MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

ATTORNEY FOR APPELLANT

Daniel W. Sherman
Valparaiso, Indiana

ATTORNEYS FOR APPELLEES

Amy Stewart Johnson
Anthony W. Overholt
Maggie L. Smith
Frost Brown Todd LLC
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Anchor Health Systems, Inc.,
Appellant-Plaintiff,

v.

Dennis Radowski, City of Hammond and Professional Claims Mgmt., Inc.,
Appellees-Defendants

March 1, 2023

Court of Appeals Case No. 22A-CC-611

Appeal from the Lake Superior Court

The Honorable Thomas P. Hallett, Judge

Trial Court Cause No. 45D03-1601-CC-00048

Memorandum Decision by Judge May
Judges Crone and Weissmann concur.

May, Judge.

[1] Anchor Health Systems, Inc. ("Anchor") appeals following the trial court's order denying its motion for relief pursuant to Indiana Trial Rule 59 and Indiana Trial Rule 60. We address the following two issues:

1. Whether the trial court abused its discretion when it denied Anchor's motion for relief pursuant to Trial Rule 59; and

2. Whether the trial court abused its discretion when it denied Anchor's motion for relief pursuant to Trial Rule 60.

Because Anchor has not demonstrated the trial court abused its discretion by denying its motion under either rule, we affirm.[1]

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[1] We wish to remind Anchor's counsel of some of his obligations under the Indiana Appellate Rules and impress upon him that all attorneys practicing before this Court and the Indiana Supreme Court are required to abide by those Rules. The Appellate Rules are easily accessible on the Indiana Judicial Branch's website. *See* Indiana Rules of Appellate Procedure, available at https://www.in.gov/courts/publications/rules/.

Appellate Rule 50 requires appellants to include in the appendix "pleadings and other documents from the Clerk's Record in chronological order that are necessary for resolution of the issues raised on appeal[.]" Anchor failed to include in its appendices a copy of its amended complaint and a copy of its motion for relief from the trial court's summary judgment order. The absence of these documents hindered our review. Anchor's failure to include a copy of its motion for relief is particularly noteworthy because Anchor is appealing from the trial court's order denying that motion. We were able to access Anchor's amended complaint via Odyssey, and the Appellees included Anchor's motion for relief in their appendix.

In addition, Rule 46(A)(6)(c), regarding the statement of facts section of a litigant's brief, provides: "The statement shall be in narrative form and shall not be a witness by witness summary of the testimony." However, rather than present its statement of facts in narrative form, Anchor simply reproduced large excerpts of affidavits and exhibits it submitted to the trial court with minimal additional context. This resulted in a disjointed presentation of the facts, which significantly hindered our review.

Moreover, Appellate Rule 51(D) provides: "An Appendix shall consist of a table of contents (See Rule 51(F)) and one or more additional volumes, and each Appendix volume must be limited in size to the lesser of two hundred fifty (250) pages or fifty megabytes (50MB)." Given Rule 51's limitation of 250 pages per appendix volume, there was no need for Anchor to file five volumes of appendices with a combined total of less than 250 pages and 58 megabytes. This hindered our review because it required repeated transitioning between digital files of unnecessary additional appendix volumes. We expect counsel to review the Appellate Rules and not repeat these mistakes.

Facts and Procedural History

[2] On January 27, 2016, Anchor filed suit against Dennis Radowski ("Dennis"), the Hammond City Controller, and Professional Claims Management, Inc. ("PCM"). Anchor subsequently amended its complaint on September 29, 2020. In the amended complaint, Anchor alleged Dennis was an employee of the City of Hammond ("City"), and by virtue of his employment with the City, both he and his wife, Grace Radowski ("Grace"), were beneficiaries of a health insurance plan administered by PCM. Anchor alleged it provided healthcare services to Grace and it had not been paid for those services.

[3] The City and PCM (collectively, "City Defendants") subsequently filed a motion for summary judgment. Dennis did not join the motion for summary judgment. On September 16, 2021, the trial court issued an order granting the City Defendants' motion for summary judgment in which the trial court found:

> 1. Plaintiff filed its Amended Complaint requesting damages from the City Defendants under a health insurance policy with Defendant, Dennis Radowski, for home health care services provided to Mr. Radowski's wife.
>
> 2. Plaintiff is seeking relief from City Defendants solely as an intended third-party beneficiary of the City of Hammond's health insurance plan administered by Professional Claims Management, Inc.
>
> 3. The determination of Plaintiff's status as a third-party beneficiary is a question of law requiring the interpretation of the health insurance plan.

* * * * *

> 6. The provisions cited by Plaintiff, either standing alone or read in the context of the entire plan, fail to show a clear and affirmative intent by Defendant, Dennis Radowski, and City Defendants to bestow rights upon Plaintiff as a third-party beneficiary.

(Appellant's App. Vol. II at 15-16.)

