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IN THE COURT OF APPEALS OF INDIANA

Ruth Anne Gregory, Jane Marie Meives, Kay E. Morken and Phillip S. Sprague,

Appellants-Intervenors,

v.

Eileen V. Koltz,

Appellee-Plaintiff.

January 31, 2023

Court of Appeals Case No. 22A-MI-1106

Appeal from the Steuben Circuit Court

The Honorable Allen Wheat, Judge

The Honorable James W. Burns, Magistrate

Trial Court Cause No. 76C01-1404-MI-134

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellants-Intervenors, Ruth Ann Gregory (Gregory), Jane Marie Meives (Meives), Kay E. Morken (Morken), and Phillip S. Sprague (Sprague) (collectively, Appellants), appeal the trial court's Order, denying Appellants' motion to intervene and motion to set aside default judgment issued in favor of Appellee-Plaintiff, Eileen V. Koltz, Trustee of the Eileen V. Koltz Trust, UTD April 7, 1987 (Koltz).

[2] We affirm.

ISSUES

[3] Appellants present this court with two issues on appeal, which we restate as:

(1) Whether the trial court abused its discretion when it denied Appellants' motion to intervene in a quiet-title action that had resulted in a default judgment seven years earlier; and
(2) Whether the trial court abused its discretion when it denied Appellants' motion to set aside the default judgment.

[4] Koltz presents this court with the following issue: Whether Appellants' appeal should be dismissed as untimely because Appellants did not file their notice of appeal within thirty days of the trial court's Order and failed to seek an extension of the deadline to file.

FACTS AND PROCEDURAL HISTORY

[5] In 1922, Bert Sprague (Bert) and Frank Gilbert (Gilbert) purchased real estate in an unrecorded plat of Lake George Beach in Fremont, Indiana, to subdivide and resell. Over the years, subdivided sections of this real estate were sold to various individuals. In 1999, Koltz purchased a section of the lake front real estate to use as her primary residence, with an easement immediately to the west of this real estate.

[6] Two conveyances appear to have created this easement, in its entirety or at least sections of it. The first section, referred to as Tracts B, C, and D, was created by Steuben County Deed Record 116, dated March 27, 1957, with Russel and Mildred Sprague, husband and wife, and Ruth and Harold Smits, husband and wife, as grantors to "the owners of lake lots on or near Lake George" and recorded April 20, 1957. (Appellants' App. Vol. II, p. 9). The second section of the easement was created by a transfer of the West one-half of Lot 70(A) Steuben County Deed Record 134, dated October 7, 1967, and recorded October 10, 1967, with Lester and Patricia Zintsmaster as grantors to "the public." (Appellants' App. Vol. II, p. 9).

[7] On December 9, 2004, Koltz acquired ownership of a portion of the easement, located in Tracts A and B owned by Bert's heirs, Jack and Madola Sprague, by quitclaim deed. The quitclaim deed was recorded on December 30, 2004. Other fractional shares of ownership in either Tracts B, C, and D, or the West one-half of Lot 70A were transferred by testate or intestate succession, none specifically referencing the property encumbered by the easement. "It appears

that at some point all of this real estate was dropped from the Steuben County tax rolls and seems to have laid fallow for well over [sixty] years except for its use as an easement." (Appellant's App. Vol II, p. 9). Prior to April 2014, it appeared that various fractional shares of ownership in Tracts B, C, and D, and the West one-half of Lot 70A existed as follows: Sprague held a 5/48 interest in Tract B and a 5/48 interest in Tract C and D; Meives held a ¼ interest in the West one-half of Lot 70A; and Gregory held a ¼ interest in Tracts B, C, And D.

[8] On April 10, 2014, Koltz filed a Complaint to quiet title to real estate, claiming ownership to land commonly identified as "Survey Legal Tract A" (Property), which consisted of sections of Tracts A, B, C, and D, and a portion of the West one-half of Lot 70A. (Appellants' App. Vol. II, p. 18). The sections comprising the Property were encumbered, entirely or in part, by the easement. The Complaint included, as referenced in its caption, the defendants Gilbert, Deceased; Lester R. Zintsmaster, Deceased; Patricia A. Zintsmaster, Deceased;

> AND ALL OTHER UNKNOWN HEIRS AND DEVISEES, AND ALSO THE UNKNOWN HEIRS, DEVISEES, REPRESENTATIVES, LEGATEES, EXECUTORS, ADMINISTRATORS, HUSBANDS, WIVES, RECEIVERS, LESSEES, SUCCESSORS, ASSIGNEES, GUARDIANS, TRUSTEES, WIDOWS,WIDOWERS, CHILDREN, CES TUIS QUE TRUSTS, CREDITORS, BENEFICIARIES, GRANTEES OF EACH AND ALL OF THE ABOVE DESCRIBED AND NAMED DEFENDANTS INCLUDING ALL DEFENDANTS ONCE KNOWN BY ANY OF THE NAMES HEREIN SET OUT WHO HAVE CHANGED THEIR NAMES AND WHO ARE NOW KNOWN BY SOME

> OTHER NAME AND ANY AND ALL PERSONS WHO MIGHT HAVE SOME POSSIBLE INTEREST IN SAID REAL ESTATE, AND THE UNKNOWN HUSBANDS OR WIVES, WIDOWS OR WIDOWERS, HEIRS OR DEVISEES OF ALL PERSONS APPEARING OR RECORDED AS AN OWNER OR FORMER OWNER OR ENCUMBRANCER OF REAL ESTATE HEREIN DESCRIBED AND ANY AND ALL PERSONS AND CORPORATIONS CLAIMING FROM, THROUGH OR UNDER SUCH PERSONS AND CORPORATIONS ABOVE DESCRIBED OR HEREINAFTER DESCRIBED AND NAMED AND RELATED TO THEM OR ANY OF THEM

