MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Andrew C. Carroll
Law Offices of Steven K. Deig, LLC
Evansville, Indiana

APPELLEE PRO SE

Robin R. Craig
Evansville, Indiana

IN THE COURT OF APPEALS OF INDIANA

Pritam K. Emmons,
Appellant-Defendant,

v.

Robin R. Craig,
Appellee-Plaintiff.

August 30, 2022

Court of Appeals Case No. 22A-CC-189

Appeal from the Vanderburgh Superior Court

The Honorable Gary J. Schutte, Judge

Trial Court Cause No. 82D06-2008-CC-3337

Brown, Judge.

[1] Pritam K. Emmons appeals the denial of her motion to set aside default judgment and motion to correct error. We affirm in part, reverse in part, and remand.

Facts and Procedural History

[2] On August 12, 2020, Robin R. Craig filed a complaint against Christine Woodruff and Emmons under cause number 82D06-2008-CC-3337 ("Cause No. 37"). Craig alleged that she rendered legal services to Woodruff at the request of Woodruff and Emmons, that invoices for her work were forwarded to Woodruff at her address in Sulphur, Indiana, and that there remained an unpaid balance of $9,601.93.[1] The complaint alleged: "Pursuant to the parties' agreement at the outset of representation, accounts not paid as originally set up, accrue interest at the rate of 18% per annum," Appellant's Appendix Volume II at 39. It alleged Craig was "entitled to Judgment of and from each Defendant, jointly and severally, in the sum of $9,601.93, plus pre-judgment interest from October 4, 2018 at the rate of 18%, court costs and statutory post-judgment interest." *Id*. at 40. On September 9, 2020, Craig filed a motion for default judgment alleging that the complaint had been served upon Woodruff

[1] The complaint stated that copies of ten invoices from February 24, 2016, though October 3, 2018, were attached to the complaint.

and Woodruff's response was due on or before September 3, 2020.[2] On September 21, 2020, the court entered default judgment against Woodruff.[3]

[3] On October 27, 2020, Craig filed an "Affidavit of Robin Craig Regarding Service" stating that, on September 23, 2020, her office sent a letter by certified mail to Emmons enclosing the pleadings filed by her office, that on September 30, 2020 the letter was delivered to Emmons's residence, and that the letter and documentation were attached.[4] *Id*. at 74. She also filed a motion for default judgment and Emmons did not respond to the complaint within twenty days. The motion alleged Craig was entitled to a judgment of $9,601.93 plus prejudgment interest of $3,560.87 for a total of $13,162.80 plus costs of the action. The next day, the court issued an order denying Craig's motion for default judgment for failure to attach an affidavit regarding military service. On November 3, 2020, Craig filed a motion for default judgment and an affidavit of non-military service. On November 16, 2020, the court entered default judgment against Emmons. The order stated that Craig was entitled to judgment of $9,601.93 plus prejudgment interest of $3,560.87 for a total of

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[2] According to the chronological case summary ("CCS"), Woodruff was served on August 14, 2020. The motion for default did not allege that the complaint had been served upon Emmons.

[3] The September 21, 2020 default judgment entry did not state that default judgment was entered against Emmons.

[4] The August 12, 2020 complaint was attached to the affidavit. The record shows Craig filed another complaint on September 22, 2020, and the allegations in the September 22nd complaint appear to be identical to those in her August 12th complaint.

$13,162.87 and costs of $157. On February 26, 2021, Craig filed a motion for proceedings supplemental.

[4] On March 12, 2021, Emmons filed a motion to set aside default judgment arguing that she did not receive notification of Cause No. 37 until March 10, 2021, and that she never entered into a contract with Craig, she had one interaction with Craig when presenting her with a check for a retainer, and she never received an invoice for services rendered. On April 22, 2021, the court held a hearing at which Emmons appeared *pro se*. Emmons indicated that Woodruff was her daughter. She argued that she never entered into a contract with Craig, agreed to pay, or received an invoice and stated "[m]y extent was I loaned by [sic] daughter a retainer." Transcript Volume II at 5. Emmons indicated that Craig was going to handle Woodruff's divorce and child custody. The court admitted copies of Craig's invoices.[5]

[5] Craig stated that Emmons did retain her services, that Emmons came to an appointment with Woodruff on March 19, 2015, and that Emmons requested her to provide services for Woodruff.[6] Craig stated: "We did send the billing address because I explained to them, that we typically have one address [in] our system and that is where correspondence is going to go to tell you about your

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[5] The invoices stated: "Invoice submitted to: Christine Woodruff . . . Sulphur IN . . . ." *See* Defendant's Exhibit 1. The invoices also stated: "Payment is due within 10 days of receipt of invoice. Interest at the rate of 18% accrues on all unpaid balances. Accounts that are paid as agreed from the outset will have the interest charges waived." *Id.* The record includes invoices dated February 24, 2016, through October 3, 2018.