[4] On October 15, 2021, Anchor filed a motion seeking relief under both Trial Rule 60 and Trial Rule 59. In its motion, Anchor stated:

> 1. In its September 16, 2021 Order on Motion for Summary Judgment, this Court granted judgment in favor of defendants City of Hammond and Professional Claims Management, Inc. on the Amended Complaint filed by plaintiff.
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> 2. Plaintiff recently discharged its former counsel, Jonathan O'Hara, and concurrently with this motion, have retained attorney Daniel W. Sherman to substitute as Anchor's attorney and he has moved to substitute as plaintiff's counsel in this case.
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> 3. Plaintiff now seeks relief under Rule 60, sections (B) (1) (2) and (8) in that it has a meritorious claim for breach of contract against defendants City of Hammond and Professional Claims Management, Inc., which, on information and belief, will be supported by newly discovered evidence.
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> 4. Alternatively, plaintiff seeks relief under Rule 59(A)(1) in that plaintiff seeks to address a meritorious claim it has for breach of contract against defendants City of Hammond and Professional Claims Management, Inc., which, on information and belief, will be supported by newly discovered material evidence.

(Appellees' App. Vol. II at 4-5.) The City Defendants filed a response arguing Anchor's motion was procedurally improper and substantively deficient. Anchor then filed a "Memorandum/Supplement Supporting Motion for Relief Under Rule 60 and/or 59, [sic] and Reply to Defendants' Response to Initial Motion" and attached as exhibit 1 to the memorandum an affidavit from Shelly Wilson, Anchor's owner. (*Id*. at 18.) The City Defendants also responded to this filing.

[5] The trial court held a hearing on the motion on January 20, 2022. On February 16, 2022, the trial court issued an order denying Anchor's motion for relief under both Trial Rule 59 and Trial Rule 60. As to Trial Rule 59, the trial court found Anchor's motion for relief was untimely, and as to Trial Rule 60, the trial court determined: "Plaintiff has failed to show any surprise or excusable neglect, any newly discovered evidence, or any other basis for relief from the Order on Motion for Summary Judgment issued September 16, 2021, under Trial Rule 60(B)." (Appellant's App. Vol. II at 17.)

Discussion and Decision

[6] Anchor appeals following an order denying its motion for relief pursuant to both Rule 59 and Rule 60. "We review the grant or denial of Trial Rule 59 motions to correct error and Trial Rule 60(B) motions for relief from judgment under an abuse of discretion standard." *Cleveland v. Clarian Health Partners, Inc.*, 976 N.E.2d 748, 755 (Ind. Ct. App. 2013), *reh'g denied*, *trans. denied*. An abuse

of discretion occurs if "the trial court's decision is clearly against the logic and effect of the facts and circumstances before it or is contrary to law." *Id*.

1. Denial under Trial Rule 59

[7] Indiana Trial Rule 59(C) provides: "The motion to correct error, if any, must be filed not later than thirty (30) days after the entry of a final judgment is noted in the Chronological Case Summary." "A final judgment is one that 'disposes of all claims as to all parties[.]'" *Snyder v. Snyder*, 62 N.E.3d 455, 458 (Ind. Ct. App. 2016) (quoting Ind. Appellate Rule 2(H)(1)) (brackets in original).

[8] Here, the order granting summary judgment disposed only of Anchor's claims against the City Defendants. It did not dispose of Anchor's claims against Dennis. Thus, the order granting summary judgment for City Defendants was not a final judgment,[2] and Anchor was not able to challenge the summary judgment order pursuant to Rule 59.[3] *See*, *e.g.*, *Indy Auto Man, LLC v. Keown &*

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[2] The order granting summary judgment to some, but not all, of the parties could have been declared a final appealable order by the trial court pursuant to Trial Rule 54(B) or Trial Rule 56(C), as those rules "allow trial courts to certify interlocutory orders as final, appealable orders if the trial court includes the 'magic language' in its order: that there is no just reason for delay and directs entry of judgment." *Ramco Indus., Inc. v. C & E Corp.*, 773 N.E.2d 284, 288 (Ind. Ct. App. 2002) (quoting *Legg v. O'Connor*, 557 N.E.2d 675, 676 (Ind. Ct. App. 1990)). However, in the instant case, the trial court did not issue an order with such "magic language."

[3] To the extent Anchor sought to challenge the partial summary judgment order by means of its Rule 59 motion, Anchor's motion can be construed as a motion to reconsider the order granting summary judgment. *See Snyder*, 62 N.E.3d at 458 ("motions to correct error are proper only after the entry of final judgment; any such motion filed prior to the entry of final judgment must be viewed as a motion to reconsider"). However, the filing of a motion to reconsider does not toll the deadline for filing a notice of appeal, *see* Trial Rule 53.4(A), nor does it convert an interlocutory order into a final judgment. *See Nationwide Ins. Co. v. Parmer*, 958 N.E.2d 802, 806 (Ind. Ct. App. 2011) (holding requirement that parties file a motion requesting certification of an interlocutory order for appeal within thirty days applied even though appellants filed a motion to reconsider). As such, Anchor would have needed to pursue an interlocutory appeal of the order denying summary judgment as provided in Indiana Appellate Rule 14(B) in order for us to have jurisdiction

Kratz, LLC, 84 N.E.3d 718, 721 (Ind. Ct. App. 2017) (holding trial court's order granting summary judgment for only one of two named defendants was not a final order). Accordingly, the trial court did not abuse its discretion when it denied relief under Trial Rule 59.

