MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Automotive Finance Corporation,
Appellant-Plaintiff,

v.

Bernard Kayiji,
Appellee-Defendant.

November 16, 2022

Court of Appeals Case No. 22A-CC-1393

Appeal from the Marion Superior Court

The Honorable James A. Joven, Judge

Trial Court Cause No. 49D13-0909-CC-041482

Bailey, Judge.

Case Summary

[1] Automotive Finance Corporation ("AFC") appeals the trial court's grant of a Trial Rule 60(B)(8) motion for relief from judgment filed by Bernard Kayiji ("Bernard"). AFC raises one issue for our review, namely, whether the court abused its discretion when it granted Bernard's motion.

[2] We reverse.

Facts and Procedural History

[3] Bernard came to the United States in 1990 as a refugee from the Democratic Republic of Congo. Following his arrival in the United States, Bernard met Raymond Ohani ("Raymond") who was also a refugee from the Democratic Republic of Congo. Bernard and Raymond became acquaintances and would see each other periodically. Both Bernard and Raymond initially resided in Washington, D.C., but Bernard eventually moved to Virginia. In 2006 or 2007, Bernard purchased a vehicle from S.O.S. Motors, Inc. ("S.O.S. Motors"), which was owned by Raymond. According to Bernard, he never had any subsequent involvement with S.O.S. Motors and was not an owner, officer, director, or employee of the dealership.

[4] In October 2007, S.O.S. Motors submitted a "Dealer Application" to AFC, which is an Indiana corporation. Ex. at 9. That application included Bernard's signature and listed him as the President of S.O.S. Motors. It also included Raymond's signature as S.O.S. Motors' Vice President. On October 16, S.O.S.

Motors and AFC entered into a "Demand Promissory Note and Security Agreement" (the "Agreement"). *Id.* at 60. That document again contained Bernard's signature and identified him as the President of S.O.S. Motors. *See id.* at 67. And it identified Raymond as the Vice President and contained his signature. An "Unconditional and Continuing Guaranty" (the "Guaranty") was also submitted to AFC that contained the signatures of Bernard and Raymond. *Id.* at 71. Pursuant to the terms of the Agreement, AFC loaned S.O.S. Motors $100,000 to purchase vehicles for its inventory.

[5] On September 8, 2009, AFC filed a complaint against S.O.S. Motors, Raymond, and Bernard (collectively, "Dealer") in Marion County for the following: Count I, breach of note and security agreement; Count 2, breach of guaranty; and Count 3, "victims of crime: deception and fraud." Appellant's App. Vol. 2 at 34 (emphasis removed). According to the complaint, Dealer had "defaulted" on the loan and owed AFC "the unpaid balance due," which equaled $83,349.42.

[6] Bernard received a copy of the complaint at his home on September 12. Since the complaint also named Raymond and Raymond's business, Bernard approached Raymond about it. Bernard stated to Raymond that Raymond had "used [Bernard's] name wrongly, unjustly, and without authorization." Tr. at 13. And Bernard asked Raymond to "do the right thing" and "remove [Bernard's] name" from the lawsuit. *Id.* Raymond "took [the] papers" and "promis[ed] to do the right thing." *Id.*

[7] Based on Raymond's assurances, Bernard did not respond to AFC's complaint or otherwise appear in court. As a result, on March 10, 2010, AFC filed a motion for default judgment against S.O.S. Motors and Bernard.[1] On March 11, the court entered a default judgment against S.O.S. Motors and Bernard. In particular, the court ordered S.O.S. Motors and Bernard to pay AFC $146,496.93 under Counts 1 and 2, which figure represented the amount owed plus interest, late fees, and attorney's fees. The court also ordered S.O.S. Motors and Bernard to pay the "treble sum" of $121,853.79 under Count 3. Appellant's App. Vol. 2 at 81.

