40] The question we now face is whether Central provided sufficient grounds in the joint motion to correct error and motion for relief from judgment to justify setting aside the trial court's order directing Central to pay the Precast parties' attorney's fees. Based on the facts and circumstances of this case, the answer is no. Central did not seek to withdraw the admission it made at trial, nor did it explain how any of the new evidence attached to the motion demonstrated that it had suffered damages as a result of the Precast parties' actions. Given that Central was required to prove damages in order to be successful on its

numerous claims against three different defendants, coupled with the fact that Central knew and subsequently admitted that it suffered no damages, we conclude that the trial court could reasonably find that Central's act of bringing and/or continuing to litigate its numerous claims against the Precast parties was frivolous, unreasonable, and groundless, and was done in bad faith. We affirm the trial court's denial of Central's request to vacate the attorney's fees award.[7]

[41] By contrast, County did not submit any judicial admissions, and we reach a different result on the question of whether the trial court erred by not reversing its prior orders to County to pay the Precast parties' legal fees. Indiana Code section 34-52-1-1 speaks in the disjunctive, stating that attorney's fees may be awarded when a litigant's behavior is "frivolous, unreasonable, or groundless;" or when the litigant proceeds in bad faith. But in this case, the trial court's orders directing County to pay the Precast parties' attorney's fees concluded categorically that each and every one of County's claims against the Precast parties "were frivolous, unreasonable, *and* groundless *and* [County] continued to litigate claims that were clearly frivolous, unreasonable, *and* groundless *and* litigated the claims in bad faith" against the Precast parties. Appellants' App.

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[7] Amici curiae Kathleen A. DeLaney, Paul L. Jefferson, and Matthew R. Gutwein argue that ordering unsuccessful litigants to pay attorney's fees "would have a chilling effect on access to Indiana courts." Brief of Amicus Curiae Attorneys for Open Courts, p. 7. We disagree. Central is not just an unsuccessful litigant. Instead, Central litigated this case up to and through trial, to the point of resting its case, before conceding that it had no proof that it had been damaged by the Precast parties' conduct. In addition, our decision is limited to the facts and circumstances of this case.

Vol. II, pp. 99-100, 104, 109. As a result, although parties need only show proof of one condition to justify an award of attorney's fees, *D.S.I. v. Natare Corp.*, 742 N.E.2d 15 (Ind. Ct. App. 2000), *trans. denied*, we are required to examine all of the elements of the statute.

[42] Regarding the trial court's determination that County had acted in bad faith, the court's orders reinstating the attorney's fees order and denying the Purchasers' motion to correct error and motion for summary judgment do not contain any findings explaining how County acted with furtive design or ill will. Similarly, the orders do not include findings as to how County acted frivolously, that is, primarily to harass or maliciously injure the Precast parties, or failed to make a good faith and rational argument on the merits of their claims.

[43] The orders do find that County failed to provide evidence to support its claims. The discussion of the lack of evidence could apply to whether County's claims were 'unreasonable,' that is, that no reasonable attorney would consider the claims justified or worthy of litigation. The findings could also pertain to whether County's claims were groundless, which is defined as a lack of facts to support the legal claim relied on and presented by the losing party.

[44] Despite the trial court's finding that County provided no evidence to the jury, we note that County's claims against the Precast parties survived a motion to dismiss, a motion for summary judgment, and a motion for directed verdict (except as to County's claim for punitive damages). The Precast parties

correctly note that no Indiana court has held that a party that survives one of these dispositive motions is categorically immune from a subsequent attorney's fees order, and we would not adopt such a rule today. But we must consider the overly broad language of the trial court's fee orders, which stated that each and every one of County's claims met all of the elements of the fee award statute both when the claims were filed and as the litigation progressed, in the context of County's repeated success in overcoming dispositive motions, to the point that most of its claims reached the jury. And an action is not groundless merely because a party loses on the merits. *Dunno*, 980 N.E.2d 846.

[45] Further, contrary to the trial court's findings that County presented absolutely no evidence to support its claims, County did present some evidence in support of its claims, in the form of nine witnesses and dozens of exhibits. Unlike Central, County did present evidence that the Precast parties' alleged misconduct had caused County to suffer financial harm.

