MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kenneth L. Brandy
d/b/a Bully Boy Entertainment,
Appellant-Plaintiff,

v.

Ladarrius Person and
YFN Lucci,
Appellees-Defendants.

June 24, 2021

Court of Appeals Case No. 21A-CT-77

Appeal from the St. Joseph Superior

The Honorable Steven L. Hostetler, Judge

Trial Court Cause No. 71D07-1904-CT-135

Mathias, Judge.

[1] Kenneth Brandy entered into a contract with Ladarrius Person for a performance by Rayshawn Bennett, a musical artist known by the stage name YFN Lucci. When Bennett did not appear for that performance, Brandy filed a

complaint against both Person and Bennett. After neither defendant responded to the complaint, Brandy obtained default judgments against both men. About a year later, however, the trial court granted Bennett's motion to set aside the judgment against him. Brandy appeals, arguing that the trial court erred in setting aside that judgment.

[2] We affirm.

Facts and Procedural History

[3] On January 23, 2019, Brandy and Person executed an artist-engagement contract for a March 9 performance by Bennett—stage name, YFN Lucci—at a performing arts center in South Bend, Indiana. *See* Appellant's App. pp. 13–16. Person and Bennett both live in Georgia. Though Bennett did not sign the contract, Person signed it as an "authorized signatory" for the musical artist. *Id.* at 16. Under the contract, Brandy agreed to wire a $16,000 deposit, half of the engagement fee, to Person after which Bennett would "provide at least a 30 second video recording announcing the event." *Id.* at 13–14.

[4] The day after executing the contract, Person text messaged Brandy a Union City, Georgia address that Brandy used to successfully wire the $16,000. *See id.* at 43. Brandy subsequently contacted Person to obtain the "video promotion" from Bennett for the concert. *Id.* Person responded and, on February 6, sent Brandy a video recording of Bennett in which he confirmed the March 9 performance and stated, "don't miss it . . . it's going down." *Id.* at 44.

[5] But on March 9, Bennett did not appear in South Bend for the scheduled performance. After Person then failed to respond to a demand letter or refund the $16,000 deposit, Brandy filed a complaint against both Person and Bennett, alleging breach of contract, conversion, and fraud. Brandy's counsel attempted to serve the two men with the summons and complaint via certified mail, return receipt requested, at the Union City, Georgia address that Person had previously provided. *See id.* at 17–18. But the attempt was unsuccessful, and neither Person nor Bennett entered an appearance or answered the complaint.

[6] So, on August 28, Brandy moved for default judgment. The court subsequently held a hearing on the matter, at which neither Person nor Bennett appeared. Then, on October 21, the court entered default judgment against both men.[1] Both the notice of the hearing and the judgment order were sent to the Union City, Georgia address. *Id.* at 4, 26–27.

[7] A little over one year later, on November 15, 2020, Bennett, through counsel, filed a motion to set aside the default judgment against him. Bennett indicated that he "was never served in this matter" and "does not reside" at the Union

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[1] In the judgment order, the court found—after Brandy presented evidence—that "more than 23 days have passed since the Defendants signed for the receipt of service." Appellant's App. p. 29. While we do not question the veracity of the court's finding, the only signed receipt of service in the record before us is not dated and was filed by Brandy the day before the default-judgment hearing. *Id.* at 26. In his brief, Brandy asserts that the signed-for service occurred on September 6, 2019, Appellant's Br. at 8 (citing Appellant's App. pp. 26–28), but the appendix pages cited in support of that assertion are inconclusive. Further, we do not know what evidence was presented at that default-judgment hearing, or any hearing, because Brandy did not request the inclusion of any transcripts in the record on appeal. We urge Brandy's counsel to be mindful of Indiana Appellate Rules 9(F)(5), 50(A)(1), and 50(A)(2)(h) in the future.

City, Georgia address. *Id.* at 35. He also stated that he was not "aware of the contract" noting that "Person did not have authority to enter into the contract" on Bennett's behalf. *Id.*

[8] After holding a hearing on the motion, the trial court issued an order setting aside the default judgment against Bennett. The court concluded that it lacked personal jurisdiction over Bennett, finding "no basis to conclude that [he] was ever duly served with process at" the Union City, Georgia address. *Id.* at 7. The court also rejected Brandy's argument that service on Person, "who apparently does reside at [that] address," was sufficient to constitute service on Bennett "under the circumstances presented here." *Id.* at 8.[2] Brandy now appeals.

Standard of Review

[9] In granting Bennett's motion to set aside default judgment, the court found the judgment void, under Trial Rule 60(B)(6), for lack of personal jurisdiction. Each party believes that our standard of review is abuse of discretion. Though it is true that we generally review a trial court's decision on a motion to set aside default judgment for an abuse of discretion, the court's decision here was based on lack of personal jurisdiction—a legal determination. *See Thomison v. IK Indy, Inc.*, 858 N.E.2d 1052, 1055 (Ind. Ct. App. 2006). Once that determination was

[2] The court then considered "whether the Motion to Set Aside was filed within 'a reasonable time' as required by Trial Rule 60(B)." Appellant's App. p. 8. The "reasonable time" requirement, however, does not apply to a judgment that is void for lack of personal jurisdiction. *See Norris v. Pers. Fin.*, 957 N.E.2d 1002, 1006 n.2 (Ind. Ct. App. 2011) (citing *Stidham v. Whelchel*, 698 N.E.2d 1152, 1156 (Ind. 1998)).

made, the judgment against Bennett was void, and the court no longer had discretion to enforce it. *See Anderson v. Wayne Post 64, Am. Legion Corp.*, 4 N.E.3d 1200, 1205 (Ind. Ct. App. 2014), *trans. denied.* We therefore review the trial court's legal determination regarding personal jurisdiction de novo. *Id.* At the same time, personal jurisdiction is often fact sensitive. *Id.* ("[W]hether a judgment is void or valid is not a determination made by pulling a label from the ether."). Thus, to the extent the jurisdictional determination turns on disputed facts, we review the court's factual findings on the issue for clear error. *Norris v. Pers. Fin.*, 957 N.E.2d 1002, 1006 (Ind. Ct. App. 2011).

