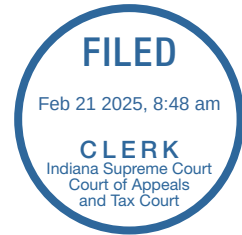
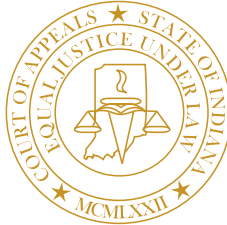


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Ronald Farren,
Appellant-Defendant

v.

Cadlerock Joint Venture, L.P.,
Appellee-Plaintiff

February 21, 2025

Court of Appeals Case No.
24A-CC-1537

Appeal from the Marion Superior Court
The Honorable John M.T. Chavis, II, Judge
The Honorable Ian Stewart, Magistrate

Trial Court Cause No.
49D05-1103-CC-12499

Memorandum Decision by Judge Vaidik
Chief Judge Altice and Judge Scheele concur.

Vaidik, Judge.

Case Summary

- [1] Ronald Farren appeals the trial court’s denial of his motion for relief from judgment under Indiana Trial Rule 60(B)(6) and (8). We affirm.

Facts and Procedural History

- [2] In March 2011, Cadlerock Joint Venture, L.P., filed a “Complaint on Promissory Note, Security Agreement, Guaranties and for Post-Judgment Replevin” against Farren and multiple entities, including Capital Acceptance Corporation, of which Farren was president. Appellee’s Br. p. 5. Cadlerock mailed Farren a copy of the complaint and summons at 9168 Nautical Watch Drive in Indianapolis. Around the same time, several entities in which Farren had an interest (including some of the defendants in this case) filed Chapter 11 bankruptcy proceedings in the Southern District of Indiana. Cadlerock was a creditor in the bankruptcy cases.
- [3] An attorney entered an appearance on behalf of Farren in this case in November 2011 but later withdrew in June 2013. After that, no action was taken in this case until January 2014, when on its own motion, the trial court set the matter for a hearing on Trial Rule 41(E) dismissal in March. The parties failed to appear for the hearing, and the court dismissed the case for failure to prosecute.

- [4] Four months later, Cadlerock moved to set aside the dismissal as to defendants Farren and Capital Acceptance Corporation under Trial Rule 60(B)(1), alleging there was excusable neglect for its failure to prosecute. Cadlerock sent copies of the motion to both Farren and Capital Acceptance Corporation at the Nautical Watch Drive address. Farren never responded or opposed the motion. The court granted the motion without hearing in September.
- [5] The next month, October 2014, Cadlerock moved for default judgment against Farren and Capital Acceptance Corporation. Again, Cadlerock sent a copy of the motion to the Nautical Watch Drive address, and Farren never responded or opposed the motion. The trial court granted the motion in January and entered default judgment against Farren and Capital Acceptance Corporation in the amount of \$7,756,702.14. Copies of the judgment were “MAILED TO PARTIES.” Appellant’s App. Vol. II p. 4 (Jan. 16, 2015 CCS entry).
- [6] In 2015, Farren and his ex-wife divorced. The dissolution decree identified several debts “in the sole name of [Farren] or his businesses,” including “Cadlerock Judgment.” Appellee’s App. Vol. II p. 37.
- [7] After no action in this case for over seven years, Cadlerock moved for proceedings supplemental in July 2022. Negotiations between the parties ensued, and they agreed any motion by Farren to set aside the default judgment would be deemed filed as of November 8, 2022. The parties were ultimately unable to settle the matter, and in February 2024, Farren moved to set aside the reinstatement order and the default judgment, contending both were void

because they were granted without notice to him and because the court set aside the Rule 41(E) dismissal without first holding a hearing. In his accompanying affidavit, Farren claimed he didn't receive notice of the dismissal, Cadlerock's motion to set aside the dismissal, the order reinstating the case, or the motion for default judgment because he'd sold the Nautical Watch Drive property in 2009. Farren asserted that he wasn't aware of the default judgment "at the time it was entered or within a year of its entry" and that he didn't receive a copy of the judgment until after Cadlerock moved for proceedings supplemental in 2022. Appellant's App. Vol. II p. 65. In its brief opposing Farren's motion, Cadlerock argued that Farren knew of the default judgment in 2015, citing the reference to the "Cadlerock Judgment" in Farren's divorce decree. As an exhibit to its brief, Cadlerock included an affidavit from its account officer averring, "The Default Judgment entered in this Case is the only judgment obtained by Cadle[r]ock against Ronald E. Farren." *Id.* at 168.

