MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Steven Kollar,
Appellant-Defendant

v.

State of Indiana and Marlena Elias,
Appellees-Plaintiffs

August 13, 2024

Court of Appeals Case No.
24A-MI-591

Appeal from the St. Joseph Circuit Court

The Honorable John Broden, Judge

The Honorable Andre Bernard Gammage, Magistrate

Trial Court Cause No.
71C01-2305-MI-182

Memorandum Decision by Chief Judge Altice.

Judges Bailey and Mathias concur.

Altice, Chief Judge.

Case Summary

[1] Steven Kollar appeals the trial court's denial of his Ind. Trial Rule 60(B) motion to set aside a default judgment, arguing that he established mistake of fact and excusable neglect and that he has a meritorious defense. Kollar raises the following restated issue for our review: Did the trial court improperly deny Kollar's motion to set aside the default judgment?

[2] We affirm.

Facts & Procedural History

[3] Marlena Elias was at risk of losing her home in South Bend to tax foreclosure. On September 9, 2021, she received a flyer from MCB Capital LLC informing her to contact Kollar within four business hours to save her property. Elias contacted Kollar via phone. The two orally agreed that in exchange for the transfer of the deed to her home, Kollar would pay any delinquent property taxes and provide Elias with fifty percent of the profits upon the subsequent sale of the home. Kollar referred Elias to attorney Gary Griner of Griner Law Group to draw up documents for the transaction.

[4] Elias met with Griner and executed a quitclaim deed effective on September 13, 2021, transferring title to her property to Kollar for no consideration. Elias

never received a written copy of the agreement between her and Kollar, nor did she receive notice of her right to cancel the transaction. After being told later that month to vacate the property for renovations, Elias attempted to revoke the oral agreement, but Kollar refused. Concerned that Kollar had fraudulently induced her into deeding the home to him, Elias reached out to the Notre Dame Clinical Law Center for legal assistance in late September 2021. After months of dispute over the legitimacy of the transaction, Kollar took possession of the property in early May 2022 while Elias was in the hospital.

[5] On May 18, 2023, Elias filed a complaint to quiet title against multiple defendants, including Kollar, alleging fraud and misrepresentation resulting in unjust enrichment. Kollar was served on June 15, 2023. He never filed an appearance or answered Elias's complaint.

[6] On November 28, 2023, the State filed a motion to intervene in Elias's action. Despite having no appearance on record, Kollar moved on December 5, 2023, for a sixty-day extension of time to respond to the State's motion. In this filing, Kollar indicated that he was *pro se*. The State filed an objection to Kollar's requested extension, and then the trial court denied Kollar's request and gave him until December 15, 2023, to file a response to the State's motion to intervene. On December 19, 2023, after no response from Kollar, the trial court granted the State's motion to intervene.

[7] On January 4, 2024, and within Elias's pending action, the State filed its complaint against Kollar and the other defendants under the Indiana Home

Solicitation Sales Act, Indiana Home Loan Practices Act, and Senior Consumer Protection Act for injunctive relief, restitution, civil penalties, and costs. Kollar was personally served with the complaint on January 17.

[8] On February 7, 2024, after Kollar had not filed a responsive pleading, the State filed a motion for default judgment and for permanent injunctive relief against Kollar. The trial court granted the State's motion two days later, entering default judgment against Kollar in the amount of $302,837.50 and permanently enjoining him from certain activities, including the solicitation of the purchase of real property from any person in Indiana if such property is the subject of a tax sale or a foreclosure proceeding.

[9] Thereafter, on February 12, 2024, Elias filed her own motion for default judgment against Kollar, which the trial court granted two days later. The court awarded Elias $65,000, the appraised value of her property.

[10] On February 26, 2024, Kollar moved to set aside the default judgment entered in favor of the State. After generally citing to T.R. 60(B), he alleged:

> Defendant was not represented by counsel. Defendant is currently searching for counsel Because AG did a strategic move in suing Defendants attorney making him ineligible to represent me since he had complete history of this case. Attorneys do not like opposing ND Legal Aid Making it monetary unsound. thos elimination a lot of choices. Some did not like the weaponization of the AG office to knock out another attorney. One attorney has been out of the country returning March 5th 2024.