[8] Thereafter, in 2012, Bernard learned that his wages were being garnished in Virginia as a result of the default judgment. In December 2013, Bernard filed a report with a police department in Washington, D.C., for identify theft and fraud; however, the police did not take "any action." Tr. at 16. Then, in August 2014, Bernard filed a complaint against AFC and Raymond in the Superior Court of the District of Columbia and asserted that he had "never signed" the contract and that AFC had "illegally obtained" his name and address. Ex. at 15. The court "dismissed" Bernard's complaint. Tr. at 29. Bernard then filed a complaint against AFC in a Virginia state circuit court in

[1] Concurrently with its motion for default judgment, AFC filed a motion to dismiss its claims against Raymond without prejudice because Raymond had filed for bankruptcy. The court granted that motion. However, on April 18, 2012, AFC filed a motion to set aside the dismissal and to reinstate its claims as to Raymond. The court granted that motion, vacated its notice of dismissal, and reinstated the complaint against Raymond. Thereafter, the court entered summary judgment against Raymond on all claims asserted by AFC in its complaint.

July 2017 for "aggravated Identity Theft" and again stated that he did not sign the contracts. Ex. at 22. Bernard "lost" that case. Tr. at 31. Bernard also filed a counterclaim against AFC in August 2017 in response to the garnishment proceedings in Virginia. The court dismissed the counterclaim shortly thereafter. Bernard appealed "as far as the Supreme Court of Virginia," which "dismissed" the case. Tr. at 31. Bernard was not represented by counsel for any of those proceedings. A second garnishment order was then issued on September 1, 2021.

[9] On December 8, 2021, with the assistance of counsel, Bernard filed a motion for relief from judgment pursuant to Indiana Trial Rule 60(B)(8) in Marion County. In his motion, Bernard asserted that he "did not sign" either the Agreement or the Guaranty and that he is "not associated as an officer or otherwise with" S.O.S. Motors. Appellant's App. Vol. 2 at 140. Bernard maintained that his signature was "forged." *Id.* at 141. He further asserted that he had "relentlessly attempted to present his case and defenses" by filing the police report in Washington, D.C., and by filing the lawsuits in Washington, D.C., and Virginia. *Id.* He also contended that "Raymond's fraudulent scheme to unlawfully use Bernard's signature and identity to procure loans for S.O.S. [Motors] constitutes extraordinary circumstances" such that the default judgment should be set aside. *Id.* at 142. And he maintained that he had "a meritorious defense in that his signature was forged on the agreement and personal guaranty[.]" *Id.* at 144.

[10] The trial court held a fact-finding hearing on Bernard's motion on February 1, 2022. At the hearing, Bernard testified that, while there is a "likeness" of his signature on the dealer application, he "did not sign" the application. Tr. at 23-24. He then testified that he believed Raymond had obtained his signature when he purchased the car from Raymond. He also testified that the social security number listed next to his name on the dealer application was not his. Similarly, while he acknowledged that a "likeness" of his signature appeared on both the Agreement and the Guaranty, he testified that he "did not" sign either document. *Id.* at 41-42. He additionally noted to the court that "the contract [was] signed on October 16, 2007" but it was "presented to the notary public, who signed and notarized it, on October 17." *Id.* at 43. Bernard also presented as evidence the articles of incorporation for S.O.S. Motors, which do not name Bernard as an incorporator.

[11] Following the hearing, the court entered findings of fact and conclusions thereon. In particular, the court found that "Bernard's evidence supported his testimony that his signature on the Application, [Agreement], and personal guaranty was not placed there by him in that he did not sign the documents and was never an officer, director or shareholder of" S.O.S. Motors. Appellant's App. Vol. 2 at 22. The court then found that, while Bernard's attempts to challenge the garnishment proceedings were "misguided," the attempts "demonstrate his determination to obtain relief from the default judgment." *Id.*

[12] Based on its findings, the court concluded that "both extrinsic fraud and an unconscionable plan or scheme existed to influence the court to issue a default

judgment against Bernard[.]" *Id.* at 25. Specifically, the court stated that "Bernard presented substantial evidence that the debt owed to [AFC] was the result of fraud" and that the "unconscionable scheme was furthered by Raymond, who indicated to Bernard that he would handle the lawsuit for Bernard." *Id.* The court also concluded that Bernard had presented a meritorious defense. As such, the court vacated the default judgment against Bernard. This appeal ensued.

