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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

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# IN THE COURT OF APPEALS OF INDIANA

Joseph Beale,
*Appellant-Defendant,*

v.

Jennifer Beale,
*Appellee-Plaintiff*

June 30, 2023

Court of Appeals Case No. 22A-DN-2180

Appeal from the Carroll Circuit Court

The Honorable Benjamin A. Diener, Judge

Trial Court Cause No. 08C01-2010-DN-28

**Memorandum Decision by Judge Mathias**
Judges May and Bradford concur.

**Mathias, Judge.**

[1] Joseph Beale ("Husband") appeals the Carroll Circuit Court's denial of his post-dissolution motion to set aside the dissolution decree for fraud or excusable neglect. Husband raises three issues for our review, which we consolidate and restate as whether the trial court erred when it denied Husband's motion. We affirm.

## Facts and Procedural History

[2] In March 1996, Husband and Jennifer Beale ("Wife") were married. The parties lived in Carroll County during their marriage, and they had no children of the marriage.

[3] In October 2020, Husband and Wife separated, and Wife filed her petition for dissolution of the marriage. About one year later, the parties agreed to hold a final hearing on Wife's dissolution petition on January 18, 2022.

[4] On December 17, 2021, Wife's mother died. Shortly thereafter, Wife learned that her mother had amended a deed to certain real property in Carroll County. That property had previously been held by Wife's mother, but she amended the deed such that she retained a life interest in that real property, and continued to pay the property taxes on it, while Wife held a 25% ownership interest in the property. Wife's ownership interest in the property was later valued at over $300,000.

[5] Upon learning of this additional property, Wife's counsel sent Husband's counsel the following email on January 12, 2022:

> I got a recent mortgage statement, so I don't need that. I'll get you a copy. I have a date of filing statement and recent statement for all of [Wife's] accounts. I'll provide those to you as well. We're missing recent statements for some of [Husband's] accounts. I also think he opened accounts after filing. He's not working a job, so all of his money is . . . derived from return on marital assets owned at the time of filing[] and, therefore, is subject to division by the court. That's why the recent statements are important. Please get me recent statements for these accounts. *Also, when I was putting together my exhibits for the real estate I noticed that my client owned a fractional future interest in real estate as of the date of filing of which I was not aware. Her mother deeded property to [Wife] and her three siblings and reserved a life estate. Her mother was living on the date of filing[] but died [in December]. For what it's worth I thought it was our obligation to disclose this.*

Appellant's Mar. 1, 2023, App. Vol. 2, p. 61 (emphasis added). Husband's counsel, in turn, promptly informed Husband of the email, but did not move to continue the final hearing and did no further investigation into the value of the property.

[6] Six days later, on the day of the final hearing but prior to the commencement of the hearing, Husband and Wife reached a settlement agreement to distribute the marital property and dissolve their marriage. The parties then appeared at the final hearing and recited the terms of their agreement to the court. The court accepted the parties' agreement, dissolved the marriage, and ordered the parties to submit a written agreement to the court. The parties' agreement did not identify Wife's recently inherited 25% interest as marital property and did not divide it with the marital estate. *See id.* at 86-91.

[7] After the court had orally accepted the parties' agreement and dissolved the marriage, Husband "learned that [Wife's] 'fractional' interest in the subject property was valued at over $300,000." *Id.* at 70. Husband then refused to execute the written settlement agreement as ordered by the court. More than two months after the court's order accepting the parties' settlement agreement and dissolving the marriage, Wife filed a motion to enforce the agreement, and Husband filed a motion to set it aside under Trial Rules 59 and 60(B)(1). *See id.* at 58, 72-77. Along with his motion, Husband served additional interrogatories on Wife, which she moved to quash.

[8] After a hearing on the parties' additional motions, the trial court granted Wife's motion to enforce the agreement and denied Husband's motion to set it aside. In doing so, the court found that the "[p]arties freely and voluntarily reached an agreement" and that there had been no "facts that changed since" the parties entered into their agreement. *Id.* at 97. This appeal ensued.

## Discussion and Decision

[9] Husband appeals the trial court's denial of his motion to set aside the settlement agreement. We review the trial court's denial of a Rule 59 motion and a Rule 60(B) motion for an abuse of discretion. *See Speedway SuperAmerica, LLC v. Holmes*, 885 N.E.2d 1265, 1270 (Ind. 2008). A motion made under Rule 60(B) is addressed to the "equitable discretion" of the trial court; the grant or denial of such a motion "will be disturbed only when that discretion has been abused." *In re Paternity of P.S.S.*, 934 N.E.2d 737, 740-41 (Ind. 2010) (citation omitted). An

"[a]buse of discretion will be found only when the trial court's action is . . . against the logic and effect of the facts before it and the inferences which may be drawn therefrom." *Id.* at 741 (alteration original; citation omitted).