(Appellants' App. Vol. II, pp. 15-16). A praecipe for summons by publication and affidavit in support of the praecipe was filed together with the Complaint. In the affidavit, Koltz's counsel affirmed that all defendants were deceased and that she had "made a diligent search to locate the children and grandchildren, if any, of the deceased defendants, but [was] unsuccessful in locat[ing] the [sic] in order to complete personal service." (Appellants' App. Vol. II, p. 23). Service by publication was made on April 23, April 30, and May 7, 2014, in a daily newspaper in Steuben County, Indiana. The notice published in the newspaper included the caption of the Complaint and generally informed the defendants that they were being sued with the nature of the Complaint being an action to quiet title to real estate located in Steuben County, Indiana. The notice included a deadline to file a response to the Complaint but did not identify the specific real estate.

[9] On February 13, 2015, the trial court entered a default judgment after no response to the Complaint had been filed within thirty days of the third

publication in the newspaper. On March 2, 2015, Koltz recorded the judgment in the office of the recorder of Steuben County.

[10] In December 2018, Morken purchased the real estate, located at 215 Lane 201 A Lake George, Fremont, Indiana. On December 19, 2020, Gregory and Stephen R. Bixler conveyed to Morken any interest they had in the Property by quitclaim deed. On January 20, 2021, Daniel T. Zintsmaster, Anna Maria Corbett, Meives, and Anita Bouma delivered a quitclaim deed to Morken, conveying to Morken any interest they had in the Property. On February 11, 2021, Sprague and David S. Sprague delivered to Morken a quitclaim deed, also conveying to Morken any interest they had in the Property.

[11] On November 10, 2021, Appellants filed a motion to intervene and to set aside and vacate the default judgment. In an effort to set aside the default judgment, Appellants argued that of the three lines of ownership succession in the Property, only two lines were included as defendants in the cause. They also claimed that Koltz had provided improper notice of the Complaint by publication and had failed to make reasonable efforts to identify and name the proper defendants while other defendants that were included in the body of the Complaint were never identified by name in the caption of the Complaint. Finally, Appellants maintained that Koltz had failed to file the Quiet Title Affidavit, as required by Indiana Code section 32-30-3-14(e)(2)(F), and had omitted to verify the Complaint.

[12] On February 28, 2022, after a hearing, the trial court denied both of Appellants' motions. In its Order, the trial court reasoned that:

> A complaint to quiet title is by its nature a suit against the world and notice is required to be published to give notice to all of the claimant's effort to acquire clear title. Every effort should be made to give actual notice to those who appear in the chain of title of record by deed, lis pendens notice, mortgage or other lien. None of the [Appellants] had taken any steps to give notice of their interest in the real estate in question and [Koltz] was left to follow a stale trail of testate and intestate transfers to divine who may have an interest in the subject [P]roperty. That some potential claimants may be omitted is to be expected when the real estate has been so long neglected in the public record that it has even fallen from the tax rolls. The notice actually given by publication was sufficient to have put a vigilant person on notice of the nature of the claim. To hold that every heir with a potential claim of even a miniscule interest can challenge a quiet title determination forever is untenable. The level of uncertainty would be a huge impediment for the utilization of real estate for productive purposes.

[13] (Appellants' App. Vol. II, p. 13). As a result, the trial court concluded:

> In summary, the [c]ourt finds that [Appellants] have not met their burden to show 'extraordinary and unusual circumstances' under T.R. 24(C) and that their motion is not timely coming more than 6 years after entry of the judgment.
>
> The [c]ourt further finds that even had they been allowed to intervene they have not presented a compelling case that the judgment is void under T.R. 60(B)(6) as there was sufficient notice in the Summons published by [Koltz] to all parties to constitute adequate service under the circumstance presented here.

> Had [Appellants] filed, within one year of the entry of the default, they could have availed themselves of the remedy provided by T.R. 60(B)(4), but they are well past that one-year time limitation.
>
> Lastly, no real case has been made to set aside the judgment under T.R. 60(B)(8), it precludes the [c]ourt from considering grounds under T.R. 60(B)(4) and no other reason is compelling.
>
> The [c]ourt now denies [Appellants'] Motion to Intervene and Motion to Set Aside and Vacate Default Judgment.

(Appellants' App. Vol. II, p. 14).

[14] On March 1, 2022, the clerk served the trial court's final judgment on Koltz's counsel; Appellants' counsel was not served on that date. On April 14, 2022, the clerk served the judgment on Appellants' counsel. On May 13, 2022, Appellants filed their notice of appeal, including a notation that "[w]hile the Order was dated February 28, 2022, a copy of the Order was not served upon Appellants' counsel until April 14, 2022." (Appellants' Notice of Appeal, p. 2). On June 21, 2022, Koltz filed a motion to dismiss Appellants' appeal with the motions panel of this court, arguing that the appeal was untimely and that Appellants had failed to follow "the mandatory procedures provided by Trial Rule 72(E)" which would have allowed the trial court to extend the time to appeal. (Appellee's motion to dismiss, p. 8). On July 5, 2022, Appellants filed a response to the motion to dismiss and a motion for extension of time to initiate appeal. By Order of July 18, 2022, this court's motions panel denied Koltz's motion to dismiss the appeal based on "App. R. 1" and granted

Appellants' motion for an extension of time to initiate the appeal. (Order, July 18, 2022, p. 1).