Discussion and Decision

[13] AFC contends that the court abused its discretion when it granted Bernard's Indiana Trial Rule 60(B) motion for relief from judgment. As this Court has recently stated:

> Whether to grant a motion for relief from judgment under Indiana Trial Rule 60(B) is within the discretion of the trial court, and we reverse only for an abuse of that discretion. *Jo.W. v. Je.W*, 952 N.E.2d 783, 785 (Ind. Ct. App. 2011). An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances before it, or if the trial court has misinterpreted the law. *Id.* When we review a trial court's decision, we will not reweigh the evidence. *Id.*

RAB Performance Recovery, LLC v. Knight, 174 N.E.3d 228, 231 (Ind. Ct. App. 2021).

[14] Here, Bernard filed his motion for relief from judgment pursuant to Trial Rule 60(B)(8). That rule provides that a court may relieve a party from a judgment,

including a judgment by default, for "any reason justifying relief from the operation of the judgment[.]" Ind. Trial Rule 60(B)(8). In his motion, Bernard specifically asserted that he should be relieved from the default judgment because he did not sign the documents and because Raymond had used his signature without his permission.

[15] It is clear that the crux of Bernard's claim is that Raymond had committed fraud. Thus, we agree with AFC that Bernard's motion, while framed as a motion under Trial Rule 60(B)(8), is more properly a claim under Indiana Trial Rule 60(B)(3). That subsection provides that a court can provide relief to a party for "fraud (whether heretofore denominated intrinsic or extrinsic)[.]" T.R. 60(B)(3). As Bernard's claim is one of fraud, it falls squarely into subsection (B)(3).

[16] However, a court may only grant relief from a judgment under Rule 60(B)(8) for any reason justifying relief "other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4)." T.R. 60(B)(8). Our Court has interpreted that rule to mean that "subdivision (8) is not available if the grounds for relief properly belong in another of the enumerated subsections." *Summit Acct. & Comput. Serv. v. Hogge*, 608 N.E.2d 1003, 1006 (Ind. Ct. App. 1993). Because Bernard's claim properly belongs under subsection (B)(3), Trial Rule 60(B)(8) is not an available ground for relief.

[17] Further, a Trial Rule 60(B) motion "shall be filed . . . not more than one year after the judgment, order or proceeding was entered or taken for reasons (1),

(2), (3), or (4)." T.R. 60(B). As Bernard filed his motion for relief from judgment more than ten years after the court entered the default judgment, Bernard has not complied with the one-year time limit for a 60(B)(3) motion. And it is well settled that a party "cannot . . . circumvent the time limitations of" Trial Rule 60(B)(3) "by attempting to rely on T.R. 60(B)(8)." *Summit*, 608 N.E.2d at 1006; *see also, Fish v. 2444 Acquisitions, LLC*, 46 N.E.3d 1261, 1267 (Ind. Ct. App. 2015) (holding that the one-year time limit under Trial Rule 60(B)(3) cannot be bypassed by arguing that Trial Rule 60(B)(8) applies). Here, because Bernard's motion was more properly a motion under Trial Rule 60(B)(3), he is bound by the one-year time limit of that subsection, and it was improper for him to use subsection (B)(8) as an attempt to circumvent the time limit.