[6] The record contains a personal check by Emmons to Craig dated March 19, 2015.

court dates and anything that came up. So the bill did go to our client and at her address [] that is correct." *Id*. at 11. Craig argued the pleadings were "sent certified mail return receipt requested" to Emmons and that she received "the green card back" indicating the mail had been delivered on September 30, 2020, to the same address which was on Emmons's check. *Id*. at 17. She further argued Emmons's claim that she was unaware of the cause until March 10, 2021, was untrue. Craig stated that Emmons had written her a letter on October 30, 2020, which acknowledged receiving the certified mail on September 30th.[7] Craig also indicated that Emmons filed a disciplinary complaint against her which was dated November 5, 2020, and the court admitted Emmons's request for investigation in which she stated that she received original court documents on September 30, 2020.

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[7] The letter stated:

> September 30th I received a letter in the mailbox; it says delivered Certified by the Orange County Sherriff, which did not happen. This fraudulent document naming me as a defendant is dated August 11, 2020. I am not sure why you would claim I owe you money as I have never sought services from you or agreed to pay for services rendered from you or your firm. If I did owe you money, shouldn't I have received this letter on August 11, 2020? So I would have been able to dispute.
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> The actual judgment was rendered on September 21st, against someone else and I was removed as a defendant, still you felt compelled to send this to me after the judgment to extort money from me. Clearly you are able to alter documents to your advantage.
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> I am very disappointed in the fact that a professional would be able to act as you have. I will be contacting the Indiana Supreme Court Disciplinary Commission, the prosecutor of Warrick County and the Judge in this case to advise them of the documents you have sent in an attempt to extort money.
>
> Never your client
>
> P. Emmons

Plaintiff's Exhibit C.

[6] On May 10, 2021, the court entered an order denying Emmons's motion to set aside default judgment. The court stated it found "no evidence of justifiable excuse so as to set aside the default judgment previously entered." Appellant's Appendix Volume II at 135. An entry dated May 11, 2021, in the chronological case summary ("CCS") states: "Automated ENotice Issued to Parties" and "Order Denying – 5/10/2021: Robin Renee Craig; Pritam K. Emmons." *Id*. at 7.

[7] On December 8, 2021, Craig filed a motion for proceedings supplemental alleging that Emmons had an account with German American Bank. The motion alleged that Craig "owns a judgment against the defendant in this cause with an unpaid balance of $13,162.80, plus costs ($157.00) and post judgment interest ($1,129.81), for a total amount owed as of December 8, 2021 of $14,449.61 . . . ." *Id*. at 140. That same day, the court entered an order that German American Bank answer interrogatories submitted by Craig and place a hold on any funds owned by Emmons up to $14,449.61. In response to an interrogatory to describe all accounts in which Emmons has an interest, German American Bank listed two accounts.[8]

[8] On January 5, 2022, Emmons filed a motion to correct error arguing that she did not receive the May 10, 2021 order and first learned the court had denied her motion to set aside default judgment on December 13, 2021. Emmons also

[8] The description of each account included Emmons's name and the name of another person.

filed a motion to stay garnishment. The next day, the court issued an order granting Emmons's motion to stay garnishment. On January 7, 2022, Craig filed a motion to reconsider stating she believed the court's January 6, 2022 order was issued in error. Also on that date, the court entered an Order on Bank Garnishment which rescinded its order releasing the hold and ordered German American Bank to continue to honor the hold placed on any account titled individually or jointly in the name of Emmons up to $14,449.61.