[15] Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Timeliness of Appellants' Appeal*

[16] Because Koltz presents this court with a threshold procedural question, we will address her claim before proceeding to the merits of Appellants' appeal. Specifically, Koltz contends that the motions panel abused its discretion by denying her motion which sought to dismiss Appellants' appeal as untimely. Even though the motions panel has already ruled on the issues now developed by Koltz, Koltz is not precluded from presenting her arguments to us. *Cincinnati Ins. Co. v. Young*, 852 N.E.2d 8, 12 (Ind. Ct. App. 2006), *trans. denied*. While it is well established that we may reconsider a ruling by the motions panel, we will decline to do so in the absence of clear authority establishing that the panel erred as a matter of law. *See Oxford Fin. Group, Ltd. v. Evans*, 795 N.E.2d 1135, 1141 (Ind. Ct. App. 2003).

[17] The trial court issued its Order on February 28, 2022, which was entered on the Chronological Case Summary (CCS) the same day. As the Order constituted a final judgment, the deadline for appeal was March 30, 2022. *See* 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 an appeal may be taken therefrom as in the case of a judgment."); Ind.

Appellate Rule 9(A) ("A party initiates an appeal by filing a Notice of Appeal within thirty (30) days after the entry of a Final Judgment is noted in the [CCS]"). The clerk served the Order on Koltz's counsel on March 1, 2022. The CCS reflects that the Order was served on Appellants' counsel on April 13, 2022, after the deadline to appeal had expired. Appellants filed their Notice of Appeal on May 13, 2022—within thirty days of the service date but outside the thirty days of the Order's entry on the CCS.

[18] Koltz now contends that Appellants should have applied the mandates set out in Indiana Trial Rule 72(E) to extend their deadline to appeal instead of proceeding with the filing of a Notice of Appeal.

> Lack of notice, or the lack of the actual receipt of a copy of the entry from the Clerk shall not affect the time within which to contest the ruling, order or judgment, or authorize the [c]ourt to relieve a party of the failure to initiate proceedings to contest such ruling, order or judgment, except as provided in this section. When the service of a copy of the entry by the Clerk is not evidenced by a note made by the Clerk upon the Chronological Case Summary, the [c]ourt upon application for good cause shown, may grant an extension of any time limitation within which to contest such ruling, order or judgment to any party who was without actual knowledge, or who relied upon incorrect representations by [c]ourt personnel. Such extension shall commence when the party first obtained actual knowledge and shall not exceed the original time limitation.

T.R. 72 (E). However, here, the CCS does include a note from the Clerk's office evidencing service of the trial court's Order on Appellants, albeit more than a month after the trial court issued its Order and Koltz received notice

thereof. Although Appellants' counsel had "a general duty to regularly check the court records and monitor the progress of pending cases, [counsel is] entitled to rely upon notification by the clerk pursuant to T.R. 72(D)." *Slay v. Marion Cnty. Sheriff's Dep't*, 603 N.E.2d 877, 883 (Ind. Ct. App. 1992), *trans. denied*. Accordingly, as the CCS reflects the entry evidencing notice and service of the Order on Appellants' counsel, T.R. 72(E) is not implicated.

[19] As it is the entry of the Order on the CCS that triggered the timeline for appeal notwithstanding the Clerk's belated service of the Order on Appellants, the Appellants' Notice of Appeal was filed outside the thirty-day window of time. *See* App. R. 9(A). Generally, "[u]nless the Notice of Appeal is timely filed, the right to appeal shall be forfeited[.]" App. R. 9(A)(5). Nevertheless, our supreme court has recognized a limited exception to the forfeiture of an untimely appeal when "there are extraordinarily compelling reasons why this forfeited right should be restored." *In re O.R.*, 16 N.E.3d 965, 971 (Ind. 2014) (Father's attempt to perfect a timely appeal, and the constitutional dimensions of the parent-child relationship showed that Father's otherwise forfeited appeal deserved a determination on the merits). "[O]ur appellate rules exist to facilitate the orderly presentation and disposition of appeals . . . and" as we have previously noted "we are mindful that our procedural rules are merely means for achieving the ultimate end of orderly and speedy justice." *In re Adoption of T.L.*, 4 N.E.3d 658, 661 n. 2 (Ind. 2014). This policy has been incorporated into our Rules of Appellate Procedure in Appellate Rule 1, which provides, in part, that "[t]he [c]ourt may, upon the motion of a party or the

[c]ourt's own motion, permit deviation from these Rules." Thus, despite the "shall be forfeited" language of Appellate Rule 9(A), the Rules themselves provide a mechanism allowing this court to resurrect an otherwise forfeited appeal.

[20] Here, in light of the Clerk's belated service of the trial court's Order on Appellants—but not on Koltz—and our court's preference for deciding cases on their merits by giving a party its day in court rather than dismissing them on procedural grounds, we cannot say that our motions panel erred by reinstating Appellants' otherwise forfeited appeal based on Appellate Rule 1. We now turn to the merits of Appellants' appeal.

II. *Motion to Intervene*

[21] Claiming an interest in this cause sufficient to entitle them to intervene, Appellants contend that the trial court abused its discretion when it denied their motion to intervene as of right pursuant to Indiana Trial Rule 24(A)(2). A trial court is required, as a matter of right, to grant a party's timely motion to intervene if the party shows (1) an interest in property which is the subject of the action, (2) that disposition of the action may practically impair or impede the party's ability to protect that interest, and (3) that no existing party is adequately representing the moving party's interest. *See* T.R. 24(A)(2); *Citimortgage, Inc. v. Barnabas*, 975 N.E.2d 805, 816 (Ind. Ct. App. 2012). The trial court has discretion to determine whether a prospective intervenor has met its burden. *Id*. Thus, we review the trial court's ruling on a motion to intervene

for abuse of discretion and assume that all facts alleged in the motion are true. *Id*.