[46] Finally, the trial court's orders did not discuss the Precast parties' discovery practices, which included repeatedly failing to produce documents. Some of the documents in question were produced through third party discovery, or only during federal litigation after the trial court had issued its final judgment in this case. Although we do not conclude that the Precast parties' conduct affected the outcome of the case, their actions or inactions complicated County's efforts to show that their case was not unreasonable or groundless.

[47] Under the facts and circumstances of this case, we reverse the award of attorney's fees as to County but affirm as to Central. The trial court determined that the Purchasers were jointly and severally liable for the fee award, and the Purchasers have not challenged that determination. Further, we note that the attorney's fee award is "all or nothing." Purchasers argued before the trial court that the fee orders should be apportioned, and that not all of the fees were recoverable, but the Precast parties argued against apportionment among the various claims, and the trial court agreed. Neither party argues on appeal that the fee orders should be apportioned, and we cannot make that choice for them. As such, Central is responsible for the full fee award and may not later argue that its liability for attorney's fees should be reduced. See *Boyer Const. Group Corp. v. Walker Const. Co., Inc.*, 44 N.E.3d 119, 127 (Ind. Ct. App. 2015) (under joint and several liability, "'each liable party is individually responsible for the entire obligation . . . .'") (quoting Black's Law Dictionary 933 (8th ed. 2004)).

II. Setting Aside the Final Judgment

[48] The Purchasers argue the trial court should have set aside the jury's verdict against County, and the trial court's grant of a directed verdict against Central, because they claim that the Precast parties wrongfully withheld discovery. They further argue that the Precast parties' discovery misconduct undermined the validity of the final judgment on their claims.

[49] As noted above, "rulings on motions to correct error are reviewed only for abuse of discretion in recognition of the trial court's 'superior position to resolve disputed facts.'" *Sims v. Ind. Bureau of Motor Vehicles*, 157 N.E.3d 1, 3 (Ind. Ct.

App. 2020) (quoting *Becker v. State*, 992 N.E.2d 697, 700 (Ind. 2013)). An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before the court. *Brandon v. Buddy & Pal's III, Inc.*, 62 N.E.3d 418 (Ind. Ct. App. 2016). Similarly, a Trial Rule 60(B) motion for relief from judgment addresses only the procedural, equitable grounds for justifying relief from the legal finality of a final judgment, not the legal merits of the judgment. *Barton v. Barton*, 47 N.E.3d 368 (Ind. Ct. App. 2015), *trans. denied*. We review the denial of a motion for relief from judgment for an abuse of discretion. *Fitzpatrick v. Kenneth J. Allen & Assoc., P.C.*, 913 N.E.2d 255 (Ind. Ct. App. 2009). We may neither reweigh the evidence nor substitute our judgment for that of the trial court. *Centex Home Equity Corp. v. Robinson*, 776 N.E.2d 935 (Ind. Ct. App. 2002), *trans. denied*. We review questions of law de novo. *See City of Indianapolis v. Hicks*, 932 N.E.2d 227 (Ind. Ct. App. 2010) (applying de novo review in appeal from denial of motion to correct error to appellant's questions of law*), trans. denied*.

[50] A party filing a motion to correct error may raise any grounds for appeal preserved during trial, including "newly discovered material evidence." Ind. Trial Rule 59. And a party that files a motion for relief from judgment may argue 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." Ind. Trial Rule 60(B)(2).

[51] A person seeking relief based on newly discovered evidence, whether under Trial Rule 59 or Trial Rule 60, must demonstrate each of the following nine requirements:

> (1) the evidence has been discovered since the trial; (2) it is material and relevant; (3) it is not cumulative; (4) it is not merely impeaching; (5) it is not privileged or incompetent; (6) due diligence was used to discover it in time for trial; (7) the evidence is worthy of credit; (8) it can be produced upon a retrial of the case; and (9) it will probably produce a different result at retrial.

Bunch v. State, 964 N.E.2d 274, 283 (Ind. Ct. App. 2012) (quoting *Taylor v. State*, 840 N.E.2d 324, 329-30 (Ind. 2006)), *trans. denied*. In addition, a person seeking relief under Trial Rule 60(B)(2) or 60(B)(3) must show a meritorious claim or defense. Ind. Trial Rule 60.