[8] The court held a hearing on Farren's motion to set aside in May 2024. Farren did not appear due to health issues and therefore could not be cross-examined. His counsel told the court that no one had a copy of the case file and explained that he received "a letter from the Marion County Clerk saying, 'We can't find it anywhere, and we assume it was destroyed.'" Tr. p. 17.

[9] After the hearing, the court denied Farren's motion. In its order, the court concluded, "[I]t is doubtful that there was pertinent evidence that Superior Court 10 needed to rule on [Cadlerock's motion to set aside dismissal]. . . . Based on the reason why dismissal had been entered against plaintiff . . . it

probably was unnecessary for Superior Court 10 to hold a hearing before setting aside the dismissal[.]” Appellant’s App. Vol. II p. 18. The court also found that Farren knew of the default judgment by October 2015 since it was referenced in his divorce decree and accordingly concluded that his motion was untimely because “a seven-year delay before taking any action to rectify a perceived error is not reasonable.” *Id.*

[10] Farren now appeals.

Discussion and Decision

[11] Farren appeals the trial court’s denial of his motion for relief from judgment. Because Farren seeks relief under Trial Rule 60(B)(6) and (8), this case implicates two standards of review. “When a party moves to set aside a judgment under Rule 60(B)(6), the trial court lacks discretion because its judgment is either void or valid, prompting a de novo standard of review on appeal.” *M.H. v. State*, 207 N.E.3d 412, 416 (Ind. 2023). “But under Rule 60(B)(8)’s catchall provision, whether relief is warranted is left to the equitable discretion of the trial court, and thus, we review the court’s decision for an abuse of that discretion.” *T.D. v. State*, 219 N.E.3d 719, 725 (Ind. 2023) (quotation omitted). In reviewing the denial of a 60(B)(8) motion, we may neither reweigh the evidence nor substitute our judgment for that of the trial court. *Cnty. Materials Corp. v. Ind. Precast, Inc.*, 187 N.E.3d 253, 265 (Ind. Ct. App. 2022), *reh’g denied, trans. denied*.

[12] We address Farren’s 60(B)(6) and 60(B)(8) claims in turn.

I. Farren is not entitled to relief under Trial Rule 60(B)(6) because the order setting aside the Rule 41(E) dismissal and the subsequent default judgment are not void

[13] Farren contends he is entitled to relief under Rule 60(B)(6) because both the order setting aside the Rule 41(E) dismissal and the subsequent default judgment are void. Rule 60(B)(6) allows a party to move for relief from judgment at any time if the judgment is void. *T.D.*, 219 N.E.3d at 725. To be entitled to relief, the party must establish that the judgment is void, not merely voidable. *Id.* Farren claims the order setting aside dismissal is void because the trial court issued it without notice or a hearing. And since that order is void, he argues, the subsequent default judgment is also void. Cadlerock counters that the order setting aside dismissal is at best voidable, not void.

[14] Farren argues that he was entitled to a hearing on Cadlerock's motion to set aside the Rule 41(E) dismissal before the court ruled on it. He relies on Trial Rule 60(D), which provides, in relevant part, "In passing upon a motion allowed by subdivision (B) of this rule the court shall hear any pertinent evidence[.]" Farren cites several Court of Appeals cases that interpret Rule 60(D) to require a hearing on every 60(B) motion before the court may issue an order. *See* Appellant's Br. p. 18 (citing *Hoosier Health Sys. v. St. Francis Hosp. & Health Ctrs.*, 796 N.E.2d 383 (Ind. Ct. App. 2003); *Davidson v. Am. Laundry Mach. Div.*, 431 N.E.2d 546 (Ind. Ct. App. 1982); *State ex rel. AAFCO Heating & Air Conditioning Co. v. Lake Superior Court, Room Two*, 328 N.E.2d 733, 734 (1975); *Spence v. Supreme Heating & Air Conditioning Co.*, 437 N.E.2d 1008 (Ind.

Ct. App. 1982)). In response, Cadlerock points to cases where this Court held that Rule 60(D) requires a hearing only when there is pertinent evidence to be heard. *See, e.g., A.W. v. State*, 224 N.E.3d 331, 338 (Ind. Ct. App. 2023) (“However, when there is no pertinent evidence to be heard, a hearing is unnecessary.”). Cadlerock contends Farren couldn’t have had any pertinent evidence to present on its motion to set aside dismissal and thus a hearing on the motion was not required.

