MEMORANDUM DECISION

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IN THE

COURT OF APPEALS OF INDIANA

Michael Richard Huhn,
Appellant-Respondent,

v.

Kim L. Huhn,
Appellee-Petitioner

August 14, 2023

Court of Appeals Case No. 22A-DR-2761

Appeal from the Allen Circuit Court

The Honorable Ashley N. Hand, Magistrate

Trial Court Cause No. 02C01-0305-DR-498

Memorandum Decision by Judge Crone
Judges Kenworthy and Felix concur.

Crone, Judge.

Case Summary

[1] Michael Richard Huhn (Husband) appeals the denial of an Indiana Trial Rule 60(B) motion for relief from judgment concerning an amended qualified domestic relations order (QDRO). He also appeals the denial of the related motion to correct error. We affirm.

Facts and Procedural History

[2] Husband and Kim L. Huhn (Wife) married in 1975. Wife filed a petition for dissolution of marriage in May 2003. In November 2003, the parties signed a mediation agreement that would be "incorporated into the Marital Settlement Agreement." Appellee's App. Vol. 2 at 192-94. Per the mediation agreement, Wife was to "retain as her sole and exclusive property[,]" inter alia, "50% interest in the accumulated interest at separation in Husband's G[eneral] M[otors] Pension Plan with survivor benefits[.]" *Id.* at 178. Per the same agreement, Husband's counsel was "responsible for drafting all document[s] necessary to finalize the dissolution of marriage including, but not limited to the QDRO." *Id.* at 180, 194.

[3] At the end of January 2004, the parties entered into a supplemental marital settlement agreement, which referenced and attached the original settlement agreement and confirmed the parties' wish to supplement the original settlement agreement with the supplemental agreement. *Id.* at 188. At the same time, the court issued a decree of dissolution in which it approved both the original and the supplemental marital settlement agreement. *Id*. at 187-202.

[4] In early August 2004, Wife's attorney sent a letter to Husband's attorney, Stephen Rothberg, reminding him that he was to prepare the QDRO. When, by the end of the month, no draft of the QDRO was received, Wife's attorney sent another letter to Rothberg. *Id*. at 130. In February 2005,[1] Rothberg mailed a draft QDRO to GM's Pension Administration Center and sought preliminary written approval as required by the court. *Id*. at 203. In an early March 2005 letter sent to Husband, Wife, and their respective attorneys, Fidelity Investments (Fidelity) explained that, on behalf of GM, it "reviews domestic relations orders to determine if they are" qualified but does not review initial drafts. *Id.* at 210. Fidelity included a copy of the QDRO approval guidelines, encouraged the submission of an executed domestic relations order, and provided a free online tool to facilitate creation of an order. *Id*.

[5] In May 2005, Rothberg sent a draft QDRO to Wife's attorney for review. *Id.* at 211. In September 2005, Wife's attorney sent Rothberg a letter approving and consenting to the filing of the QDRO drafted by Rothberg. *Id*. at 218. The trial court signed the QDRO on September 20, 2005. *Id*. at 219-24. In an October 31, 2005 letter to the parties and their attorneys, Fidelity acknowledged receipt of the signed QDRO and stated that it would determine if it "qualified" per "Section 206(d)(3) of the Employee Retirement Income Security Act [ERISA]

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[1] In early February 2005, Wife filed a disciplinary complaint against Rothberg alleging that an entire year had passed since the January 2004 dissolution, and he had yet to draft the QDRO. Appellee App. Vol. 3 at 41-42. Wife also alleged that she had learned that her attorney and Rothberg had been "friends for years." *Id*. Rothberg filed the draft QDRO with GM in late February 2005. By early November 2005, Wife had retained a different attorney. Appellee's App. Vol. 2 at 226.

of 1974, as amended, and Section 414(p) of the Internal Revenue Code [IRC] of 1986, as amended." *Id*. at 225. Again, Fidelity enclosed a copy of the QDRO approval guidelines and procedures for the "General Motors Hourly-Rate Employees Pension Plan" (the Plan). *Id*. (typography altered).

