

## 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

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In re The Richard Lee Baker and  
Patty J. Baker Family Trust

Brenda J. Rippy and Richard K.  
Baker, individually and as  
successor co-trustees of the  
Richard Lee Baker and Patty J.  
Baker Family Trust, Jordan  
Brown, and Nicole Brown,

October 19, 2022

Court of Appeals Case No.  
22A-TR-581

Interlocutory Appeal from the Clay  
Circuit Court

The Honorable Matthew L.  
Headley, Special Judge

Trial Court Cause No.  
11C01-2107-TR-46

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*Appellants-Respondents,*

v.

Lee Ann Riggs,  
*Appellee-Petitioner*

**Crone, Judge.**

### **Case Summary**

[1] Richard Lee Baker (Richard) and Patty J. Baker established an eponymous family trust (the Trust) and served as co-trustees. After their deaths, their children Brenda J. Rippy, Richard K. Baker (Kent), and Lee Ann Riggs became successor co-trustees. Riggs filed a petition to docket the Trust and a petition to remove Rippy and Kent as successor co-trustees, alleging that they had acted improperly in conveying trust property to Rippy’s daughter and son-in-law, Nicole Brown and Jordan Brown. The Browns filed a motion for summary judgment against Riggs. Riggs filed a response and a combined countermotion for summary judgment against all parties, including Rippy and Kent. The very next day, the trial court issued an order unwinding those conveyances and ordering the appointment of a new trustee, among other things. Rippy and Kent and the Browns filed separate motions for relief from the trial court’s judgment, which were denied.

[2] On appeal, the Browns and Rippy and Kent argue that the trial court committed reversible error in not allowing them to respond to Riggs’s

countermotion for summary judgment. We agree, so we reverse and remand for further proceedings.

## **Facts and Procedural History**

[3] In 2002, Richard and Patty Baker established the Trust and served as co-trustees. Patty died in January 2016, and Richard died in September 2020, at which time Rippy, Kent, and Riggs became the successor co-trustees. In July 2021, Riggs filed a petition to docket the Trust with the trial court and a petition to remove Rippy and Kent as successor co-trustees. Among other things, the latter petition alleged that Rippy and Kent had refused to inventory and appraise the trust estate and had conveyed certain real estate therefrom to Nicole Brown and Jordan Brown, Rippy's daughter and son-in-law, over Riggs's objection and despite her expressed "willingness to purchase the real estate ... for a price significantly greater than that [Rippy and Kent] were willing to sell to [the Browns]." Rippy & Kent's App. Vol. 2 at 53. The petition also alleged that Rippy and Kent had concealed from Riggs their conveyance of another parcel of Trust real estate to the Browns as well as the purchase price thereof. Riggs requested an accounting, the conveyances to be set aside, Rippy and Kent's removal as successor co-trustees, and appointment of an independent trustee. Rippy and Kent filed a response and an objection to Riggs's petition for removal, and the Browns were added as respondents in this matter.

[4] On January 13, 2022, the Browns filed a motion for summary judgment against Riggs alleging that "there is no genuine material [issue] of fact as to whether or

not said conveyances were proper ....” *Id.* at 75. On February 14, Riggs filed a response to the Browns’ summary judgment motion and a combined countermotion for summary judgment as to all parties, including Rippy and Kent.

[5] The very next day, without giving the Browns, Rippy, and Kent an opportunity to respond to Riggs’s countermotion, the trial court issued an order on all pending summary judgment motions. In its order, the court essentially unwound the conveyances, ordered an accounting of personal property, and announced its intention to appoint a new trustee if the parties could not agree to one, among other things.<sup>1</sup> Pursuant to Indiana Trial Rule 60(B), the Browns and Rippy and Kent (collectively Appellants) filed separate motions for relief from the trial court’s order, asserting in pertinent part that they were entitled to respond to Riggs’s countermotion for summary judgment. The trial court denied those motions. This appeal followed.

