MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

Craig R. Patterson
Noah W. Vancina
Beckman Lawson, LLP
Fort Wayne, Indiana

ATTORNEY FOR APPELLEE

J. Brian Tracey
Fort Wayne, Indiana

IN THE COURT OF APPEALS OF INDIANA

Joann K. Wall-Beer,
Appellant-Defendant,

v.

Eagle Contracting, Inc.,
Appellee-Plaintiff

May 24, 2022

Court of Appeals Case No. 21A-PL-2437

Appeal from the Allen Superior Court

The Honorable David J. Avery, Judge

Trial Court Cause No. 02D09-2007-PL-262

Vaidik, Judge.

Case Summary

[1] Eagle Contracting, Inc., obtained a default judgment against Joann K. Wall-Beer. Wall-Beer later moved to set aside the default judgment, arguing she did not receive proper service of process and that Eagle Contracting's attorney engaged in misconduct that warranted the judgment be set aside. The trial court denied the motion, and Wall-Beer appeals. We affirm.

Facts and Procedural History

[2] In 2018, Wall-Beer hired Eagle Contracting to perform repair work on her house. After Eagle Contracting began its work, conflicts arose. According to Eagle Contracting, Wall-Beer added several requests as repairs were underway, causing additional cost which she refused to pay, while according to Wall-Beer, Eagle Contracting did not perform all the agreed-upon work and the work they did do was of poor quality. On July 8, 2020, Eagle Contracting filed a complaint against Wall-Beer in Allen Superior Court, alleging Wall-Beer failed to pay for the repair work and materials. Eagle Contracting sent the complaint and summons to Wall-Beer's home via certified mail. The return receipt stated it was received by an individual named "Alex Benson" at Wall-Beer's address. *See* Appellant's App. Vol. II p. 82. In addition to this service, "a number" of notices about the suit were sent to Wall-Beer's home both by Eagle Contracting and the court. *Id.* at 21.

[3] No counsel appeared for Wall-Beer, and she did not file an answer or otherwise acknowledge the suit. On August 18, Eagle Contracting moved for entry of default against Wall-Beer, and the court set a hearing for September 18. On September 11, a week before the hearing, Wall-Beer telephoned Eagle Contracting's attorney, Marlin Benson ("Attorney Benson")[1], and left a voicemail message, asking him to call her about the case and stating she had retained George Fishering ("Attorney Fishering"), who had represented her in a previous dispute with Eagle Contracting. Wall-Beer left a similar voicemail on September 15. The next day, Attorney Benson's paralegal returned Wall-Beer's call, and Wall-Beer clarified she hadn't yet retained Attorney Fishering "for this part of it" but had used him previously. *Id.* at 116.

[4] On September 18, Wall-Beer failed to appear for the hearing on the motion for default judgment. The next month, the trial court entered default judgment against Wall-Beer in the amount of $61,718.64.

[5] About a year later, in September 2021, Wall-Beer moved to set aside the default judgment under Indiana Trial Rule 60(B), arguing that the judgment was void because the trial court did not have personal jurisdiction over her due to improper service and that the judgment should be set aside because Attorney Benson engaged in misconduct by not notifying Attorney Fishering of the suit. A hearing on the motion was held in October. Both parties submitted evidence

[1] No relation to the "Alex Benson" mentioned above.

mainly by affidavit. In her affidavit, Wall-Beer stated she was never served, knew no one named "Alex Benson," and authorized no one by that name to receive her certified mail.[2] Eagle Contracting submitted affidavits from Attorney Benson's paralegal, detailing the September voicemails from Wall-Beer and the phone call with her, during which Wall-Beer clarified Attorney Fishering was not representing her. Eagle Contracting also submitted an affidavit from Attorney Fishering, confirming his representation of Wall-Beer ended in 2019, before this suit was filed.

[6] After the hearing, the trial court denied Wall-Beer's motion, concluding Eagle Contracting complied with the requirements of service and no misconduct occurred.

