



ATTORNEY FOR APPELLANT

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IN THE
COURT OF APPEALS OF INDIANA

Inspire Outdoor Living,
Appellant-Defendant,

v.

Christopher Norris, et al.,
Appellee-Plaintiff.

July 26, 2022

Court of Appeals Case No.
22A-PL-641

Appeal from the Hamilton
Superior Court

The Honorable J. Richard
Campbell, Judge

Trial Court Cause No.
29D04-2112-PL-8713

Bailey, Judge.

Case Summary

- [1] Inspire Outdoor Living (“IOL”) appeals the trial court order granting the motion for relief from default judgment filed by Christopher Norris, et al. (“Norris”).¹ The only issue is whether the trial court abused its discretion when it granted that motion. We hold that it did, and we reverse and remand.

Facts and Procedural History

- [2] On December 2, 2021, Norris filed a Small Claims Complaint against IOL, alleging negligence, breach of contract, and violation of statutory law. The Complaint provided the complete address—including suite number 1515—for Norris’s counsel. The trial court records also contained the full address for Norris’s counsel. On December 8, the trial court ordered the matter transferred from the Small Claims Court to the plenary docket based on IOL’s request for a jury trial.
- [3] On December 14, 2021, IOL filed its Answer to Complaint and Counterclaims in which it brought one counterclaim of a statutory violation and a second counterclaim of fraudulent inducement. The Certification of Service included in the Answer and Counterclaims showed that it was served upon Norris’s

¹ Throughout its brief, IOL confusingly refers to the parties as “Plaintiff” and “Defendant,” sometimes inaccurately. We remind IOL’s counsel that references to parties are to be their names or descriptive terms, such as “employee” or “taxpayer,” in order to avoid the very type of confusion contained in IOL’s brief. Ind. Appellate Rule 22(D).

counsel at the address of record, but it was missing the suite number. In addition, “[t]he Court[’]s record reflects that there was no e[lectronic]-notification of [IOL’s] [A]nswer sent out by [the] Odyssey system or the Clerk[’]s office” to Norris’s counsel. Tr. at 10 (trial judge’s comments).

[4] On February 7, 2022, IOL filed a Motion for Default Judgment based on Norris’s alleged failure to file a timely response to IOL’s counterclaims. The Certificate of Service for that document also indicated it had been served upon Norris’s counsel at an address that lacked a suite number. On February 14, 2022, the trial court granted IOL’s motion and entered a default judgment against Norris on IOL’s counterclaims. The order was served upon “All Counsel of Record.” App. at 53.

[5] On March 1, 2022, Norris filed a Verified Motion to Set Aside Default Judgment and Request for Hearing. At the March 3 hearing, Norris’s counsel argued that he had never received IOL’s Answer and Counterclaims because they were sent to the wrong address, i.e., they were missing the suite number. Norris’s counsel also argued that Norris has a meritorious defense in that Norris’s own cause of action stated valid claims of “defective workmanship, violation of the Indiana Home Improvement Act, and negligent workmanship.” Tr. at 12. Norris’s counsel did not address any defense to IOL’s counterclaims. The trial court took the matter under advisement and, on March 14, 2022, issued its order granting Norris’s motion to set aside the default judgment and vacating the same. This appeal ensued.

Discussion and Decision

- [6] IOL challenges the trial court’s order vacating the default judgment IOL had obtained against Norris on IOL’s counterclaims. As an initial matter, we note that Norris has not filed an appellee’s brief in this appeal. Under such circumstances, we will not develop an argument for the appellees but instead will reverse the trial court’s judgment if the appellant’s brief presents a case of prima facie error. *Salyer v. Wash. Regular Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020). “Prima facie error in this context means ‘at first sight, on first appearance, or on the face of it.’” *Id.* (citation omitted).
- [7] We review the grant of a Trial Rule 60(B) motion for relief from judgment for an abuse of discretion. *E.g., Sanders Kennels, Inc. v. Lane*, 153 N.E.3d 262, 267 (Ind. Ct. App. 2020). “An abuse of discretion occurs where the trial court’s judgment is clearly against the logic and effect of the facts and inferences supporting the judgment for relief.” *Id.* (citation omitted).
- [8] A party may move for relief from a judgment on several grounds specified under the Trial Rules, including “mistake, surprise, or excusable neglect.” Ind. Trial Rule 60(B)(1). However, in addition to showing the mistake, surprise, or excusable neglect, the movant must also make a prima facie showing of a “meritorious claim or defense.” T.R. 60(B). To make that showing, the movant is not required to *prove* a meritorious defense but “need only present evidence that, if credited, demonstrates that a different result would be reached if the case were retried on the merits and that it is unjust to allow the judgment

to stand.” *Outback Steakhouse of Fla., Inc. v. Markley*, 856 N.E.2d 65, 73-74 (Ind. 2006); see also, e.g., *Logansport/Cass Cnty. Airport Auth. v. Kochenower*, 169 N.E.3d 1143, 1148-49 (Ind. Ct. App. 2021) (noting allegations of a meritorious defense may be satisfied when the moving party states enough facts to give a court an opportunity to measure whether the defense has any potential). However, “[t]he mere allegation that[,] but for the excusable neglect[,] the action would have been defended is insufficient to set aside a judgment.” *Fitzgerald v. Cummings*, 792 N.E.2d 611, 615 (Ind. Ct. App. 2003).

- [9] As IOL points out, Norris failed to articulate any defense—meritorious or otherwise—to IOL’s counterclaims. Norris’s motion to set aside the default judgment stated only “Plaintiffs have meritorious defenses to Defendant’s claims along with valid claims for damages against Defendants.” App. at 48. That allegation, without citation to any alleged factual support, is insufficient to make a prima facie showing of a meritorious defense. And, at the hearing on Norris’s motion to set aside the default judgment, Norris again failed to state any defense at all to IOL’s counterclaims, much less support a defense with alleged facts that, if true, would lead to a different result if the counterclaims were tried on the merits. See, e.g., *Outback Steakhouse*, 856 N.E.2d at 73-74.
- [10] IOL has presented a case of prima facie error in the trial court’s order granting Norris’s motion to set aside judgment and vacating that judgment.
- [11] We reverse and remand for further proceedings consistent with this opinion.

Najam, J., and Bradford, C.J., concur.