Discussion and Decision

[10] Brandy asserts that he adequately served Bennett, and thus the trial court erred in concluding it lacked personal jurisdiction over Bennett. More specifically, Brandy argues that "[u]nder the Indiana Trial Rules, service on Mr. Person, as a representative or agent of Mr. Bennett, by certified mail, return receipt requested, constitutes proper service on Mr. Bennett to establish personal jurisdiction" Appellant's Br. at 9. We disagree.

[11] The Indiana Trial Rules "govern a court's authority over individuals involved in a civil case, and the process by which that court obtains that authority." *LaPalme v. Romero*, 621 N.E.2d 1102, 1104 (Ind. 1993) (citing Ind. Trial Rule 4(A)). Under Trial Rule 4.4, a nonresident of Indiana, such as Bennett, submits to the jurisdiction of any Indiana court "for acts done in this state or having an effect in this state." But the Indiana court acquires personal jurisdiction over the

nonresident when the summons is served in the manner provided for in Trial Rule 4.4(B). *Lapalme*, 621 N.E.2d 1102. Simply put, if service of process on a nonresident is insufficient, the trial court does not acquire personal jurisdiction over that nonresident. *See King v. United Leasing, Inc.*, 765 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). And it is well settled that any judgment rendered without personal jurisdiction is void. *See, e.g.*, *id.*

[12] Here, Brandy sought to comply with Trial Rule 4.4(B) by attempting to perfect service on Bennett under Trial Rule 4.1. *See* T.R. 4.4(B)(1). Rule 4.1 provides, in relevant part,

> Service may be made upon an individual, or an individual acting in a representative capacity, by:
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> (1) sending a copy of the summons and complaint by registered or certified mail or other public means by which a written acknowledgment of receipt may be requested and obtained to his residence, place of business or employment with return receipt requested and returned showing receipt of the letter; or
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> ****
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> (4) serving his agent as provided by rule, statute or valid agreement.

T.R. 4.1(A)(1), (4).

[13] Brandy failed to adequately serve Bennett under Trial Rule 4.1 because Brandy did not send a copy of the summons and complaint to Bennett's residence or

place of business; and Person was not authorized to accept service on Bennett's behalf.

[14] Brandy sent Bennett's copy of the summons and complaint, by certified mail, to Person's Union City, Georgia address.[3] But Bennett's uncontradicted affidavit establishes that he has "never resided" at the Union City address. Appellant's App. p. 51. We therefore agree with the trial court that "there is no basis to conclude that [Bennett] was ever duly served with process at" the Union City, Georgia address. *Id.* at 7. Nevertheless, service on Bennett could still be proper if Person was Bennett's "agent" for purposes of Trial Rule 4.1. But he was not.

[15] There is no evidence in the record that would lead us to conclude that Person was either Bennett's agent for service, or a person otherwise authorized to receive notice on Bennett's behalf. *See LaPalme*, 621 N.E.2d at 1106 (holding that "[a]nyone accepting service for another person" means "anyone *with authority* to accept service for another person"). Rather, the opposite is true. Bennett specifies in his affidavit that he did not give "Person authority to enter into the [contract] on [Bennett's] behalf," he "did not receive any compensation associated" with the contract, and he "first gained knowledge of the [contract] and the related lawsuit after funds were garnished from" his bank account in

[3] This court has previously held that "Trial Rule 4.1(A)(1) . . . requires that a return receipt must show receipt of the letter in order for service to be effective." *Munster v. Groce*, 829 N.E.2d 52, 59 (Ind. Ct. App. 2005). We note that here, however, the only signed certified-mail receipt in the record appears to be for notice of the default-judgment hearing, *see* Appellant's Br. at 8, not the summons and complaint.

October 2020. Appellant's App. pp. 51–52.[4] We acknowledge that Person signed the contract as a self-described "authorized signatory" for Bennett. *Id.* at 16. But Bennett never signed that contract. And the trial rules do not permit a self-described "authorized signatory" to accept service of process for another. *See* *Swiggett Lumber Const. Co. v. Quandt*, 806 N.E.2d 334, 338 (Ind. Ct. App. 2004); *Idlewine v. Madison Cnty. Bank & Tr.*, 439 N.E.2d 1198, 1202 (Ind. Ct. App. 1982).

[16] In sum, when Brandy filed his motion for default judgment against Bennett and when the trial court entered that judgment, Bennett had not been adequately served. The default judgment against Bennett was therefore void for lack of personal jurisdiction.

Conclusion

[17] The trial court did not err in granting Bennett's motion to set aside the default judgment against him.

[18] We affirm.

Riley, J., and May, J., concur.

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[4] Bennett points out that Brandy's counsel "had no trouble" accessing "YFN Lucci, LLC's business address . . . . in the related garnishment action that followed the default judgment." Appellee's Br. at 9. Indeed, a quick search of "YFN Lucci" on the Georgia Secretary of State's website provides the name of a registered agent and an address for serving that agent. Thus, it would not have been difficult for Brandy to properly serve Bennett—the organizer of "YFN Lucci, LLC." Appellant's App. p. 51.