[52] We affirm the trial court's refusal to set aside its final judgment as to Central because Central admitted during trial that it had suffered no financial harm as a result of the Precast parties' actions. In the absence of any damages, all of Central's claims presented at trial must fail. Nothing in the Purchasers' joint motion to correct error and motion for relief from judgment contradicts or retracts Central's judicial admission at trial. As a result, there were no grounds for the trial court to vacate its directed judgment against Central and in favor of the Precast parties.

[53] Turning to County, we note that Gookins, Rectenwal, and other Precast owners were the senders or recipients of the newly discovered emails, and those emails were generated around the same time as other emails that the Precast

parties provided in discovery earlier in this case. The Precast parties admitted to the trial court that they had not previously produced at least some of the documents when preparing responses to the Purchasers' discovery requests.

[54] Nevertheless, many of the newly discovered emails are cumulative of other evidence that was admitted at trial. For example, some of the emails include discussions by Rectenwal and Gookins about soliciting Central's workers to join Precast, but the Purchasers submitted a similar email to the jury at trial. Other emails show that Gookins was considering starting up a new precast concrete manufacturing company by the time he quit working for Central, but the Purchasers presented at trial an email that also made that point. Still other emails demonstrate there was a closer relationship between Utility Pipe and Precast than had previously been disclosed in discovery, but Zausch testified at trial that Utility Pipe's owners also owned a majority of shares in Precast.

[55] In addition, other newly discovered emails would have merely impeached the Precast parties' witnesses. For example, County points to an October 22, 2015, email from Gookins to Zausch indicating that Rectenwal was already working on an inventory system for Precast, whereas Rectenwal testified at trial that he began working at Precast on February 8, 2016 and denied doing any work before then. That email serves only to impeach Rectenwal's credibility. Similarly, Gookins expressed extreme hostility toward County and its executives in several of the newly discovered emails, going as far as to state that he would love to see County put out of business. But those emails would also be merely impeaching of his trial testimony, in which he admitted that he is

competitive and was elated to potentially take a customer from County. *See Q.J. v. Ind. Dep't of Child Servs.*, 92 N.E.3d 1092 (Ind. Ct. App. 2018) (appellant's newly discovered evidence would not have prevailed, had a motion for relief from judgment been filed; the previously unavailable document would have been used only to impeach an adversarial witness), *trans. denied*. Further, the Purchasers had argued to the jury, based on witness testimony, that Gookins "hated" County, so the jury had already heard this information. Tr. Vol. V, p. 76.

[56] County further claims that one email exchange from January 2018 shows Gookins instructing an officer of Horn Precast to ignore the Purchasers' nonparty discovery requests as the case progressed, and that this evidence of wrongdoing would have changed the jury's verdict. We cannot agree that the email would have produced a different result at trial. The emails in fact reveal that Harry Horn asked Gookins if he should have his attorney contact Precast's attorney, and Gookins responded that he believed his attorney "did not want anything to be done at this time" on discovery. Appellants' App. Vol. III, p. 71. But Gookins also stated he would check with his attorney for further guidance. Thus, the email exchange does not indicate that Gookins was unilaterally instructing a nonparty to avoid discovery but was instead relaying the advice of his counsel as he understood it.

[57] Under these facts and circumstances, County failed to show that it was entitled to relief under Indiana Trial Rule 59 or Indiana Trial Rule 60(B)(2) for newly discovered evidence. Further, County did not demonstrate that the Precast

parties' conduct rose to the level of fraud or other misconduct under Indiana Trial Rule 60(B)(3). We need not address whether County had a meritorious claim or defense for purposes of Trial Rule 60(B)(2) or (3). The trial court did not abuse its discretion in denying County's request under to set aside the jury's verdict and schedule a new trial.

Conclusion

[58] For the foregoing reasons, we affirm the judgment of the trial court with respect to the denial of the Purchasers' request to set aside the final judgment. We further affirm the trial court's denial of Central's request to set aside the award of attorney's fees. But we reverse the trial court's denial of County's request to set aside the award of attorney's fees.

[59] Affirmed in part and reversed in part.

Bradford, C.J., and Najam, J., concur.