## Discussion and Decision

[6] Appellants raise several issues, one of which we find dispositive: whether the trial court committed reversible error in denying them an opportunity to respond to Riggs’s countermotion for summary judgment. We review a trial court’s ruling on a “Trial Rule 60(B) motion for relief from judgment under an

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<sup>1</sup> The order states, “Court denies Browns and Kent/[Rippy’s] Motion for Summary Judgment by reviewing the motions and affidavits.” Summary Judgment Order at 4. Kent and Rippy did not file a summary judgment motion.

abuse of discretion standard.” *Munster Cmty. Hosp. v. Bernacke*, 874 N.E.2d 611, 613 (Ind. Ct. App. 2007). “On appeal, we will not find an abuse of discretion unless 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.*

[7] Trial Rule 56(A) provides that “[a] party seeking to recover upon a claim ... may, at any time after the expiration of twenty [20] days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.” Trial Rule 56(C) provides in pertinent part,

The motion and any supporting affidavits shall be served in accordance with the provisions of Rule 5. *An adverse party shall have thirty (30) days after service of the motion to serve a response and any opposing affidavits.* The court may conduct a hearing on the motion. However, *upon motion of any party made no later than ten (10) days after the response was filed or was due, the court shall conduct a hearing on the motion which shall be held not less than ten (10) days after the time for filing the response.* At the time of filing the motion or response, a party shall designate to the court all parts of pleadings, depositions, answers to interrogatories, admissions, matters of judicial notice, and any other matters on which it relies for purposes of the motion. A party opposing the motion shall also designate to the court each material issue of fact which that party asserts precludes entry of summary judgment and the evidence relevant thereto. The judgment sought shall be rendered forthwith if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.... Summary judgment shall not be granted as of course because the opposing party fails to offer opposing affidavits or evidence, but the court

shall make its determination from the evidentiary matter designated to the court.

(Emphases added.) With cross-motions for summary judgment, courts “consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law.” *Reed v. Reid*, 980 N.E.2d 277, 285 (Ind. 2012).

[8] When interpreting trial rules, “[w]e construe the word ‘shall’ as mandatory rather than directory.” *Daugherty v. Robinson Farms, Inc.*, 858 N.E.2d 192, 197 (Ind. Ct. App. 2006), *trans. denied* (2007). Thus, a trial court does not have discretion to rule on a summary judgment motion without giving the adverse party an opportunity to serve a response and any opposing affidavits. *See id.* (holding that trial court had no discretion to grant belated demand for jury trial without written agreement of all parties because Trial Rule 38(D) provides that court “shall not” do so). Here, the trial court abused its discretion by denying Appellants an opportunity to file responses to Riggs’s countermotion for summary judgment and to ask for a hearing thereon, which would be obligatory if requested.<sup>2</sup> Accordingly, we conclude that the trial court also abused its

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<sup>2</sup> The trial court premised its premature ruling on Trial Rule 56(B), which states that “[w]hen any party has moved for summary judgment, the court may grant summary judgment for any other party upon the issues raised by the motion although no motion for summary judgment is filed by such party.” This stance ignores Trial Rule 56(C)’s explicit requirement to allow an adverse party to respond to the motion. The Browns assert that if they had been given an opportunity to respond to Riggs’s countermotion, they would have objected to and moved to strike two affidavits that she submitted in support thereof. They also assert that the trial court’s order “decided issues outside and in addition to those presented by way of the dispositive [summary judgment] motions.” Browns’ Br. at 12.

discretion in denying Appellants' motions for relief from judgment, so we reverse and remand for further proceedings consistent with this decision. *See Otte v. Tessman*, 426 N.E.2d 660, 662 (Ind. 1981) (remanding due to trial court's failure to set hearing on summary judgment motion pursuant to Trial Rule 56(C) and adopting position of Court of Appeals' dissent that "[i]f the failure to obey the clear explicit dictates of the Indiana Rules of Procedure can be simply dismissed as harmless error, then, the erosion of an orderly judicial system has begun").<sup>3</sup>

[9] Reversed and remanded.

May, J., and Weissmann, J., concur.

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<sup>3</sup> Riggs asserts that Appellants' reliance on "the dictates of Trial Rule 56 [is] inapposite. Rather, the Trial Court was acting under its authority pursuant to the Trust Code to oversee transactions in the Trust and to ensure, particularly in situations such as this, a scrupulous adherence to fiduciary responsibilities and self-dealing rules and regulations." Appellee's Br. at 16. Riggs cites no authority for the proposition that the Trust Code overrides the procedural mandates of the Trial Rules.