[6] In a December 16, 2005 letter, Fidelity notified Rothberg that it had determined that the QDRO was not qualified pursuant to ERISA and IRC. *Id.* at 228. Fidelity explained: "It appears from the language in the [QDRO] that there is a misunderstanding regarding the type of Plan. The General Motors Hourly-Rate Employees Pension Plan is not a defined contribution (401k) plan, but rather a defined benefit (pension) plan." *Id*. (typography altered). Fidelity listed in detail numerous reasons why the QDRO drafted by Rothberg was not qualified. *Id*. at 228-30.

[7] In May 2006, Rothberg filed with the court a motion to amend form of QDRO. He attached to the motion an amended QDRO that "to the best of [Husband's] information and belief comports with the substance of the agreement of the parties and that which may be required under" ERISA and IRC. *Id*. at 234. Rothberg's amended QDRO defined Wife's interest in the Plan as "a shared interest benefit payable for the duration of [Husband's] lifetime, and shall be 50% of each of [Husband's] future benefit payments, payable 'if, as, and when' such payments are made to [Husband]." *Id*. at 238. In November 2006, Rothberg sent Wife's attorney a letter reiterating that in May 2006 he had filed a motion to amend form of QDRO. Ex. Vol. 3 at 111.

[8] The trial court signed the amended QDRO in February 2007. Appellee's App. Vol. 2 at 245-48; Appellee's App. Vol. 3 at 1-5. Thereafter, Rothberg sent a letter to GM Pension Administration Center and enclosed a copy of the signed amended QDRO. Ex. Vol. 3 at 131. He copied Wife's attorney and Husband. In an April 30, 2007 letter to Rothberg, Fidelity replied that the amended QDRO was qualified but that Fidelity needed a certified copy of the court's order. Appellee's App. Vol. 3 at 7. The letter also stated that it had been sent to all parties and their legal representatives. *Id*. In May 2007, Rothberg forwarded a certified copy of the amended QDRO to Fidelity. Appellee's App. Vol. 2 at 137.

[9] GM Benefits & Services Center sent to Rothberg a letter dated June 4, 2007, which was copied to Husband, Wife, and Wife's attorney. The lengthy letter confirmed Fidelity's determination that the amended QDRO was qualified per ERISA and IRC and stated as follows:

> In accordance with the terms of the Domestic Relations Order, [Wife], the "Alternate Payee" has been assigned 50% of [Husband's], the "Participant" benefit accrued as of the Participant's Benefit Commencement Date in the General Motors Hourly-Rate Employees Pension Plan.
>
> [Wife] is entitled to 50% of any Early Retirement Supplement, Interim Supplement or Temporary Benefit, for which [Husband] may be eligible to receive from the General Motors Hourly-Rate Employees Pension Plan. This benefit will commence if and when it becomes payable to [Husband] and for the duration payable to [Husband].

[Wife] is entitled to 50% of any post-retirement increases which [Husband] may be eligible to receive. This benefit will commence if and when it becomes payable to [Husband] and for the duration payable to [Husband].

[Wife] is entitled to 50% of any Early Retirement Subsidy which [Husband] may be eligible to receive. This benefit will commence if and when it becomes payable to [Husband] and for the duration payable to [Husband].

[Wife] is entitled to receive payment of the benefit when [Husband] elects to commence his/her pension benefit payment. At that time, [Wife] will receive the benefit in the form that [Husband] elects. Annuity payments to [Wife] shall cease upon either the death of [Wife] or [Husband], whichever occurs first. If [Wife] predeceases [Husband], the assigned benefit will revert to [Husband].

[Wife] will be designated the surviving spouse for the purpose of the Plan's pre-retirement surviving spouse benefits. [Wife's] share of the Qualified Pre-retirement Survivor Annuity will be proportional to his/her share of [Husband's] accrued benefit.

[Wife] will be designated the surviving spouse for the purpose of the Plan's post-retirement surviving spouse benefits. [Wife's] share of the Qualified Joint and Survivor Annuity will be proportional to his/her share of [Husband's] total available accrued benefit.

The Order does not require the Plan to provide any other benefits to [Wife]. *If the above does not accurately reflect the intent of the parties, the QDRO should be amended accordingly.*

Id. at 127-28 (emphasis added). The letter included various contact phone numbers in case of questions.