[15] As demonstrated by the cases the parties cite, our precedent is at odds as to whether a hearing on a Rule 60(B) motion is absolutely required under Rule 60(D) or only required when there is pertinent evidence to be heard. But for purposes of our 60(B)(6) review here, we need not decide whether the trial court was required to hold a hearing before issuing its judgment on Cadlerock’s motion to set aside dismissal because even if it was, the failure to hold a hearing does not render the set-aside order void. In *T.D.*, our Supreme Court clarified the distinction between void and voidable judgments:

While a void judgment “is a complete nullity” without legal effect from its inception, a voidable judgment “is capable of confirmation or ratification,” making it subject to ordinary appellate or other direct procedures to correct it. . . . [A] trial court’s judgment is void if the court lacks personal jurisdiction, subject matter jurisdiction, or the authority to render the judgment. That said, we construe “authority” narrowly to distinguish void errors from voidable legal or procedural errors. There is a distinct difference between a judgment that the law does not authorize under any circumstances (a void judgment), and a judgment authorized by law but derived in violation of law (a voidable judgment). In the latter scenario, the trial court still

has the requisite authority to act, and thus, the error is a procedural irregularity that can be cured.

219 N.E.3d at 726-27 (citations omitted). Farren does not challenge the trial court's personal or subject-matter jurisdiction; rather, he suggests that the court was not authorized to set aside the Rule 41(E) dismissal without a hearing.

[16] Even if we accept Farren's argument that he was entitled to a hearing before the court ruled on Cadlerock's motion to set aside dismissal, the court's failure to hold a hearing is a procedural irregularity that can be cured. Several of the cases upon which Farren relies support this proposition. In both *Hoosier Health Systems* and *Spence*, we held that the trial court erred in ruling on a 60(B) motion without a hearing, but rather than concluding that the rulings were void, we reversed and remanded for the court to hold a hearing on the motion. *See* 796 N.E.2d at 387-88; 437 N.E.2d at 1009 ("The failure to give notice and to hold a hearing constitute reversible error."). Indeed, at the hearing on Farren's 60(B) motion, his counsel acknowledged that if the trial court were to grant the motion, the remedy would be to hold a hearing on Cadlerock's motion to set aside dismissal. *See* Tr. pp. 19, 27. The court's order setting aside dismissal is not "a judgment that the law does not authorize under any circumstances"; by Farren's own argument, the judgment would be authorized had the court simply held a hearing before issuing it.

[17] Farren identifies one case, *Hovey v. Hovey*, 902 N.E.2d 896 (Ind. Ct. App. 2003), *reh'g denied, trans. denied*, where we held that a trial court's judgment on a 60(B) motion was void. But this holding was not based solely on the court's failure to

hold a hearing on the motion. In *Hovey*, a father sought relief from his child-support arrearage under Rule 60(B), which the trial court granted. On appeal, the mother challenged the judgment on several bases, including that the court issued it without providing her notice or holding an evidentiary hearing. The father countered that a status hearing the court held after his motion should be considered the evidentiary hearing. But because “the record [wa]s completely devoid of any evidence that the clerk notified [the mother’s] counsel in writing of the hearing,” we held that the judgment was void because “due process requires notice of certain proceedings after the initiation of a lawsuit,” and “[a] judgment is void if it is rendered without due process.” *Id.* at 901.

[18] Unlike in *Hovey*, we cannot say “the record is completely devoid of any evidence” that Cadlerock provided notice of its motion to set aside dismissal. “Notice should be such as is reasonably calculated to inform defendant of the pending proceedings.” *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 759 (Ind. 2014). Cadlerock mailed a copy of its motion to the Nautical Watch Drive address, the same address where it sent the complaint and summons. Farren contends that he sold the Nautical Watch Drive property before Cadlerock filed its complaint and that Cadlerock “knew from the bankruptcy proceedings how to serve [him] at a correct address” because it “served [him] with bankruptcy related filings” at different addresses. Appellant’s Br. pp. 6, 22. But until Farren raised these assertions in response to Cadlerock’s motion for proceedings supplemental in 2022, Cadlerock had no reason to believe the Nautical Watch Drive address was not a “correct address.” Rather than challenging the initial

service of process, an attorney entered an appearance on Farren’s behalf. After that attorney withdrew, Farren never entered an appearance or indicated a change of address. *See* Ind. Trial Rule 72(D) (“It shall be the duty of the attorneys, and parties not represented by an attorney, when entering their appearance in a case or when filing pleadings or papers therein, to have noted on the Chronological Case Summary and on the pleadings or papers so filed, their mailing address . . .”). Further, at the hearing on Farren’s 60(B) motion, his counsel clarified that he was “not contesting original service.”¹ Tr. p. 9. And we are unpersuaded by Farren’s argument that Cadlerock should have conformed its notice here with the addresses at which it was serving him in the bankruptcy proceedings. Because Farren hadn’t indicated by the time of Cadlerock’s motion to set aside dismissal that he was not receiving notice at the Nautical Watch Drive address, we cannot say that Cadlerock attempting service at that address denied him due process such that the order setting aside dismissal is void. *See Baker & Daniels, LLP v. Coachmen Indus., Inc.*, 924 N.E.2d 130, 139 (Ind. Ct. App. 2010) (where Coachmen’s counsel failed to inform the court of his change of address as required by the trial rules, rejecting Coachmen’s claim that it was denied due process and the judgment at issue was therefore void because “Coachmen fail[ed] to establish that . . . efforts at notice were not reasonably calculated to apprise Coachmen of the status of the action”