A. *Intervention by Sprague, Gregory, and Meivis*

[22] Appellants premised their right to intervene on their contention that they had an interest in the Property, which supported their right to intervene. However, focusing on the quitclaim deeds executed between Morken, on the one hand, and Sprague, Gregory, and Meives, respectively on the other hand, by which they conveyed their respective interests in the Property to Morken at different points during these proceedings by quitclaim deeds—the validity of which are uncontested—Koltz argues that as Sprague, Gregory, and Meives no longer have any interest in the Property, they cannot now intervene. In response and without reference to any supporting caselaw, Appellants contend that because Sprague, Gregory, and Meives held "ownership interests in the [Property] at the time of the [d]efault [j]udgment," they are entitled to intervene in the proceedings to set aside the judgment. (Appellants' Reply Br. p. 8).

[23] "The analysis of what constitutes an 'interest' under T.R. 24(A) to require intervention leads one into a legal quagmire which resolves little but the immediate decision." *In re Paternity of E.M.*, 654 N.E.2d 890, 892 (Ind. Ct. App. 1995). In Indiana, we have adopted a relatively narrow construction of T.R. 24 based upon *Donaldson v. United States*, 400 U.S. 517, 91 S.Ct. 534, 27 L.Ed.2d 580 (1971), and our courts have required "more of an 'interest' to merit intervention as of right than the language of the rule itself might suggest."

Llewellyn v. Beasley, 415 N.E.2d 789, 795 (Ind. Ct. App. 1981). An applicant seeking intervention must claim an immediate and direct interest in the proceedings. *In re Paternity of E.M.*, 654 N.E. 2d at 893. Other cases cited with approval by this court in *Hinds v. McNair*, 287 N.E.2d 767, 772 (Ind. Ct. App. 1971), suggest that intervention requires a direct, substantial, legally protectable interest in the proceeding, or a significantly protectable interest. Put succinctly, the intervenor of right "must have an interest recognized by law that relates to the subject of the action in which intervention is sought." *State ex rel. Prosser v. Indiana Waste Sys.*, 603 N.E.2d 181, 187 (Ind. Ct. App. 1992).

[24] Although Sprague, Gregory, and Meivis had an interest in the Property at the time the default judgment was issued, they conveyed this interest, as recognized by law, via a quitclaim deed to Morken after the default judgment was recorded but prior to the filing of the motion to intervene. As such, at the moment they sought intervention in these proceedings, Sprague, Gregory, and Meivis no longer possessed an interest in the Property that was legally protectable. *See id*. Therefore, the trial court did not abuse its discretion by denying their motion to intervene as of right.

B. *Intervention by Morken*

[25] Having acquired an interest in the Property by quitclaim deed, the trial court evaluated Morken's request to intervene pursuant to Indiana Trial Rule 24(C) and found the motion to intervene untimely.

[26] Intervention as a matter of right "shall" be granted only "[u]pon timely motion." T.R. 24(A).[1] But, after entry of final judgment, as is the case here, our trial rules go a step further to state that intervention "may be allowed" by the trial court—the word "shall" no longer applies. *See* T.R. 24(C). Timely intervention serves two goals: first, it prevents prejudice to the existing parties who have spent time and energy litigating a matter without regard to the intervenor's interests. *Citimortgage, Inc.*, 975 N.E.2d at 815. Second, it preserves the orderly process of the courts, a process that must be predictable, expedient, and economical. *Id*. Timeliness is primarily a shield that protects the existing parties and the courts, not a sword "to sanction would-be intervenors who are tardy in making their application." *Id.* at 816. The prejudice to the original parties may be particularly acute, and the proceedings disorderly, when a new party seeks to intervene after judgment to raise new issues of fact or law, rather than to perfect an appeal of the issues that have been litigated. *Bryant v. Lake Cnty. Tr. Co.*, 334 N.E.2d 730, 735 (Ind. Ct. App. 1975). For this reason, the courts have consistently held that any attempt to intervene after judgment is disfavored, and a showing of extraordinary or unusual circumstances must be made to justify such an attempt. *Id*. Accordingly, Morken bears the burden of showing that the trial court abused its discretion in

[1] A party seeking to intervene under T.R. 24(C) must also fulfill the requirements of either T.R. 24(A) or (B). *Citimortgage*, 975 N.E.2d at 815.

not finding extraordinary and unusual circumstances to justify her attempt to intervene almost seven years after the default judgment was entered.

[27] In support of their respective positions, both parties refer this court to our supreme court's opinion in *JPMorgan Chase Bank, N.A. v. Claybridge Homeowners Ass'n, Inc.*, 39 N.E.3d 666, 668 (Ind. 2015), in which Claybridge obtained a 2004 judgment against the Waltons, homeowners in the association. Three years later, on October 30, 2007, Claybridge filed to foreclose its judgment lien on the Walton's home and filed a lis pendens notice with the Hamilton County Clerk. *Id.* A mere two weeks after filing the foreclosure petition and lis pendens notice, the Waltons refinanced their home with Washington Mutual Bank, which assigned the note and mortgage to JPMorgan on November 27, 2007. *Id*. In May 2010, the trial court awarded a judgment in rem in favor of Claybridge and against the Walton's real estate. *Id.* In August 2013, with the foreclosure in place, the praecipe for sheriff's sale of the real estate was filed. *Id*. at 669. Upon receipt of notice of the sheriff's sale, JPMorgan moved to intervene in the proceedings—six years from the date of filing and three years from the date of recording. *Id*. Mindful of the timeliness requirement of T.R.24(A) and the discretionary nature of T.R.24(C), the supreme court, in considering whether JPMorgan should be allowed to intervene in a post-judgment action, held that the lis pendens notice served as constructive notice to the world because Claybridge had an unrecorded judgment lien and sought to enforce an in rem real estate interest. *Id.* at 670. The court noted that "[a]ny successor in interest to real estate is deemed to take notice of a pending action