Appellant's Appendix Vol. III at 30 (errors in original). Three days earlier, Kollar had filed with the trial court an affidavit in which he asserted that he had been struggling to retain counsel since learning that Griner could not represent him. Kollar further averred:

> 3. Many local attorneys simply refuse to take the case because Notre Dame and the AG are on the opposing side….
>
> 4. Also because of the involvement of the AG and the complexity of the case, attorneys quoted very high retainer fees that I simply could not afford. I have been working to obtain a line of credit so that I can retain counsel. I believe that the line of credit will be available and that I will be able to retain counsel within about 2 weeks from now.
>
> 5. I actually thought that I had filed a motion for extension of time but now realize that I didn't.
>
> 6. The Notre Dame Law Clinic has sued me or defended against me in eviction cases many many times over the past several years. In one year, cases against me amounted to over 50% of all of their filed cases. They even represented a multimillionaire in a partnership dispute against me and backed out of a settlement in that same case. They have defamed me, made numerous false allegations against me, used stolen documents and materials against me. Much of that happened while Regan Perrodin was a student at Notre Dame. I believe that she share the personal bias against me that Judy Fox had – and she is now using the office of AG to further that personal bias. In most of the past cases in which Notre Dame opposed me, my attorneys had advised to settle or take a light approach because fighting aggressively would only inflame the situation.

> 7. Because of the factors listed above I just haven't been able to retain counsel even though I have been trying to. I am asking the court to give me some additional time so that my due process rights are not violated….

Id. at 25-26. Through his additional averments, Kollar attempted to establish that he had a meritorious defense.

[11] The State filed a lengthy response to Kollar's motion, in which it argued that Kollar made "numerous incoherent arguments" and failed to support his request for relief with any reasoned argument that the default judgment was the result of mistake, surprise, or excusable neglect. *Id*. at 34. Further, the State argued in part:

> Forgetfulness is not a recognized reason for 60(B) relief nor is the fact that a defendant has had difficulty affording or retaining counsel. While an unfortunate reality for many *pro se* parties, our trial rules do not excuse their failure to comply with the rules simply because they cannot retain counsel.

Id. at 38.

[12] On March 1, 2024, the trial court denied Kollar's motion to set aside the default judgment that had been entered in favor of the State. The next week, on the State's motion, the trial court amended the default judgment to correct a calculation error, resulting in the money judgment being reduced to $252,873.50. The injunctive relief remained unchanged.

[13] Kollar now appeals. Additional information will be provided below as needed.

Standard of Review

[14] T.R. 60(B) provides a mechanism for a party to obtain relief from the entry of a final judgment. *Allen Cnty. Plan Comm'n v. Olde Canal Place Ass'n*, 61 N.E.3d 1266, 1268 (Ind. Ct. App. 2016). A motion made under T.R. 60(B) is addressed to the equitable discretion of the trial court, and we will generally review only for an abuse of discretion. *In re Adoption of C.B.M.*, 992 N.E.2d 687, 691 (Ind. 2013). However, where the trial court ruled, as it did here, on a paper record, without conducting an evidentiary hearing, our review is de novo. *Id*.

Discussion & Decision

[15] We initially observe that Kollar attempts to challenge both default judgments entered against him – the first in favor of the State and the second in favor of Elias. But he never moved to set aside the latter judgment. Accordingly, Kollar has waived review of his claim that the trial court erred by failing to set aside the default judgment obtained by Elias after her complaint went unanswered by Kollar for nearly nine months.[1] *See Carney v. Patino*, 114 N.E.3d 20, 29 n.6 (Ind. Ct. App. 2018) ("The trial court cannot be found to have erred as to an issue or argument that it never truly had an opportunity to consider."), *trans. denied*. Thus, we will consider only the trial court's refusal to set aside the default judgment obtained by the State.

[1] Kollar did not respond to Elias's waiver argument in his reply brief.

[16] A default judgment is "an extreme remedy and is available only where that party fails to defend or prosecute a suit. It is not a trap to be set by counsel to catch unsuspecting litigants." *Allstate Ins. Co. v. Watson*, 747 N.E.2d 545, 547 (Ind. 2001).

> On the one hand, a default judgment plays an important role in the maintenance of an orderly, efficient judicial system as a weapon for enforcing compliance with the rules of procedure and for facilitating the speedy determination of litigation. On the other hand, there is a marked judicial preference for deciding disputes on their merits and for giving parties their day in court, especially in cases involving material issues of fact, substantial amounts of money, or weighty policy determinations. The trial court, in its discretion, must balance these factors in light of the circumstances of each case.