[10] In April 2022, Husband filed a "Trial Rule 60 Motion" requesting that the court set aside the amended QDRO from 2007 "owing to a material substantive mistake made in the order to the extent it is inconsistent with and in material contradiction of the Decree of Dissolution." Appellee's App. Vol. 3 at 9. In July 2022, Wife filed a motion for findings of fact, moved to disqualify Husband's counsel, and requested attorney's fees. Husband filed a pre-hearing memorandum. After two days of hearings,[2] the trial court issued an order in September 2022 denying Husband's Rule 60 motion and denying Wife's request for attorney's fees. Husband filed a motion to correct error, and Wife filed a response and request for attorney's fees. In November 2022, the court held a hearing, denied Husband's motion to correct error, and denied Wife's request for attorney's fees. Husband appeals and has retained new counsel.

Discussion and Decision

[11] Husband admits that he "filed a QDRO that was inconsistent with the terms of the parties' Dissolution Decree" and that he later requested that the court set aside the QDRO so "an order could be filed that faithfully reflected the terms of the Dissolution Decree." Appellant's Br. at 12. Focusing on notions of equity

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[2] At the beginning of the first day of hearings, following arguments on the matter, the trial court denied Wife's motion to disqualify Husband's attorney. Tr. Vol. 2 at 16.

and fairness, Husband contends that the trial court abused its discretion in denying both his Trial Rule 60 motion and his motion to correct error.

[12] "[W]e generally review a ruling on a motion to correct error for an abuse of discretion[.]" *Berg v. Berg*, 170 N.E.3d 224, 227 (Ind. 2021). We "will only reverse 'where the trial court's judgment is clearly against the logic and effect of the facts and circumstances before it or where the trial court errs on a matter of law.'" *Id.* (citing *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013)). We apply de novo review where a ruling turns on a question of law. *Id.*

[13] The relevant portions of Indiana Trial Rule 60(B) provide:

> On motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons:
>
> (1) *mistake*, surprise, or excusable neglect;
>
> …
>
> (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4).
>
> The motion shall be filed within a *reasonable time* for reasons (5), (6), (7), and (8), and not more than one year after the judgment, order or proceeding was entered or taken for reasons (1), (2), (3), and (4). A movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a *meritorious claim or defense*.

(Emphases added). "A motion made under T.R. 60(B) is addressed to the equitable discretion of the trial court, and we will reverse only upon an abuse of that discretion." *Brimhall v. Brewster*, 864 N.E.2d 1148, 1152-53 (Ind. Ct. App. 2007), *trans. denied*. "When the trial court's action is clearly erroneous, an abuse of discretion will be found." *Ind. Ins. Co. v. Ins. Co. of N. Am.*, 734 N.E.2d 276, 279 (Ind. Ct. App. 2000), *trans. denied* (2001). The onus is on the movant to establish grounds for relief under T.R. 60(B). *Id*.

[14] In his April 2022 "Trial Rule 60 Motion," Husband did not cite a particular sub-paragraph of Trial Rule 60(B). Rather, he asserted that relief was justified "owing to a material substantive *mistake* made in the [February 2007] order to the extent it is inconsistent with and in material contradiction of the Decree of Dissolution." Appellee's App. Vol. 3 at 9 (emphasis added). He quoted Trial Rule 60(B)'s reference to "mistake" but did not specifically attribute it to sub-paragraph (B)(1). *Id*. He further asserted that the "mistake or error was not determined or learned of until such time as" Husband prepared for retirement. *Id*. at 10.

[15] In light of the multiple references to "mistake" within Husband's motion, we are not surprised that the trial court made finding number 25: "As [Husband's] Trial Rule 60 Motion was filed over fifteen (15) years after the Order was entered, and after [Husband's] counsel received correspondence from Fidelity outlining [Wife's] benefits, relief under Ind. Trial Rule 60(B)(1) is unavailable." Appealed Order Trial Rule 60 at 6. Given Trial Rule 60(B)'s clear one-year deadline for seeking relief from a mistake under 60(B)(1), Husband wisely does

not challenge finding number 25 on appeal. Instead, Husband hangs his hat upon Trial Rule 60(B)(8), which the trial court also alternatively analyzed. *See id.* at 6-7.