[7] Wall-Beer now appeals.

Discussion and Decision

[8] Wall-Beer argues the trial court erred in denying her motion for relief from judgment under Trial Rule 60(B)(3) and 60(B)(6). Indiana Trial Rule 60(B) provides, in relevant part:

[2] Wall-Beer hypothesizes this unknown person could have been the mail carrier, as at the time of service—August 2020—she alleges the United States Postal Service had authorized mail carriers to sign return receipts due to the COVID-19 pandemic. But she offers no evidence that is what happened in this case.

> 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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> . . .
>
> (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
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> . . .
>
> (6) the judgment is void;
>
> . . .
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> The motion shall be filed within a reasonable time for reasons (5), (6), (7), and (8), and not more than one year after the judgment, order or proceeding was entered or taken for reasons (1), (2), (3), and (4).

I. Improper Service

[9] Wall-Beer first asserts the trial court did not have personal jurisdiction over her and therefore any judgment rendered against her is void. In general, the standard of review for the granting or denying of a Trial Rule 60(B) motion is whether the trial court abused its discretion. *Anderson v. Wayne Post 64*, 4 N.E.3d 1200, 1205 (Ind. Ct. App. 2014), *trans. denied*. However, a motion under Rule 60(B)(6) alleging the judgment is void requires no discretion on the part of the trial court because either the judgment is void or it is valid. *Id.* "If service of

process is inadequate, the trial court does not acquire personal jurisdiction over a party, and any default judgment rendered without personal jurisdiction is void." *Swiggett Lumber Const. Co. v. Quandt*, 806 N.E.2d 334, 336 (Ind. Ct. App. 2004). Personal jurisdiction presents a question of law, which we review de novo. *Anderson*, 4 N.E.3d at 1205. To the extent personal jurisdiction turns on disputed facts, we review for clear error. *Id.* at 1206.

[10] Wall-Beer contends the trial court did not have personal jurisdiction over her because she was not properly served. Indiana Trial Rule 4.1(A) provides service may be made upon an individual or their representative by

> sending a copy of the summons and complaint by registered or certified mail or other public means by which a written acknowledgment of receipt may be requested and obtained to his residence, place of business or employment with return receipt requested and returned showing receipt of the letter[.]

Here, Eagle Contracting sent a copy of the summons and complaint by certified mail to Wall-Beer's home address. An unknown person signed the return receipt, and Wall-Beer argues this "is insufficient to confer jurisdiction on the trial court." Appellant's Br. p. 15.

[11] The trial court cited *Buck v. P.J.T.*, 394 N.E.2d 935 (Ind. Ct. App. 1979), in its denial of Wall-Beer's motion to set aside. There, we affirmed a default judgment when the defendant, William Buck, was served via certified mail but the return receipt was signed by "Janis Buck." *Id.* at 936. In doing so, we noted "actual delivery to the party is not jurisdictionally necessary." *Id.* at 937.

Similarly, in *Precision Erecting, Inc. v. Wokurka*, 638 N.E.2d 472, 474 (Ind. Ct. App. 1994), *trans. denied*, we affirmed a default judgment where the defendant was served via certified mail and the return receipt was signed by his wife, holding:

> We find nothing in the trial rules requiring that the individual to whom service of process is mailed be the one who signs the return receipts in order for service to be effective. Rather, the rule requires only that service be *sent* by certified mail to the proper person . . . .

[12] Wall-Beer argues her case is distinguishable because, unlike the cases above, in which there was either a known or assumed[3] relationship between the signer and the intended recipient, here all the evidence presented shows "Alex Benson" was not associated with Wall-Beer in any way. But at no point in *Buck* or *Precision Erecting* did we suggest that the holding was based on the relationship between the signer and the intended recipient. And in fact, we have found service by certified mail to be effective under Rule 4.1(A) even where the evidence shows there was no connection between the signer and the intended recipient. *See Marshall v. Erie Ins. Exch.*, 923 N.E.2d 18, 23 (Ind. Ct. App. 2010) (finding proper service of process under Rule 4.1(A) where complaint and summons sent to defendant's business address and the return receipt was signed by an "unidentified party"), *trans. denied*.