Whetstine v. Menard, Inc., 161 N.E.3d 1274, 1279-80 (Ind. Ct. App. 2020) (quoting *Green v. Karol*, 344 N.E.2d at 110 (Ind. Ct. App. 1976)), *trans. denied*.

[17] Kollar argues that he was entitled to relief because his failure to answer the State's complaint was the result of mistake or excusable neglect. Under T.R. 60(B)(1), a default judgment may be set aside based on a party's "mistake, surprise, or excusable neglect" so long as the party files its motion within one year of the entry of judgment[2] and alleges a meritorious defense. Such a motion, "does not attack the substantive, legal merits of a judgment, but rather addresses the procedural, equitable grounds justifying the relief from the finality

[2] It is undisputed that Kollar filed his motion within one year of the entry of default judgment.

of a judgment." *Logansport/Cass Cnty. Airport Auth. v. Kochenower*, 169 N.E.3d 1143, 1146 (Ind. Ct. App. 2021). Further, there is no general rule as to what constitutes excusable neglect, as each case must be decided considering its own particular facts. *Kretschmer v. Bank of Am., Na.*, 15 N.E.3d 595, 600 (Ind. Ct. App. 2014), *trans. denied*.

[18] In his motion, Kollar failed to direct the trial court to any subsection of T.R. 60(B) or explain legal grounds in support of his motion. He alleged only that he was unrepresented and having trouble retaining an attorney. Notably, Kollar did not allege a mistake of fact, as he does now on appeal, and his affidavit was not itself a proper vehicle to raise other grounds for relief. *See Morequity, Inc. v. Keybank, N.A.*, 773 N.E.2d 308, 314 (Ind. Ct. App. 2002) ("Filing an affidavit in support of one's argument in a pending proceeding is not the same as filing a Trial Rule 60(B)(6) motion based upon alleged lack of personal jurisdiction."), *trans. denied*.

[19] Waiver notwithstanding, we observe that nothing in the record supports Kollar's new claim that he did not answer the State's complaint because he mistakenly believed Griner would be doing so on his behalf. Although Kollar's affidavit does not reveal when he learned that Griner could not represent him, we know that Kollar had such knowledge at least a month **before** the State filed its complaint, when he filed a *pro se* motion for an extension of time to respond to the State's motion to intervene. Accordingly, Kollar's claim that he is entitled to relief due to mistake is without merit.

[20] That leaves Kollar with his claim of excusable neglect based on his alleged struggles to find willing or affordable legal representation. Kollar's affidavit shows that he is not a novice when it comes to litigation and that he has had attorneys represent him many times in the past when the opposing party was represented by the Notre Dame Clinical Law Center. Thus, his claimed inability to find legal counsel in this case rings hollow. And his assertion that the State "did a strategic move" in suing Griner to make him ineligible to represent Kollar is clearly baseless. *Appellant's Appendix Vol. III* at 30. Griner is not even a party.[3]

[21] "A *pro se* litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented." *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). Here, despite undisputed knowledge of the action, Kollar failed to respond in any way to Elias's complaint filed in May 2023 and then failed to respond to the State's complaint filed in the same action eight months later. Kollar waited until after the default judgments were entered to claim that he was having trouble securing counsel, which he supported with only a self-serving affidavit.

[3] Griner is a member of two of the limited liability companies that are defendants in this suit. Kollar is also a member of one of these entities.

[22] We conclude that Kollar failed to establish excusable neglect,[4] and thus we need not address his argument that he alleged a meritorious defense. *See Biodynamic Extraction, LLC v. Kickapoo Creek Botanicals, LLC*, 187 N.E.3d 295, 301 n.4 (Ind. Ct. App. 2022). The trial court properly denied Kollar's motion to set aside the default judgment.

[23] Judgment affirmed.

Bailey, J. and Mathias, J., concur.

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[4] In passing, Kollar also cites the catch-all provision – T.R. 60(B)(8) – and simply notes that he was *pro se* but did not want to be. Because he provides no discussion of this subsection of the rule and makes no claim of exceptional circumstances justifying relief beyond mere mistake or excusable neglect, we do not reach this issue. *See McGhee v. Lamping*, 198 N.E.3d 730, 738 (Ind. Ct. App. 2022) (observing that T.R. 60(B)(8) requires an affirmative showing of exceptional circumstances and is not available if the grounds for relief properly belong to one of the other enumerated subdivisions of the rule).