[16] Trial Rule 60(B)(8) provides that a court may relieve a party from a judgment for "any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4)." *See Fish v. 2444 Acquisitions, LLC*, 46 N.E.3d 1261, 1267 (Ind. Ct. App. 2015) (noting that Trial Rule 60(B)(8) is unavailable if grounds for relief properly belong in another of Trial Rule 60(B)'s enumerated sub-paragraphs), *trans. denied* (2016); *Dusenberry v. Dusenberry*, 625 N.E.2d 458, 462 (Ind. Ct. App. 1993) (describing sub-paragraphs (1) and (8) as "mutually exclusive"); *see also In re Marriage of Jones*, 180 Ind. App. 496, 500, 389 N.E.2d 338, 341 (1979) ("Relief on grounds of mistake may not circumvent the requirement of being raised in one year by the simple expedient of characterizing the grounds for relief under a different subdivision of Tr. 60(B)."). Thus, Husband had to demonstrate that his failure to act "was not merely due to an omission involving a mistake, surprise, or excusable neglect." *McGhee v. Lamping*, 198 N.E.3d 730, 737-38 (Ind. Ct. App. 2022). He needed to demonstrate some "extraordinary or exceptional circumstances justifying equitable relief." *Ameristar Casino E. Chicago, LLC, v. Ferrantelli*, 120 N.E.3d 1021, 1026 (Ind. Ct. App. 2019), *trans. denied.*

[17] In addition, per the rule's language, a Trial Rule 60(B)(8) motion "shall be filed within a reasonable time" and "must allege a meritorious claim or defense." Therefore, a trial court may grant relief from a judgment under Trial Rule

60(B)(8) only if, in addition to demonstrating a timely filing of its motion to set aside judgment and a meritorious claim or defense, the movant makes an affirmative showing of some extraordinary or exceptional circumstances justifying equitable relief. *First Chicago Ins. Co. v. Collins*, 141 N.E.3d 54, 62 (Ind. Ct. App. 2020).

[18] Exceptional circumstances include equitable considerations such as (1) whether the movant has a substantial interest in the matter at issue; (2) whether the movant had an excusable reason for its untimely response; (3) whether the movant took quick action to set aside the judgment once the issue was discovered; (4) whether the movant will suffer significant loss if the judgment is not set aside; and (5) whether the non-movant will suffer only minimal prejudice if the judgment is set aside. *See Innovative Therapy Sols. Inc. v. Greenhill Manor Mgmt., LLC*, 135 N.E.3d 662, 668 (Ind. Ct. App. 2019) (citing *Huntington Nat'l Bank v. Car-X Assoc. Corp.*, 39 N.E.3d 652, 658 (Ind. 2015)). The burden falls on the movant to demonstrate that relief is both necessary as well as just. *Huntington Nat'l Bank*, 39 N.E.3d at 658. As with sub-paragraph (B)(1), the trial court's decision as to sub-paragraph (B)(8) "is highly fact specific." *Id*.

[19] Husband generally asserts that he has a "substantial interest in his pension plan." Appellant's Reply Br. at 10. He characterizes Rothberg's drafting mistakes as an "excusable reason" and seemingly faults Wife (and her counsel) for not catching his mistake. *Id*. He admits that he (and impliedly Rothberg) "could have been more diligent" in taking action, but again attempts to deflect blame upon Wife's counsel. *Id*. at 11. As for whether he would suffer loss,

Husband reiterates the difference in language between what the mediated settlement stated and what Rothberg drafted and presented to the court as the agreement, then alleges that "those are two very different things and two different valuations." *Id.* He admits that "no evidence was presented of the exact dollar amount of the difference," and baldly asserts that he "would suffer a significant loss simply by virtue of the passage of time." *Id*. He declares that Wife "would suffer no prejudice" if his motion were granted. *Id.* at 12.