2. Denial under Trial Rule 60(B)

[9] Unlike with a motion to correct error, a party is not precluded from seeking Trial Rule 60(B) relief from an order solely on the grounds that the order was not a final judgment.[4] *Mitchell v. 10th & The Bypass, LLC*, 3 N.E.3d 967, 974 (Ind. 2014). Trial Rule 60(B)'s limitation of relief to only "final" judgments was eliminated in 2008 when Trial Rule 60(B) was amended. *Id*. ("Thus, the express language of the rule no longer limits relief only from a 'final' judgment … [the plaintiff] is not precluded from seeking Trial Rule 60(B) relief from the trial court's January 2010 order on grounds that the order was not a final judgment."). Moreover, an appeal of the denial of a motion under Trial Rule 60(B) may be taken as in the case of a final judgment. *See* Ind. T.R. 60(C) ("A ruling or order of the court denying or granting relief, in whole or in part, by motion under subdivision (B) of this rule shall be deemed a final judgment, and

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to review the merits of the trial court's order denying summary judgment. *See Indy Auto Man v. Keown & Kratz,* 84 N.E.3d 718, 721-22 (Ind. Ct. App. 2017) (appellate court did not have jurisdiction to consider appeal from non-final order granting summary judgment to one of two named defendants when plaintiff failed to first gain permission, pursuant to Indiana Appellate Rule 14(B), from both the trial court and this court to pursue a discretionary interlocutory appeal).

[4] Proposed amendments to Rule 60(B) are currently pending and, if adopted, would restore the "finality" requirement. *See* Proposed Amendment to Indiana Rules of Trial Procedure (July 2022). **[https://perma.cc/N68M-TU92]**

an appeal may be taken therefrom as in the case of a judgment."); *see also*, Ind. App. R. 2(H)(3) ("A judgment is a final judgment if … it is deemed final under Trial Rule 60(C)[.]").

[10] Trial Rule 60(B) provides, in relevant part:

> On 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:
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> (1) mistake, surprise, or excusable neglect;
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> (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;
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> * * * * *
>
> (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4).

To obtain relief under this rule, a party must show relief is justified by "'extraordinary circumstances' that are not the result of the moving party's fault or negligence." *State v. Mooney*, 51 N.E.3d 281, 283 (Ind. Ct. App. 2016) (quoting *Z.S. v. J.F.*, 918 N.E.2d 636, 640 (Ind. Ct. App. 2009)). When we review a trial court's ruling under this rule, we review for an abuse of discretion. *Id*. at 284.

[11] A "motion for relief from judgment under Indiana Trial Rule 60(B) is not a substitute for a direct appeal." *In re Paternity of P.S.S.*, 934 N.E.2d 737, 739 (Ind. 2010). Nor is such a motion "intended to address the legal merits of a judgment." *Welton v. Midland Funding, LLC*, 17 N.E.3d 353, 357 n.2 (Ind. Ct. App. 2014). Instead, a party is required to assert and argue on appeal how the trial court abused its discretion by denying the Trial Rule 60(B) motion. *Paternity of P.S.S.*, 934 N.E.2d at 741. Arguments challenging the merits of an underlying summary judgment order are unavailable on appeal from the denial of a Trial Rule 60(B) motion. *Welton*, 17 N.E.3d at 357.

[12] In the instant case, Anchor's argument focuses exclusively on the propriety of the underlying order granting summary judgment even though that is not the order before us on appeal. At the beginning of its appellate argument, Anchor asserts that, "[a]s a threshold matter, Anchor seeks to overturn the trial court's summary judgment to allow Anchor to pursue its contractual rights." (Appellant's Br. at 11.) Anchor then uses the rest of its brief to argue the trial court erred in granting summary judgment in favor of the City Defendants. Anchor has not provided any explanation or argument about how the trial court erred when denying Anchor's motion for relief under Trial Rule 60(B). Accordingly, Anchor has failed to demonstrate an abuse of discretion by the trial court. *See Mooney*, 51 N.E.3d at 285 (affirming the trial court's denial of the BMV's motion for relief from judgment because the BMV "failed to identify any circumstances warranting relief under Trial Rule 60(B)(1) or (B)(8), and its motions addressed only the legal merits of the judgments"). We therefore

affirm the trial court's denial of Anchor's motion for relief under Trial Rule 60(B).

Conclusion

[13] The trial court did not abuse its discretion when it denied Anchor's motion for relief under Trial Rule 59 because the court's order granting summary judgment for the City Defendants was not a final judgment that could be challenged by means of a Trial Rule 59 motion. Nor has Anchor demonstrated the trial court abused its discretion by denying Anchor's motion under Trial Rule 60 because Anchor failed to provide any argument on appeal to support such a holding. An appeal from the denial of a Trial Rule 60(B) motion cannot be used to challenge the merits of the underlying order, and we accordingly affirm the trial court.

[14] Affirmed.

Crone, J., and Weissmann, J., concur.