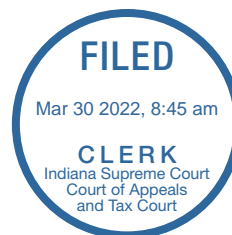


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Elite Construction Systems Inc.,
Matthew S. Gates, Heather
Gates, and Brenda Travis,
Appellants-Defendants,

v.

Ted L. Pease,
Appellee-Plaintiff

March 30, 2022

Court of Appeals Case No.
21A-PL-1585

Appeal from the Vanderburgh
Circuit Court

The Honorable David D. Kiely,
Judge

Trial Court Cause No.
82C01-2003-PL-1478

Crone, Judge.

Case Summary

- [1] Elite Construction Systems, Inc., Matthew S. Gates, Heather Gates, and Brenda Travis (the Appellants) appeal the trial court's denial of their motion to

set aside a default judgment entered in favor of Ted L. Pease. We dismiss the appeal as untimely.

Facts and Procedural History

- [2] On March 23, 2020, Pease filed a complaint against the Appellants seeking declaratory judgment and damages and alleging, among other things, breach of contract, breach of fiduciary duty, conversion, deception, and constructive fraud. The complaint and summonses were served on each Appellant by certified mail, with return receipt, on March 30, 2020. None of the Appellants responded to the complaint, and Pease filed a motion for default judgment on May 5, 2020. The trial court granted the motion and entered a default judgment against the Appellants on May 7, 2020. The trial court's order was served on the Appellants on May 15, 2020.
- [3] The Appellants hired counsel and filed a motion to set aside the default judgment on May 18, 2020. Pease responded to the motion to set aside, and the trial court held a hearing on June 23, 2020. The trial court entered its order denying the motion to set aside on June 24, 2020. A damages hearing was scheduled and later held on June 14, 2021. Following the hearing, the trial court entered a damages award in favor of Pease in the amount of \$221,771 on June 23, 2021. The Appellants filed their pro se notice of appeal on July 23, 2021.

Discussion and Decision

- [4] The sole issue raised by the Appellants in this appeal is whether the trial court abused its discretion in denying their motion to set aside the default judgment.¹ The Appellants filed their motion to set aside pursuant to Indiana Trial Rule 60(B)(1) (providing that the court may relieve a party from default judgment for “mistake, surprise, or excusable neglect”) and 60(B)(8) (providing that the court may relieve a party from default judgment for “any reason justifying relief from the operation of the judgment”). The trial court’s order denying the motion to set aside was entered in the chronological case summary on June 24, 2020.
- [5] Pease urges this Court to dismiss this appeal as untimely because it was filed by the Appellants more than a year after the trial court’s order denying their motion to set aside. Indiana Appellate Rule 9(A) provides that a party must initiate an appeal by filing a notice of appeal with the appellate clerk within thirty days after the entry of a final judgment is noted in the chronological case summary, and that unless the notice of appeal is timely filed, the right to appeal shall be forfeited. Ind. Appellate Rule 9(A)(1), (5). Indiana Appellate Rule 2(H)(3) provides in pertinent part that a judgment is a final appealable judgment if “it is deemed final under Trial Rule 60(C)[.]” Indiana Trial Rule 60(C) states in relevant part: “A ruling or order of the court denying or granting relief, in

¹ We note that the Appellants’ brief is riddled with typos and mistakes, the most egregious of which involves a statement of issues that is wholly unrelated and irrelevant to the issue presented herein and clearly pertains to a different case. *See* Ind. Appellate Rule 46(A)(4) (“*Statement of Issues*. This statement shall concisely and particularly describe each issue presented for review.”). We remind counsel that he would better serve his clients by proof reading briefs before submitting them to this Court.

whole or in part, by motion under subdivision (B) of this rule *shall be deemed a final judgment*, and an appeal may be taken therefrom as in the case of a judgment.” (Emphasis added); See *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 757 (Ind. 2014) (citing *Coslett v. Weddle Bros. Constr. Co.*, 798 N.E.2d 859, 861 (Ind. 2003) (affirming trial court’s order setting aside default judgment and declaring: “A ruling denying or granting relief on a motion to set aside a default is deemed a final judgment from which an appeal may be taken.”)).

[6] Accordingly, the trial court’s June 24, 2020, order denying the Appellants’ motion to set aside was a final appealable judgment. The Appellants’ notice of appeal filed on July 23, 2021, was untimely, and therefore their right to appeal the trial court’s ruling on the motion to set aside has been forfeited.² As we can discern no extraordinarily compelling reasons why this forfeited right should be restored, see *In re Adoption of O.R.*, 16 N.E.3d 965, 971 (Ind. 2014) (noting that once right to appeal has been forfeited, question becomes whether there are extraordinarily compelling reasons why right should be restored),³ we dismiss this appeal.

[7] Dismissed.

² As noted by Pease, the Appellants challenge only the trial court’s order denying their motion to set aside. They do not challenge the trial court’s subsequent order awarding damages to Pease entered on June 23, 2021.

³ The Appellants did not file a reply brief or otherwise respond to Pease’s request for dismissal.

Bradford, C.J., and Tavitas, J., concur.