[20] In addressing the timing of Husband's filing, the trial court found that Husband "waited over fifteen (15) years after he knew or should have known the QDRO did not match the Mediated Settlement Agreement." Appealed Order Trial Rule 60 at 8. The court further found that Rothberg "knew or had reason to know of the error in the QDRO on June 4, 2007 when GM Benefits and Services Center sent him a letter specifically outlining the benefits [Wife] was entitled to." *Id*. The court also found that Husband "presented no newly discovered evidence in support" of his motion "other than admitting he did not properly read and or review the June 4, 2007 letter." *Id*. at 9. The court found that Husband's failure to review the letter for over fifteen years "is certainly not within a reasonable time." Appealed Order Motion to Correct Error at 2.

[21] Reasonable time determinations vary with the circumstances of each case. *See Gupta v. Busan*, 5 N.E.3d 413, 416 (Ind. Ct. App. 2014), *trans. denied*. Here, fifteen years prior to filing a Trial Rule 60 motion, Husband's attorney drafted a QDRO that deviated from the parties' agreement. And, fifteen years prior to the filing of Husband's Trial Rule 60 motion, GM provided an exhaustively

detailed letter clearly setting out the parties' rights per the QDRO drafted by Rothberg. GM's June 2007 letter not only outlined the parties' benefits but also explicitly stated: "If the above does not accurately reflect the intent of the parties, the QDRO should be amended accordingly." Appellee's App. Vol. 2 at 128. Wife did not somehow prevent Husband or Rothberg from knowing about the QDRO drafted by Rothberg or the GM letter. This was not a "gotcha" situation or a default judgment. *Cf. Huntington Nat'l Bank*, 39 N.E.3d 652; *Innovative Therapy*, 135 N.E.3d 662. In the present scenario, we find no abuse of discretion in the trial court's determination that Husband did not meet his burden to demonstrate that he filed a Trial Rule 60(B)(8) motion within a reasonable time.

[22] As for a meritorious claim or defense, the trial court was unmoved by either Husband's argument that the QDRO he drafted does not reflect the parties' original agreement or his bare assertion that Wife would receive a windfall. *See* Appealed Order Trial Rule 60 at 8. The trial court was equally unpersuaded by Husband's citation to a readily distinguishable case in which this Court affirmed a trial court's decision to permit the amendment of a QDRO when the original one was impossible to accomplish. *See Parkham v. Parkham*, 855 N.E.2d 722, 729 (Ind. Ct. App. 2006), *trans. denied* (2007). While precise figures were not required at this stage, something more than vague assertions of substantial interest or significant loss were necessary for Husband to meet his burden of alleging a meritorious claim or defense. Absent even a ballpark estimate of the parties' distribution under the original agreement versus the QDRO drafted by

Rothberg, or an acknowledgement of the effect of timing upon both parties' distribution, we cannot say that the trial court abused its discretion when it impliedly found Husband failed to establish an allegation of meritorious claim or defense.

[23] In the end, the trial court determined that "failing to review the June 4, 2007 letter" from GM did not constitute "an exceptional circumstance justifying extraordinary relief as contemplated by the trial rules." Appealed Order Motion to Correct Error at 2. To conclude that such a failure to review a letter amounts to an exceptional circumstance that would merit changing a fifteen-plus-year-old QDRO drafted by the party now challenging it would create troublesome precedent to say the least. Our rules require more.

[24] Husband did not meet his burden of demonstrating a timely filing of his motion to set aside judgment, a meritorious claim or defense, and an affirmative showing of some extraordinary or exceptional circumstances justifying equitable relief. Hence, the trial court was within its discretion when it denied Husband relief pursuant to Trial Rule 60(B)(8). *Cf. Koonce v. Finney*, 68 N.E.3d 1086, 1094 (Ind. Ct. App. 2017) (concluding that 60(B)(6) motion for relief from void judgment did not revive husband's opportunity to contest twenty-year-old dissolution decree terms involving pension), *trans. denied*; *Levin v. Levin*, 645 N.E.2d 601, 604 (Ind. 1994) (holding no abuse of discretion where trial court found 60(B)(8) claim time-barred five years after dissolution; five years "is not a reasonable period of time as contemplated under [Trial Rule 60(B)(8)], as there is no justifiable reason for his delay"). Accordingly, we affirm the trial

court's denial of Husband's Trial Rule 60 motion and its denial of the related motion to correct error.

[25] Affirmed.

Kenworthy, J., and Felix, J., concur.