involving title to that real estate and is subject to its outcome" and determined that the "judgment in the pending lawsuit binds all successors in interest, regardless of whether the successor was a party to the litigation." *Id.* at 671. The court concluded that because Claybridge's 2007 lis pendens notice provided JPMorgan with constructive notice of the foreclosure, JPMorgan's 2013 motion to intervene was untimely.

[28] Distinguishing *JPMorgan*, Morken relies on the specific character of the constructive notice and contends that no lis pendens was recorded at the time Koltz filed her Complaint to quiet title. Instead, she asserts that a motion to intervene was timely filed once she had actual knowledge of the default judgment. We find Morken's argument to be unavailing on two levels.

[29] A "purchaser of real estate is presumed to have examined the records of such deeds as constitute the chain of title thereto under which he claims, and is charged with notice, actual or constructive, of all facts recited in such records showing encumbrances, or the non-payment of purchase-money." *Crown Coin Meter v. Park P, LLC*, 934 N.E.2d 142, 147 (Ind. Ct. App. 2010). The recording of an instrument in its proper book is fundamental to the scheme of providing constructive notice through the records. *Id.* Constructive notice is provided when a valid instrument is properly acknowledged and placed on the record as required by statute. *Id.*

[30] Instead of a notice of a pending lawsuit, Koltz recorded the actual default judgment to quiet title to the Property on March 2, 2015, in the office of the

recorder of Steuben County. As such, the recording of the judgment "served as constructive notice to the world" and bound "all successors in interest, regardless of whether the successor was a party to the litigation." *JPMorgan*, 39 N.E.3d at 671. In the absence of any evidence that the judgment was recorded outside the chain of title or of any extraordinary circumstances, we conclude that the trial court did not abuse its discretion in finding that Morken's petition to intervene in the 2014 lawsuit was untimely.[2]

[31] Even if we put the constructive notice aside and evaluate Morken's actual notice argument, we observe that Morken would have received actual notice of the default judgment at the latest by December 19, 2020, when she executed the first quitclaim deed related to the Property as the default judgment would have been reflected in the Property's title search. Yet, despite this actual notice of the default judgment, Morken still waited approximately one year and an additional two quitclaim deeds later before filing the motion to intervene. In the absence of a showing of extraordinary circumstances, we conclude that Morken's petition to intervene was untimely. *See Bryant*, 334 N.E.2d at 735 (A showing of extraordinary or unusual circumstances must be made to justify an attempt to intervene after judgment.)

III. *Motion to Set Aside Default Judgment*

[2] Morken also contends that she should be allowed to intervene because the default judgment was based on improper and defective process. We address this argument in Appellants' motion to set aside default judgment where we conclude that the process was not defective.

[32] Even if Appellants' motion to intervene was granted or if they, together or individually, could proceed directly with the motion to set aside default judgment without having to intervene first, we would still affirm the trial court's denial of the motion to set aside the default judgment.[3]

[33] "Our standard of review of the denial of a motion to set aside a default judgment pursuant to T.R. 60(B) is limited to determining whether the trial court abused its discretion." *Allstate Ins. Co. v. Love,* 944 N.E.2d 47, 50 (Ind. Ct. App. 2011). "An abuse of discretion occurs where the trial court's judgment is clearly against the logic and effect of the facts and inferences supporting the judgment for relief." *Id.* As such, the trial court's decision on a motion to set aside a default judgment is given substantial deference on appeal. *Id.* Therefore, absent an unequivocal abuse of discretion, the trial court's judgment will not be lightly disturbed. *Id.*

[34] Indiana Trial Rule 60(B) allows courts to set aside default judgments upon motion and upon such terms as are just for specific enumerated reasons. In support of their contention that the trial court abused its discretion by denying their motion to set aside the default judgment, Appellants rely on sections (6) and (8) of the rule. We will discuss each in turn.

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[3] It could be argued that Morken does not need to avail herself of a motion to intervene as she can proceed directly to the motion to set aside default judgment as successor in interest through the quitclaim deeds executed with Gregory and Meivis, who were included in the Complaint as heirs to the named defendants.

A. *Indiana Trial Rule 60(B)(6)*

[35] Indiana Trial "Rule 60(B)(6) provides for relief from judgments that are 'void.'" *Citimortgage, Inc.*, 975 N.E.2d at 816 (citation omitted). "A judgment issued without personal jurisdiction is void, and a court has no jurisdiction over a party unless that party receives notice of the proceeding." *Id*. By the plain terms of the rule, motions to set aside under subsection (6) of T.R. 60(B) do not require proof of a meritorious defense to the judgment being challenged. *Hair v. Deutsche Bank Nat'l Tr. Co.*, 18 N.E.3d 1019, 1022 (Ind. Ct. App. 2014). Also, although motions under T.R. 60(B)(6) should be filed within a "reasonable time," "a judgment that is void for lack of personal jurisdiction may be collaterally attacked at any time and . . . the 'reasonable time' limitation under Rule 60(B)(6) means no time limit." *Id*. (quoting *Stidham v. Whelchel*, 698 N.E.2d 1152, 1156 (Ind. 1998)).

