MEMORANDUM DECISION

APPELLANT PRO SE

Kevin Mamon
Indianapolis, Indiana

ATTORNEYS FOR APPELLEES

Theodore E. Rokita
Attorney General of Indiana

Natalie F. Weiss
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Kevin Mamon,
Appellant-Plaintiff,

v.

Jeremy Dykstra, et al.,
Appellees-Defendants

April 10, 2023

Court of Appeals Case No. 22A-PL-1863

Appeal from the LaPorte Superior Court

The Honorable Richard R. Stalbrink, Jr., Judge

Trial Court Cause No. 46D02-1805-PL-646

Memorandum Decision by Judge Kenworthy
Judges Robb and Crone concur.

Kenworthy, Judge.

Case Summary

[1] Months after the entry of summary judgment—and after this Court dismissed a direct appeal for lack of briefing—Kevin Mamon tried to set aside the trial court's judgment. In seeking relief, Mamon claimed the parties entered a binding settlement agreement before the court entered summary judgment. Yet in the underlying proceedings, Mamon claimed the agreement was nonbinding. The court declined to disturb the judgment, and Mamon appeals. We affirm.

Facts and Procedural History[1]

[2] Alleging he was injured while incarcerated, Mamon sued Jeremy Dykstra and others (collectively, "Dykstra"). Dykstra moved for summary judgment. While that motion was pending, Mamon and Dykstra signed a settlement agreement (the "Agreement") with the following provision: "This settlement is expressly conditioned on subsequent approval by the Indiana Attorney General and Governor." *Appellant's App. Vol. 2* at 167. Before any such approval, Mamon moved for a trial date. In requesting a trial, Mamon called the Agreement a "proposed . . . agreement" that "Defendants have not accepted[.]" *Id.* at 151. The following month, the trial court granted Dykstra's motion for summary judgment. Mamon then filed a Notice of Appeal. Because Mamon did not later file an Appellant's Brief, this Court dismissed the appeal with prejudice.

[1] This Court granted Mamon's request to proceed on appeal without a transcript. We therefore recite the facts and resolve the appeal without reference to a transcript.

[3] A few months later, Mamon filed two motions in the trial court: (1) a motion to enforce the Agreement and (2) a motion for relief from judgment under Trial Rule 60(B)(1). After a hearing, the court denied the motions. At that point, Mamon requested the entry of special findings. The court denied the request.

[4] Mamon now appeals.

Discussion and Decision

[5] Trial Rule 60(B) governs motions for relief from a judgment. Below, Mamon filed two documents seeking relief from the entry of summary judgment.[2] Therein, Mamon cited only one subsection of Trial Rule 60(B)—subsection (B)(1)—which provides: "On motion and upon such terms as are just the court may relieve a party . . . from a judgment" for "mistake, surprise, or excusable neglect." A motion under Trial Rule 60(B)(1) addresses "the trial court's equitable discretion[.]" *Huntington Nat'l Bank v. Car-X Assocs. Corp.*, 39 N.E.3d 652, 655 (Ind. 2015). Indeed, this type of motion "does not attack the substantive, legal merits of a judgment, but rather addresses the procedural, equitable grounds justifying the relief from the finality of a judgment." *Id.* (quoting *Kmart Corp. v. Englebright*, 719 N.E.2d 1249, 1254 (Ind. Ct. App. 1999), *trans. denied*). We review the denial of a Trial Rule 60(B) motion for an abuse of discretion, reversing only if the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and

[2] Although Mamon differently titled the documents, at bottom, Mamon sought to set aside the judgment.

actual deductions to be drawn therefrom." *State v. Collier*, 61 N.E.3d 265, 268 (Ind. 2016) (quoting *McElfresh v. State*, 51 N.E.3d 103, 107 (Ind. 2016)).

[6] In seeking relief, Mamon asserted the Agreement was binding on Dykstra. Yet in the underlying proceedings, Mamon claimed the Agreement was nonbinding. Indeed, when Mamon requested a trial, he called the Agreement a "proposed . . . agreement" that "Defendants have not accepted[.]" *Appellant's App. Vol. 2* at 151. The court then ruled on the motion for summary judgment.

[7] In short, Mamon cannot have it both ways. *See Smith v. State*, 765 N.E.2d 578, 583 (Ind. 2002) (discussing the doctrine of judicial estoppel, which is designed to prevent litigants from "playing fast and loose with the courts"); *Batchelor v. State*, 119 N.E.3d 550, 557–58 (Ind. 2019) (discussing the doctrine of invited error, which precludes a party from making a "strategic maneuver[]" while "privy to an 'erroneous action of the court,'" then taking advantage of alleged prejudicial error "following an adverse decision" (quoting *Barton v. State*, 163 N.E.2d 600, 601 (Ind. 1960)); *see also Alaska Seaboard Partners Ltd. P'ship v. Hood*, 949 N.E.2d 1247, 1254 (Ind. Ct. App. 2011) ("[A]bsent a good explanation, a party should not be permitted to gain an advantage by litigating on one theory and then pursue an incompatible theory in subsequent litigation.").

[8] All in all, because of Mamon's inconsistent assertions about the enforceability of the Agreement, we cannot say the trial court erred in declining to grant Mamon equitable relief under Trial Rule 60(B)(1).[3]

Conclusion

[9] The court did not abuse its discretion in declining to set aside the judgment.

[10] Affirmed.

Robb, J., and Crone, J., concur.

---

[3] We therefore need not decide whether the Agreement was binding. Regardless, the Agreement contained a condition precedent, with enforceability turning on whether certain government officials approved the Agreement. *See Condition*, Black's Law Dictionary (11th ed. 2019) (defining "condition precedent" as "[a]n act or event, other than a lapse of time, that must exist or occur before a duty to perform something promised arises"); *AquaSource, Inc. v. Wind Dance Farm, Inc.*, 833 N.E.2d 535, 539 (Ind. Ct. App. 2005) (determining that a provision stating the contract was subject to the approval of a party's board of directors was a condition precedent, with the terms of the contract becoming binding only upon satisfaction of the condition). Here, Mamon failed to show the specified government officials approved the Agreement. Moreover, to the extent Dykstra had an implied obligation to diligently pursue that approval, Mamon has not explained why Dykstra remained obligated to do so after Mamon characterized the Agreement as nonbinding and sought a trial.