[10] Again, Husband asserts that the trial court erred when it denied his motion to set aside the settlement agreement. Specifically, Husband argues that the trial court's judgment is erroneous because the record supported relief for Husband under Indiana Trial Rules 60(B)(1), 60(B)(2), 60(B)(3), and 60(B)(8). Husband also argues that the trial court abused its discretion in denying his motion because Wife did not comply with the Indiana Trial Rules on discovery.

[11] We initially conclude that Husband's arguments on appeal under Trial Rules 60(B)(2) and 60(B)(8), as well as his freestanding arguments under our discovery rules, have not been preserved for appellate review. Husband's arguments in the trial court for setting aside the settlement agreement were framed only around Trial Rule 59 (as constructive fraud) and Trial Rule 60(B)(1) (as excusable neglect). Appellant's Mar. 1, 2023, App. Vol. 2, pp. 72-77. A party may not raise one issue to the trial court and a different issue on appeal, nor may he frame an argument on one ground in the trial court and reframe it using a different ground on appeal. *See, e.g.*, *White v. State*, 772 N.E.2d 408, 411 (Ind. 2002); *Jamrosz v. Res. Benefits, Inc.*, 839 N.E.2d 746, 757 (Ind. Ct. App. 2005), *trans. denied*. Accordingly, these issues are not before us, and we will not consider them.

[12] We similarly hold that Husband has not preserved his "constructive fraud" argument, which Husband presents on appeal only under Trial Rule 60(B)(3). *See* Appellant's Br. at 21-24; Appellant's Mar. 1, 2023, App. Vol. 2, pp. 72-77. In his argument to the trial court on this issue, Husband cited only one authority, *Atkins v. Atkins*, 534 N.E.2d 760 (Ind. Ct. App. 1989), *trans. denied*. But *Atkins* is a Trial Rule 59 case, not a Trial Rule 60(B)(3) case. *See id.* at 762. And that difference is significant—a Trial Rule 59 motion, unlike a Rule 60(B)(3) motion, must be made "within thirty (30) days of final judgment," which Husband's motion was not. Accordingly, we reject Husband's attempt on appeal to reframe his untimely Rule 59 fraud argument as a timely Rule 60(B)(3) argument.[1] *See, e.g.*, *White*, 772 N.E.2d at 411 ("A party may not object on one ground at trial and raise a different ground on appeal.").

[13] This leaves Husband's argument under Trial Rule 60(B)(1) for our review. That Rule permits a trial court to set aside its judgment upon a showing of "mistake, surprise, or excusable neglect." Ind. Trial Rule 60(B)(1). According to Husband, the "timing of [the January 12, 2022,] email and it[s] classi[f]ication of [Wife's] property interest as a 'fractional future interest' led [Husband] to legitimately believe that the property described was insignificant and worth less

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[1] Husband's waiver of this issue notwithstanding, his constructive fraud argument required him to show that Wife knew at least an approximate value of her 25% interest prior to the parties entering into their settlement agreement. *See Atkins*, 534 N.E.2d at 761, 763. But there is no evidence that she had any such knowledge, and, thus, we would be obliged to affirm the trial court's denial of Husband's motion on his theory of constructive fraud even if the issue were properly before us.

than the additional fees he would incur in conducting fu[r]ther discovery and delaying [the] final hearing . . . ." Appellant's Br. at 16.

[14] In support of his position under Rule 60(B)(1), Husband relies on our Supreme Court's opinion in *Whittaker v. Dail*, 584 N.E.2d 1084 (Ind. 1992). In that case, the defendant failed to appear at trial after his trial counsel had withdrawn their appearances on his behalf. The trial court entered default judgment against the defendant based on his failure to appear at the trial. The defendant then obtained new counsel, who moved to set aside the default judgment for excusable neglect. At a hearing on that motion, the defendant presented undisputed evidence that his insurance company had stated that it would represent him at trial, only for the defendant to learn after the trial that the insurance company had in fact declined to represent him. After the trial court denied the defendant's motion, our Supreme Court reversed and held that the undisputed evidence demonstrated the defendant's "legitimately-held belief" that he would be represented at the trial. *Id.* at 1087.

[15] Husband's motion to set aside the settlement agreement is not analogous to the excusable neglect at issue in *Whittaker*. Husband was not misled by Wife's pre-settlement disclosure to him that she had a newly obtained fractional interest in real property. Husband simply assumed that the value of that property was not worth further investigation. Husband's poor decision is not excusable neglect as contemplated by Rule 60(B)(1). We therefore affirm the trial court's denial of Husband's motion to set aside the settlement agreement.

[16] Affirmed.

May, J., and Bradford, J., concur.