[36] In their attempt to set aside the default judgment based on Indiana Trial Rule 60(B)(6), Appellants invoke three separate arguments: (1) service by publication was inadequate to attain personal jurisdiction; (2) Koltz omitted to file the affidavit statutorily required to be filed with the Complaint, nor was the Complaint verified; and (3) Sprague was not named as a defendant in the Complaint.

1. *Service by Publication*

[37] In moving to set aside the default judgment entered almost seven years ago, Appellants assert that even though Koltz was aware of Gregory's and Meivis'

interest in fractured sections of the Property because they were identified as such in the body of the Complaint, Koltz did not exercise any due diligence in locating Gregory, Meivis, or any other defendant or heir to the Property and that, therefore, service by publication was not justified and was inadequate. Generally, if service of process is inadequate, the trial court does not acquire personal jurisdiction over a party. *Munster v. Groce*, 829 N.E.2d 52, 57 (Ind. Ct. App. 2005). The existence of personal jurisdiction is a constitutional requirement to rendering a valid judgment, mandated by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Id*. "[T]he Due Process Clause requires that[,] in order for constructive notice of a lawsuit to be sufficient, a party must exercise due diligence in attempting to locate a litigant's whereabouts." *Id*. at 60.

[38] Moreover, whether a judgment is void turns on whether the defendant was served with process effective for that purpose under the Indiana Rules of Procedure. *Anderson v. Wayne Post 64, Am. Legion Corp.*, 4 N.E.3d 1200, 1206 (Ind. Ct. App. 2014), *trans. denied*. Our appellate review requires scrutiny of "the method of authorized service chosen in order to determine whether under the facts and circumstances of the particular case that method was best calculated to inform the defendant of the pending proceeding." *Morrison v. Prof'l Billing Servs., Inc.*, 559 N.E.2d 366, 368 (Ind. Ct. App. 1990). "An authorized method is sufficient 'if no other method better calculated to give notice is available but is insufficient if another method obviously better calculated to give notice is available.'" *Id*. (quoting *Mueller v. Mueller*, 287

N.E.2d 886, 889 (Ind. 1972)). Thus, "[t]he question as to whether process was sufficient to permit a trial court to exercise jurisdiction over a party involves two issues: whether there was compliance with the Indiana Trial Rules regarding service, and whether such attempts at service comported with the Due Process Clause of the Fourteenth Amendment." *Grabowski v. Waters*, 901 N.E.2d 560, 563 (Ind. Ct. App. 2009).

[39] Indiana Trial Rule 4.13 governs notice by publication and provides, in part:

> Praecipe for summons by publication. In any action where notice by publication is permitted by these rules or by statute, service may be made by publication. Summons by publication may name all the persons to be served, and separate publications with respect to each party shall not be required. The person seeking such service, or his attorney, shall submit his request therefor upon the praecipe for summons along with supporting affidavits that diligent search has been made that the defendant cannot be found, has concealed his whereabouts, or has left the state, and shall prepare the contents of the summons to be published.

Thus, to comply with due process, "the party seeking publication [must] file[ ] with the trial court 'supporting affidavits [showing] that a diligent search has been made, that the defendant cannot be found, has concealed his whereabouts, or has left the state.'" *Goodson v. Carlson*, 888 N.E.2d 217, 220-21 (Ind. App. 2008). This is because "the Due Process Clause requires that in order for constructive notice of a lawsuit to be sufficient, a party must exercise due diligence in attempting to locate a litigant's whereabouts." *Id.* "[M]inimal or perfunctory efforts to locate a party are insufficient to justify service by

publication, and if initial attempts to locate or serve a party are fruitless, the circumstances may require more effort to locate the party instead of proceeding directly to service by publication." *Hair*, 18 N.E.3d at 1023.

[40] The record and proceedings reflect that a praecipe for summons by publication and affidavit in support of the praecipe were filed together with the Complaint. In the affidavit, Koltz's counsel affirmed that all defendants were deceased and that she had "made a diligent search to locate the children and grandchildren, if any, of the deceased defendants, but [was] unsuccessful in locat[ing] the [sic] in order to complete personal service." (Appellants' App. Vol. II, p. 23). Service by publication was approved by the trial court and perfected on April 23, April 30, and May 7, 2014 in a daily newspaper in Steuben County, Indiana. Although Koltz only included a bare-boned assertion of her diligent search efforts in the affidavit, the search for the identity and location of the owners and heirs to the fractioned parts of ownership over the Property was hampered by multiple transfers of ownership through testate or intestate succession, several of which went unrecorded. Although the initial purchase occurred by the Sprague and Gilbert families, over the years, the real estate was divided up and was sold to various people. "[A]t some point all of this real estate was dropped from the Steuben County tax rolls and seems to have laid fallow for well over [sixty] years except for its use as an easement." In *Hair*, we found a default judgment to be void for lack of jurisdiction where service of a notice of foreclosure had been rendered by publication, with a supporting affidavit claiming that Hair's location was unknown and could not be ascertained

through reasonable inquiry and diligence, where evidence indicated that a simple internet search would have easily located Hair; to the contrary, here, in determining the ownership of the Property, "[Koltz] was left to follow a stale trail of testate and intestate transfers to divine who may have an interest in the subject property." *Hair*, 18 N.E.3d at 1023; (Appellant's App. Vol II, p. 9). We echo the trial court's sentiment that "some potential claimants may be omitted is to be expected when the real estate has been so long neglected in the public record that it has even fallen from the tax rolls." (Appellants' App. Vol. II, p. 9).

