MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Steve Fulton,
Appellant-Petitioner,

v.

Erin Fulton,
Appellee-Respondent.

April 5, 2023

Court of Appeals Case No. 22A-DC-1475

Appeal from the Madison Circuit Court

The Honorable Andrew R. Hopper, Judge
The Honorable Christopher A. Cage, Commissioner

Trial Court Cause No. 48C03-2002-DC-106

Memorandum Decision by Judge Weissmann
Judges Robb and Crone concur.

Weissmann, Judge.

[1] In dissolving the marriage of Steve Fulton (Husband) and Erin Fulton (Wife), the trial court incorporated into its dissolution decree a settlement agreement stating Husband and Wife had already divided their property. More than 1½ years later, Wife asked the trial court to modify its decree to incorporate a different agreement—one that purportedly required Husband to pay Wife $112,500 as part of their property division. The trial court did not grant Wife's specific request; instead, the court set aside the property distribution portion of its dissolution decree and ordered the parties to "relitigate" the issue. Husband appeals, arguing that the trial court abused its discretion in partially setting aside the dissolution decree. Because Wife's request was untimely, we reverse.

Facts

[2] Husband and Wife appeared pro se at their final dissolution hearing and submitted to the trial court a proposed "Decree of Dissolution of Marriage and Settlement Agreement." The Settlement Agreement portion of this document provided, in pertinent part: "The parties already have divided their debts" and "all items of property." App. Vol. II, pp. 29, 30. The agreement concluded with Husband's and Wife's signatures under the following oath: "I affirm under the penalties of perjury that the foregoing representations are true." *Id.* at 31.

[3] During the final dissolution hearing, the trial court reviewed the terms of the Settlement Agreement with the parties. Wife specifically confirmed that she agreed with its terms and that she and Husband had already divided their debts

and property. Ultimately, the trial court signed the Dissolution of Marriage portion of the tendered document, issuing the following decree: "[T]he parties' marriage is hereby dissolved, and the terms of their agreement *as set forth above* shall be incorporated into this Order. *Id.* (emphasis added).

[4] A year and a half later, Wife purportedly learned that a different document, which she alleged to be the actual settlement agreement between her and Husband (Alleged Agreement), was not submitted to the trial court at the final dissolution hearing. The Alleged Agreement was signed by Wife and bore a signature resembling Husband's, both dated six months before the final dissolution hearing. Most of the agreement's provisions concerned parenting time for the parties' two children. But one provision stated: "The amount of $112,500 will be paid over the course of 15 calendar years either in lump sum or in installments." App. Vol. II, p. 48. According to Wife, this payment represented "the assets" she was to receive from Husband as a part of their property division. Tr. p. 126.

[5] A few months later, Wife filed a motion asking the trial court to incorporate the Alleged Agreement into its dissolution decree. At a hearing on Wife's motion, Husband denied signing the Alleged Agreement but admitted that he and Wife had negotiated and been operating according to some, but not all, of its terms. The trial court deemed the evidence "insufficient to adopt or enforce" the Alleged Agreement but concluded the parties did not intend for the court's dissolution decree "to serve as the final order alone." App. Vol. II, p. 55. Finding the parties had "continually operated beyond the scope of that

order"—be it by "formal or informal" agreement—the court ordered the parties "to relitigate the issues of assets and division of debts in the absence of that agreement before the Court." *Id.* at 56. Husband appeals.

Discussion and Decision

[6] The parties agree that the trial court's order effectively set aside the property distribution portion of its dissolution decree (*i.e.*, the court's incorporation of the Settlement Agreement provision stating the parties had already divided their debts and property). They also agree that the trial court must have interpreted Wife's motion as one for relief from judgment under Trial Rule 60(B).[1] Their primary dispute on appeal is the basis for, and corresponding timeliness of, Wife's motion under that rule.

[7] Trial Rule 60(B) contains eight sub-paragraphs, each providing a different reason for which a trial court may grant a party relief from its judgment. Husband characterizes Wife's motion as one under sub-paragraph (1), which allows relief for "mistake, surprise, or excusable neglect." Ind. Trial Rule 60(B)(1). Wife characterizes her motion as one under sub-paragraph (8), which

[1] Neither Wife's motion nor the trial court's order references Trial Rule 60(B). But given the facts of this case, that rule provided the only mechanism by which the court could have modified the property disposition portion of its dissolution decree. *See generally* Ind. Code § 31-15-2-17(c) (prohibiting modification except "as the [settlement] agreement prescribes or the parties subsequently consent"); Ind. Code § 31-15-7-9.1(a) (prohibiting modification "except in case of fraud"); *Dusenberry v. Dusenberry*, 625 N.E.2d 458, 461 (Ind. Ct. App. 1993) ("[N]otwithstanding statutory limitations on the modification of property settlement agreements, we must consider whether the trial court's order may be sustained under the equitable relief provisions of Trial Rule 60(B).").

allows relief for "any reason justifying relief . . . other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4)." T.R. 60(B)(8).

[8] The basis of Wife's motion is vital because she filed the motion more than a year after the trial court entered its dissolution decree. A motion based on "mistake, surprise, or excusable neglect" under Trial Rule 60(B)(1) must be filed "not more than one year after the judgment . . . was entered," but a motion based on the catchall provision of Trial Rule 60(B)(8) need only be filed "within a reasonable time." T.R. 60(B). Thus, Wife's motion was untimely if she sought relief under sub-paragraph (1).

[9] In her motion, Wife stated she was "unaware" the Alleged Agreement was not submitted at the final dissolution hearing until 1½ years after the court entered its dissolution decree. App. Vol. II, p. 41. Wife later testified that she thought the Alleged Agreement was the "agreement" submitted to, discussed with, and approved by the trial court at the final dissolution hearing. Tr. pp. 96-97. Based on these assertions, we conclude Wife's motion is properly characterized as one for relief based on mistake under Trial Rule 60(B)(1).

[10] To the extent the trial court interpreted Wife's motion as one for relief under the catchall provision of Trial Rule 60(B)(8), we note that sub-paragraphs (1) and (8) are "mutually exclusive." *Dusenberry v. Dusenberry*, 625 N.E.2d 458, 462 (Ind. Ct. App. 1993). Relief under sub-paragraph (8) is "not available" if the basis for relief properly belongs under sub-paragraph (1). *Id.*; *accord In re Marriage of Jones*, 180 Ind. App. 496, 500, 389 N.E.2d 338, 341 (1979) ("Relief

on grounds of mistake may not circumvent the requirement of being raised in one year by the simple expedient of characterizing the grounds for relief under a different subdivision of Tr. 60(B).").

[11] We review a trial court's decision on a Trial Rule 60(B) motion under an abuse of discretion standard. *Berg v. Berg*, 170 N.E.3d 224, 227 (Ind. 2021). We will reverse only if the decision is clearly against the logic and effect of the facts and circumstances before the court or is contrary to law. *Parham v. Parham*, 855 N.E.2d 722, 728 (Ind. Ct. App. 2006). Here, Wife filed her Trial Rule 60(B)(1) motion more than one year after the trial court entered its dissolution decree. Because the motion was untimely, we find the trial court abused its discretion in setting aside the property distribution portion of its decree and ordering the parties to "relitigate" the issue.

[12] We reverse the trial court's judgment.

Robb, J., and Crone, J., concur.