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IN THE
COURT OF APPEALS OF INDIANA

Barclays Investment Funding
LLC & T. Tad Bohlsen,
Appellants-Defendants,

v.

Jamalee Investments, LLC,
Appellee-Plaintiff,

April 4, 2022

Court of Appeals Case No.
21A-PL-2015

Appeal from the Madison Circuit
Court

The Honorable Mark Dudley,
Judge

Trial Court Cause No.
48C06-1912-PL-164

Robb, Judge.

Case Summary and Issue

- [1] Barclays Investment Funding LLC¹ (“Barclays”) appeals the trial court’s denial of its motion to reconsider the trial court’s order striking Barclays’ motion to set aside a default judgment. Concluding that Barclays’ motion to reconsider was instead a motion to correct error and that such motion was untimely, we dismiss.

Facts and Procedural History

- [2] In June 2019, a mortgage was recorded in Madison County for real estate located in Pendleton, Indiana. The mortgage was purportedly between Jamalee Investments LLC (“Jamalee”), as mortgagor, and Barclays, as mortgagee. Jamalee’s signatory for the mortgage was T. Tad Bohlsen, an investment manager for Barclays.
- [3] In December 2019, Jamalee filed a complaint to quiet title against Barclays and Bohlsen because Bohlsen was not authorized to act on behalf of Jamalee or execute a mortgage in Jamalee’s name and therefore, the mortgage was void. Barclays failed to file an answer or otherwise respond and in March 2020, Jamalee filed a motion for default judgment against Barclays which the trial court granted on March 19, 2020. In awarding default judgment, the trial court declared the mortgage void and cancelled of record. The trial court also

¹ T. Tad Bohlsen does not participate in this appeal.

declared that Barclays does not have any estate, right, title, or interest to the real estate in question.

[4] One year later, on March 19, 2021, Barclays filed a motion to set aside the default judgment. Barclays' motion was signed by an attorney ("Attorney"), and an appearance was filed for the Attorney on the next day. However, on April 7, the Attorney notified Jamalee that he had not filed either Barclays' motion to set aside default judgment or the appearance. Instead, the motion to set aside default judgment had been electronically signed and filed by Barclays without his knowledge. Subsequently, the Attorney filed a motion to withdraw because he was no longer under contract with Barclays.

[5] On April 12, Jamalee filed its response to Barclays' motion to set aside default judgment and also filed a separate motion to strike Barclays' motion to set aside default judgment because it was effectively not signed by the Attorney and therefore, according to Indiana Trial Rule 11, "constitutes a sham and a fraud upon [the trial court], and as such should be stricken." Appendix of Appellants, Volume II at 49. On April 13, the trial court granted Jamalee's motion to strike.

[6] Barclays filed a motion to reconsider the order striking its motion to set aside default judgment on June 14, to which Jamalee filed a response and a request for attorneys' fees. In August 2021, the trial court denied Barclays' motion to reconsider and awarded Jamalee attorneys' fees. Barclays now appeals.

Discussion and Decision

- [7] Barclays argues that the trial court abused its discretion by denying Barclays' motion to reconsider its order striking Barclays' motion to set aside default judgment.² To begin, Barclays' motion to reconsider is actually a motion to correct error. "[A]lthough substantially the same as a motion to reconsider, a motion requesting the [trial] court to revisit its final judgment must be considered a motion to correct error" because motions to reconsider must be made and ruled upon prior to the entry of final judgment. *Hubbard v. Hubbard*, 690 N.E.2d 1219, 1221 (Ind. Ct. App. 1998). A final judgment is a judgment that disposes of all claims as to all parties. Ind. Appellate Rule 2(H)(1).
- [8] Here, we have a final judgment. In March 2021, Barclays filed a motion seeking to set aside the trial court's March 2020 entry of default judgment against Barclays declaring its mortgage with Jamalee void. Subsequently, Jamalee filed a motion to strike Barclays' motion to set aside default judgment for the reasons explained above, *see supra*, ¶ 4, and on April 13, 2020, the trial court granted Jamalee's motion to strike, effectively treating Barclays' motion as if it had never been filed with the court, and leaving no claims remaining for the trial court to rule upon. As a result, the trial court's April 13 order granting Jamalee's motion to strike is a final judgment and we treat Barclays' motion to

² Barclays' stated issue is whether the trial court abused its discretion in not granting relief from its March 2020 entry of default judgment declaring Barclays' mortgage with Jamalee void. *See* Brief of Appellants at 4. However, because of the timeliness issues addressed herein, we cannot now evaluate the merits of the trial court's grant of default judgment.

reconsider as a motion to correct error. *See Hubbard*, 690 N.E.2d at 1221 (indicating that a post-judgment motion to reconsider must be treated as a motion to correct error).

[9] Barclays had thirty days from the entry of final judgment to file a motion to correct error or a notice of appeal with the trial court. *See* Ind. Trial Rule 59(C); *see also* Ind. Appellate Rule 9(A)(1). Final judgment was entered on April 13, 2021, and Barclays filed its motion to correct error on June 14, 2021, over one month beyond the thirty-day deadline. Accordingly, Barclays' motion to correct error was untimely. An appeal from the trial court's denial of a motion to correct error cannot be entertained unless the motion to correct error was *timely* filed in the first place. *See* App. R. 9(A)(1); *see also Ball v. Jones*, 52 N.E.3d 813, 818 (Ind. Ct. App. 2016) (dismissing an appeal from the denial of a motion to correct error because the appellant's original motion to correct error was untimely). As a result, Barclays forfeited its right to an appeal and we must dismiss.³

³ We note that Barclays' appeal is from the trial court's order both denying Barclays' motion to correct error *and* granting Jamalee's request for attorneys' fees. Although Barclays' motion to correct error was untimely and therefore the order thereon is not appealable to this court, an award of attorneys' fees may be appealable as of right under Indiana Appellate Rule 14(A)(1). However, to be appealable as of right, an award of attorneys' fees must be for a sum and time certain. *Huber v. Montgomery Cnty. Sheriff*, 940 N.E.2d 1182, 1185 (Ind. Ct. App. 2010). Here, Barclays was ordered to pay Jamalee the sum of \$1,749.50. *See* Appealed Order at 1. However, the trial court provided no date by which that same sum needed to be paid. As a result, the trial court's award of attorneys' fees is not appealable as of right and any appeal by Barclays from the trial court's order denying Barclays' motion to correct error and granting Jamalee's request for attorneys' fees is not properly before this court.

Conclusion

[10] We conclude that because the trial court entered final judgment on April 13, 2021, when it granted Jamalee's motion to strike Barclays' motion to set aside, Barclays was required to file its motion to correct error within thirty days. Barclays' motion to correct error was not filed until June 14, 2021, and was therefore not timely. Accordingly, we must dismiss.

[11] Dismissed.

Riley, J., and Molter, J., concur.