[41] Here, Koltz sought to quiet title to a piece of real property that was burdened with an easement and that through the years had been partitioned and acquired by several different owners, with the lines of testate and intestate inheritance being unclear and ownership unrecorded or lain fallow. In the absence of evidence showing that available information at the time suggested that a more diligent search would have discovered the Property owners or their location, we are persuaded that Koltz's decision to publish notice to these parties in the county where the Property was located was, under these particular facts and circumstances, reasonably calculated to apprise them of the action at issue.[4]

[4] In a related, but equally unavailing, argument, Appellants assert that notice by publication was improper with respect to Gregory and Meivis, because, even though they were specifically identified in the body of the Complaint as known heirs in a line of succession of ownership of part of the Property, they were not named defendants in the caption of the case. While the Complaint identified Gregory and Meivis, it further specified that their whereabouts were unknown. Appellants do not provide us with or direct us to any evidence indicating that the location of Gregory and Meivis was known to Koltz or that they could easily be

2. *Complaint*

[42] Seeking a second basis to declare the default judgment void, Appellants contend that "the affidavit required to be filed in connection with a quiet title action was never filed by [Koltz], nor was the Complaint verified." (Appellants' Br. p. 13). Pursuant to Indiana Code section 32-30-3-14(e)(2)(F), in an action to quiet title, a plaintiff must file an affidavit with the complaint (Quiet Title Affidavit), containing a number of averments, including that the plaintiff does not know the names or legal residences of heirs or devisees.

[43] While it is undisputed that Koltz omitted to file the Quiet Title Affidavit or to verify the Complaint, Appellants now assert, without any reference to caselaw, that these omissions rendered the service of process inadequate and left the trial court without personal jurisdiction over them. Although Koltz and her attorney both signed the Complaint, we note that with respect to verification of the Complaint, T.R. 11(A) states, in pertinent part, that "[e]xcept when specifically required by rule, pleadings or motions need not be verified or accompanied by affidavit." As Appellants did not point us to any rule requiring the complaint in an action to quiet title to be verified—and we could not locate one—we conclude that Koltz's signature on the Complaint was sufficient, and the default judgment was not rendered void in the absence of a verification.

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located. Therefore, we find Koltz's affidavit that a diligent search had been made sufficient to support service by publication.

[44] We reach a similar conclusion with respect to the omitted Quiet Title Affidavit. Indiana Code section 32-30-3-14(e)(2) states

> The plaintiff shall file with the complaint an affidavit that states the following:
>
> * * * *
>
> (2) The plaintiff does not know the following information about a person described in subdivision (1):
>
> (A) Whether the person is alive or dead.
>
> (B) The person's legal residence.
>
> (C) The person's marital status.
>
> (D) If the person is or has been married, the name or address of the person's spouse, widow, or widower.
>
> (E) If the person is dead, whether the person has left any heirs or devisees.
>
> (F) The name or legal residence of an heir or devisee.

[45] Our review indicates that the averments which were statutorily required to be included in a separate affidavit to be filed with the Complaint, were all addressed in the Complaint itself. The Complaint identified the separate lines of succession in which the ownership of fractioned portions of the Property were handed down through testate or intestate succession. As much as possible, the Complaint named the heirs and noted that their current whereabouts were unknown. By virtue of her signature on the Complaint, Koltz's counsel certified that to the best of her knowledge the Complaint had "good grounds to support it." T.R. 11(A) ("The signature of an attorney [on a

pleading or motion] constitutes a certificate by him that he has read the pleadings; that to the best of his knowledge, information, and belief, there is good ground to support it[.]"). Accordingly, as the information required to be filed by affidavit was included and identified in the Complaint and as Appellants were not harmed by the omission of a separate affidavit, we conclude that the failure to file the Quiet Title Affidavit amounted to a technical violation which did not render the judgment void. *See also Innovative Therapy Sols., Inc. v. Greenhill Manor Mgmt., LLC*, 135 N.E.3d 662, 667-68 (Ind. Ct. App. 2019) (non-compliance with T.R. 9.2(A) which requires an affidavit of debt to be filed with the complaint, is not a per se bar to the action under T.R.60(B)(6)).

3. *Sprague*

[46] Lastly, Appellants contend that the default judgment should be declared void and set aside pursuant to T.R. 60(B)(6) because Koltz failed to name Sprague, and the entire line of succession through Bert, as a defendant in the Complaint. However, the record reflects that on December 9, 2004, Koltz acquired an ownership interest in a portion of the easement owned by Bert's heirs, Jack and Madola Sprague, by quitclaim deed. The quitclaim deed was recorded on December 30, 2004. Accordingly, when the Complaint was filed on April 10, 2014, Bert's heirs, who included Sprague, no longer owned an interest in the Property and, therefore, did not need to be included as defendants in the Complaint.

[47] In sum, as Koltz filed a proper Complaint and perfected service by publication, relief under T.R. 60(B)(6) is unavailable and the trial court did not abuse its discretion by denying Appellants' motion and declining to vacate the judgment on this ground.