[18] In any event, Trial Rule 60(B) "'does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or other proceeding or for fraud upon the court.'" *RAB Performance Recoveries*, 174 N.E.3d at 231 (quoting T.R. 60(B)). As this Court has stated:

> An independent action can be brought within a reasonable time after the judgment and must allege either extrinsic fraud or fraud upon the court. . . . While intrinsic fraud involves perjury or falsification of documents, extrinsic fraud and fraud upon the court require more than just the presentation of evidence that is false. Extrinsic fraud is best characterized as fraud outside the issues of the case, and may be found where the alleged fraud prevented a trial of the issue in the case or improperly procured the exercise of the court's jurisdiction. Fraud upon the court, while similar to extrinsic fraud, has been more narrowly limited

> to include only the most egregious of circumstances where an unconscionable plan or scheme was used to improperly influence the court's decision, and such acts prevented the opposing party from fully and fairly presenting his case.

Jo.W., 952 N.E.2d at 786.

[19] Bernard contends that an independent action for fraud exists because Raymond "indicated to Bernard that he 'would take care of the case and get Bernard out of the case'" and that he "reasonably relied on Raymond's statements" to believe that he did not need to appear or respond to the complaint. Appellee's Br. at 21. And Bernard asserts that he "has not had the opportunity to have his case heard on the merits because of Raymond's actions and unconscionable scheme to keep Bernard from presenting his case[.]" *Id.*

[20] But even if we were to agree that Raymond engaged in an unconscionable scheme to defraud Bernard, we cannot agree that Bernard has made a claim for extrinsic fraud or fraud upon the court. Indeed, while Bernard asserts that he has not had the opportunity to have his case heard, that was the result of his own choices. Raymond's assurances to Bernard that he would get Bernard removed from the case in no way precluded or prevented Bernard from responding to AFC's complaint or otherwise appearing in court. In other words, none of Raymond's actions "prevented a trial of the issue in the case" that is required for extrinsic fraud. *Jo.W.*, 952 N.E.2d at 786. Similarly, Raymond's assurances to Bernard, while false and misleading, did not

"prevent" Bernard "from fully and fairly presenting his case" such that fraud upon the court exists. *Id.*

[21] Rather, it is clear that Bernard's motion pled intrinsic fraud, which "involves perjury or falsification of documents[.]" *Id.* Indeed, Bernard's motion alleged that Raymond had falsified documents when he used Bernard's signature without his permission. And an "allegation of intrinsic fraud is governed by T.R. 60(B)(3)," which, as discussed above, does not entitle Bernard to relief. *Id.* at 787. Because Bernard did not allege extrinsic fraud or fraud upon the court, the court abused its discretion when it determined that Bernard's motion was an independent action for fraud.

[22] We sympathize with Bernard that Raymond may have forged his signature without his permission to enter into a contract on which Raymond later defaulted. We further sympathize with Bernard that he trusted Raymond, as a fellow refugee, when Raymond said that he would get Bernard out of the lawsuit. But that does not change the fact that Bernard did not follow the proper procedures as outlined by our Trial Rules. Bernard did not appear or otherwise respond to AFC's complaint. And Bernard neither filed his motion for relief from judgment based on fraud within the time period required by Trial Rule 60(B)(3) nor alleged an independent action for fraud. And, as a result, he is not entitled to relief from the default judgment.

Conclusion

[23] Because Bernard's claim was in essence a claim under Trial Rule 60(B)(3), he was required to file it within one year of the court's entry of the default judgment against him, which he failed to do. And Bernard cannot use Trial Rule 60(B)(8) as a means to avoid the one-year time limit. Further, Bernard has not alleged an independent claim for either extrinsic fraud or fraud upon the court. As such, the trial court abused its discretion when it granted Bernard's motion for relief from judgment.[2] We therefore reverse the trial court.

[24] Reversed.

Riley, J., and Vaidik, J., concur.

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[2] Because we otherwise hold that the court abused its discretion when it granted Bernard's motion for relief from judgment, we need not address AFC's claims that Bernard did not file the motion within a reasonable time.