¹ It appears that the trial court located the case file about a week after Farren filed his notice of appeal. *See* Appellant’s App. Vol. II p. 10 (Jul. 9, 2024 CCS entry); *see also id.* at 196-250; Appellant’s App. Vol. III; Appellant’s App. Vol. IV; Appellant’s App. Vol. V. Farren does not point us to any part of the case file that indicates the summons was returned unserved.

and “Coachmen’s lack of notice was as much a result of its own actions as any other party’s”), *trans. denied*.

[19] Farren also contends the default judgment is void, but his only rationale for this argument on appeal is that “all subsequent actions predicated on [the order setting aside dismissal] were ‘tainted by its nullity and are similarly without effect.’” Appellant’s Br. pp. 11, 19-20 (citing *Carter v. Allen*, 631 N.E.2d 503, 507 (Ind. Ct. App. 1994)). Since the order setting aside dismissal is not void, this argument fails. Because neither the order setting aside dismissal nor the default judgment is void, Farren is not entitled to relief under Rule 60(B)(6).

II. The trial court did not err in denying Farren relief under Trial Rule 60(B)(8) because he did not file his motion within a reasonable time

[20] Farren also moved for relief from the order setting aside dismissal and the default judgment under Rule 60(B)(8). This subsection allows a trial court to set aside a judgment for “any reason justifying relief from the operation of the judgment” other than those identified in other subsections of Rule 60(B). T.R. 60(B)(8). A Rule 60(B)(8) motion “shall be filed within a reasonable time” and “must allege a meritorious claim or defense.” T.R. 60(B). The moving party must also “demonstrate some extraordinary or exceptional circumstances justifying equitable relief.” *T.D.*, 219 N.E.3d at 728. Determining whether a 60(B) motion was filed within a reasonable time depends on the circumstances of each case, as well as the potential prejudice to the party opposing the motion

and the basis for the moving party's delay. *Kirchgessner v. Kirchgessner*, 103 N.E.3d 676, 681 (Ind. Ct. App. 2018), *trans. denied*.

[21] Here, the trial court did not address whether Farren alleged a meritorious claim or defense or demonstrated extraordinary circumstances justifying relief because it concluded Farren's motion was untimely. The court granted Cadlerock's motion to set aside dismissal in September 2014 and entered default judgment in January 2015. Farren maintains that he didn't know of the judgment until Cadlerock moved for proceedings supplemental in July 2022. But based on the reference to the "Cadlerock Judgment" in Farren's divorce decree, the trial court found that Farren knew of the default judgment by October 2015. The parties agreed that Farren's motion to set aside would be deemed filed as of November 8, 2022, meaning the motion came seven years after Farren knew of the judgment. Rather than arguing that bringing his 60(B)(8) claim after seven years was "within a reasonable time" under the circumstances, Farren claims "the divorce decree is ambiguous" and slights the trial court for basing its finding on "an obscure reference to a Cadle[r]ock judgment." Appellant's Br. p. 21. But this is a request for us to reweigh the evidence, which we cannot do. *See Cnty. Materials Corp.*, 187 N.E.3d at 265. Accepting the trial court's finding that Farren knew about the default judgment as of October 2015, and given that Farren hasn't identified any circumstances that would make a seven-year delay reasonable, the court did not err in

concluding that Farren’s motion was untimely.² Accordingly, Farren is not entitled to relief under Rule 60(B)(8).

[22] Affirmed.

Altice, C.J., and Scheele, J., concur.

ATTORNEY FOR APPELLANT

Anne L. Cowgur
Paganelli Law Group
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Bret S. Clement
Ayres Carr & Sullivan, P.C.
Carmel, Indiana

² Farren notes, “For some reason, the trial court found it was unreasonable for Farren to have taken no action in this case for seven years while not questioning the same seven-year delay by Cadle[r]ock in notifying Farren of the default judgment and seeking to collect from him.” Appellant’s Br. p. 21. But the CCS indicates that copies of the judgment were “MAILED TO PARTIES” on January 16, 2015, so Cadlerock could have believed that Farren had already been notified of the judgment. And again, based on his divorce decree, Farren knew of the judgment by October 2015. Further, as Cadlerock points out, it was not under the same time restraint as Farren to bring its motion for proceedings supplemental “within a reasonable time.”