B. *Indiana Trial Rule 60(B)(8)*

[48] In addition to T.R. 60(B)(6), Appellants also requested that the default judgment be set aside based on the omnibus provision of the rule, *i.e.,* T.R. 60(B)(8). Indiana Trial Rule 60(B)(8) allows the trial court to set aside a judgment within a reasonable time for any reason justifying relief "other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4)." *Brimhall v. Brewster*, 864 N.E.2d 1148, 1153 (Ind. Ct. App. 2007). The trial court's residual powers under subsection (8) may only be invoked upon a showing of exceptional circumstances justifying extraordinary relief. *Id*. Among other things, exceptional circumstances do not include mistake, surprise, or excusable neglect, which are set out in T.R. 60(B)(1). *Id*. Indiana Trial Rule 60(B)(8) has in the past been distinguished on the following grounds:

> T.R. 60(B)(8) is an omnibus provision which gives broad equitable power to the trial court in the exercise of its discretion and imposes a time limit based only on reasonableness. Nevertheless, under T.R. 60(B)(8), the party seeking relief from the judgment must show that its failure to act was not merely due to an omission involving the mistake, surprise or excusable neglect. Rather some extraordinary circumstances must be demonstrated affirmatively. This circumstance must be other than those circumstances enumerated in the preceding subsections of T.R. 60(B).

Id. In addition, a movant "filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense." T.R. 60(B). To show a meritorious defense for the purposes of T.R. 60(B), "[t]he 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). A movant must state a factual basis for a meritorious defense, but such showing is not governed by rules of evidence." *Logansport/Cass Cnty. Airport Auth. v. Kochenower*, 169 N.E.3d 1143, 1149 (Ind. Ct. App. 2021). Appellants argue that they filed their motion in a reasonable time, that exceptional circumstances were shown to justify relief, and that they demonstrated a meritorious defense.

[49] Although Appellants now seek to set aside a judgment rendered almost seven years prior to their motion, they assert that they were unaware of the Complaint to quiet title or the entry of the judgment until 2020, when Morken acquired the first quitclaim deed. A motion under T.R. 60(B)(8) must be filed "within a reasonable time." *See* T.R. 60(B). Determining what is a reasonable time period depends on the circumstances of each case, as well as the potential prejudice to the party opposing the motion and the basis for the moving party's delay. *Parham v. Parham*, 855 N.E.2d 722, 728 (Ind. Ct. App. 2006), *trans. denied*. As we determined that service of the Complaint was properly rendered by publication and constructive notice was given through the recording of the

judgment in 2015, we find that Appellants failed to move within a reasonable time.

[50] Even if we determine that Appellants received actual notice of the default judgment when Morken acquired the first quitclaim deed and we conclude that the T.R. 60(B)(8) motion was filed within a reasonable time thereafter, Appellants did not affirmatively demonstrate that extraordinary circumstances exist, or that a meritorious defense can be alleged. In support of the existence of extraordinary circumstances, Appellants merely allude that "[t[ermination of property interests without proper notice is not something Indiana law sanctions, and Indiana has a strong preference to decide cases on the merits." (Appellants' Br. p. 19). However, we concluded that proper notice was given by service of the Complaint through publication, and, therefore, Appellants failed to demonstrate the exceptional circumstances required to be granted relief.

[51] After citing the elements required to establish adverse possession as identified in *Fraley v. Minger*, 829 N.E.2d 476 (Ind. 2007), Appellants make the conclusory statement in their brief that "the Complaint only recited the elements of adverse possession [] and says that [Koltz] satisfied them" in support of their claim that they have a meritorious defense. (Appellants' Br. p. 21). We observe that Indiana is a notice pleading jurisdiction; it does not require parties to state a particular legal theory under which they plan to proceed. *See Noblesville Redevelopment Comm'n v. Noblesville Assocs. Ltd. P'ship*, 674 N.E.2d 558, 563 (Ind. 1996). Under notice pleading, a complaint is sufficient if the opposing party has

been sufficiently notified concerning the claim so as to be able to meet it. *Id*. at 563-64. Koltz's Complaint recited that for "more than the ten (10) years last past, the Plaintiff and its predecessors in title have used the Survey Tract on Defendant's real estate openly, adversely, notoriously and against all other claimants, including the Defendant; and, at all times have paid and will pay all applicable real estate taxes, as assessed." (Appellants' App. Vol. II, p. 20). This conclusory claim is further detailed in the Complaint and in the affidavit for adverse possession which was filed together with the Complaint. This is sufficient to put Appellants on notice of Koltz's claim. *See id*.

[52] In addition, Appellants focus on the payment of property taxes in support of a claim for adverse possession and contend that "[n]o evidence of payment of taxes of the [Property] was provided to the [c]ourt[.]" (Appellants' Br. p. 21). As indicated in the affidavit for adverse possession, filed together with the Complaint, "Steuben County, Indiana has not assigned a tax parcel number nor assessed taxes against" the Property. (Appellee's App. Vol. II, p. 43). In *Milikan v. City of Noblesville*, 160 N.E.3d 231, 238-39 (Ind. Ct. App. 2020) (citing *Colley v. Carpenter*, 362 N.E.2d 163, 167 (Ind. 1997)), we found the taxation statute to be satisfied by adverse claimants "where they never paid taxes in the adversely possessed property because no taxes were ever assessed on the property, and this court reasoned that 'only the taxes falling due on the property need be paid; where no taxes are assessed, none need be paid.'" Accordingly, Appellants' claim of a meritorious defense fails and the trial court did not abuse its discretion by denying relief from judgment based on T.R. 60(B)(8).

CONCLUSION

[53] Based on the foregoing, we affirm the motions panel discretionary decision to let Appellants' appeal proceed pursuant to Indiana Appellate Rule 1 even though the appeal was filed belatedly. We further hold that the trial court did not abuse its discretion by denying Appellants' motion to intervene in a default judgment which had been issued seven years earlier and by denying Appellants' motion to set aside the default judgment pursuant to Indiana Trial Rule 60(B)(6) and (8).

[54] Affirmed.

[55] Bailey, J. and Vaidik, J. concur