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[3] In *Buck*, the relationship between William Buck and Janis Buck is never identified, but Wall-Beer asserts there is a "reasonable inference" the two were associated based on their last names. Appellant's Br. p. 16.

[13] Here, Eagle Contracting sent the summons and complaint via certified mail to Wall-Beer's home, and the return receipt was signed. This is sufficient service of process under Trial Rule 4.1(A) to confer personal jurisdiction.

[14] The trial court's default-judgment order against Wall-Beer is not void for lack of personal jurisdiction.

II. Misconduct

[15] Wall-Beer next contends the trial court erroneously failed to set aside the default judgment on the grounds of misconduct by Attorney Benson. Specifically, she contends Attorney Benson committed misconduct when he "filed for default judgment in October 2020 without" first contacting Wall-Beer's attorney. Appellant's Br. p. 19. We review a trial court's ruling on a Rule 60(B)(3) motion for an abuse of discretion. *Univ. of Notre Dame v. Bahney*, 158 N.E.3d 809, 813 (Ind. Ct. App. 2020).

[16] Wall-Beer cites *Smith v. Johnston*, 711 N.E.2d 1259 (Ind. 1999), to support her contention. In *Smith*, a medical-malpractice suit, the doctor's counsel worked closely with the patient's counsel during the medical-review-panel process. But after initiating the lawsuit, the patient's counsel did not notify the doctor's counsel of the suit before filing for default judgment. Our Supreme Court held that, although neither the Indiana Rules of Professional Conduct nor the Indiana Trial Rules explicitly require attorneys to notify opposing counsel of a suit, "the administration of justice requires that parties and their **known lawyers** be given notice of a lawsuit prior to seeking a default judgment." *Id.* at

1264 (emphasis added). And because the patient's counsel knew of the doctor's counsel and did not notify them of the pending lawsuit and motion for default, the patient's counsel committed misconduct and the default judgment was set aside.

[17] Thus, Wall-Beer argues Attorney Benson committed misconduct by not attempting to notify her counsel before moving for default judgment. Wall-Beer's argument fails because she was **not** represented by counsel at any point from the initiation of the suit to the default judgment. Therefore, there was no one for Attorney Benson to notify. Nonetheless, Wall-Beer argues that because she (falsely) stated in one of her voicemails to Attorney Benson that she had retained Attorney Fishering, and because Attorney Benson knew Attorney Fishering had represented her in the past, Attorney Benson had a duty "to call [Attorney] Fishering to confirm that [he] no longer represented [Wall-Beer]." Appellant's Br. p. 19.

[18] We disagree. This Court has made clear the duty laid out in *Smith* applies only when the attorney has clear knowledge that the opposing party is being represented. *See Allstate Ins. Co. v. Love*, 944 N.E.2d 47, 52 (Ind. Ct. App. 2011) (concluding because plaintiff "had no clear knowledge" defendant was represented, there was "no duty to provide notice to [defendant's attorney] before seeking a default judgment"). Here, Attorney Benson knew nothing about Wall-Beer's representation before filing for default judgment, and although she told him about a week before the hearing that she was represented, she soon after confirmed she was not. Nor are attorneys expected to contact the

past representation of opposing parties before filing for default judgment. *See Menard, Inc. v. Lane*, 68 N.E.3d 1106, 1113 (Ind. Ct. App. 2017), *trans. denied*.

[19] As such, Attorney Benson did not commit misconduct and the trial court did not abuse its discretion in denying Wall-Beer's motion to set aside the default judgment on that ground.

[20] Affirmed.

Crone, J., and Altice, J., concur.