[9] On January 19, 2022, the court held a hearing. Emmons's counsel argued "for fairness sake in this matter the family law case that Ms. Craig assisted with Ms. Woodruff with was regarding herself and her child and [] a parent coming in to pay a retainer and that's all and not signing anything but the check, should not be held one hundred percent (100%) reliable [sic] for the fees that the daughter accumulated" and "if there was an actual contract . . . a verbal contract to pay eighteen percent (18%) interest that seems extremely detailed for a verbal agreement over a number of years but [] Ms. Woodruff would testified [sic] that she signed a fee agreement and it just wasn't attached." Transcript Volume II at 41. The court stated "[e]verything you say is well taken as to the merits" but "there has to be a justifiable excuse for her not having answered the Complaint." *Id*. at 42.

[10] Craig asked Emmons if she provided the court with an email address, Emmons replied "[t]hat's my husband's e-mail address, yes," Craig asked "[a]nd you provided that to the Court when you filed your first pleading in this case back in

March of 2020,"[9] and Emmons answered "[y]es." *Id*. at 43. Craig stated "[o]ne of the first things that I do after I find out who my client is, is that I ask them what address do they want their mail to go to from our office," "[t]hat's real important in my work because I do divorce work and a lot of times the people are still in the house with their husband," "I say, if I'm going to mail you something where do you want it to go to," and "[s]o they provided a mailing address and the mailing address they provided was for Ms. Woodruff because she was my client and they wanted her to get notices coming from me and not the mother." *Id*. at 44. She argued Emmons "did retain me, she's the one that called, she came to the first appointment, she was there for the discussion with respect to the fee agreement, we discussed orally the eighteen percent" and "[w]e did follow up with a written fee agreement but it was not signed and returned." *Id*. She also stated "at the bottom of the invoice it reminds them, you have two (2) options, you pay this invoice in full in ten (10) days or you're set up on a payment plan and if you make your payments as agreed you'll never have interest." *Id*. at 45. The court asked the court reporter how the court notified Emmons of the May 10th order, and the court reporter replied "[w]e notify her through the system through their e-mails," "[t]he system does it," and "[t]hrough Odyssey." *Id*. at 48.

[9] While the transcript states that Craig stated "March of 2020," Emmons filed her motion to set aside judgment on March 12, 2021. Transcript Volume II at 43.

[11] Woodruff testified that she did not receive a fee agreement in the mail and that she signed a fee agreement in Craig's office. When asked if she could "provide any additional detail with [] what point during the meeting did you sign the contract, what do you recall it being for," Woodruff stated "I don't recall what is being for but I set up payment arrangements and I had one hundred fifty dollars ($150.00) a week coming out and that was for several months. Until I had Ms. Craig withdraw from my case." *Id*. at 52. Woodruff indicated that she did not recall there being any discussion of a guarantor, that Emmons was not present during the initial consultation, and that Emmons walked in the office, paid a retainer to the secretary, walked back to her vehicle, and waited in the vehicle with Woodruff's child and stepfather. When asked "if the Court finds that the Odyssey Court System [] has submitted those e-mails to your husband's e-mail address, did you receive e-mails or are you aware of those e-mails being received," Emmons answered "I don't ever look at his e-mails" and "the reasons we use that e-mail is he's retired so he usually takes care of all the bills and e-mails and you know. I'm busy so I don't like look at my e-mail every day. Unless it's work related." *Id*. at 56.

[12] On January 26, 2022, the court issued an order denying Emmons's motion to correct error. The court found the CCS clearly showed that an "Automated ENotice" was issued to the parties on May 11, 2021, Emmons stated at the January 19, 2022 hearing that she "never checks that email," "it was the address on file in the Court system/Odyssey as provided by Emmons," and

"the Court cannot reach the conclusion that notice/service was not given." Appellant's Appendix Volume II at 14-15.

Discussion

[13] Emmons requests reversal of the trial court's denial of her motion to correct error and motion to set aside default judgment. She asserts that she was not properly served with the order denying her motion to set aside default judgment. She argues that Craig's damages were not for a sum certain or liquidated and the trial court did not, but was required to, hold a hearing to determine damages under the circumstances. Craig maintains the court acted within its discretion in denying Emmons's motions and a hearing regarding damages was not required because she attached invoices to her complaint setting forth the amounts owed under the oral contract and prejudgment interest can be calculated with a mathematical equation.

[14] We generally review trial court rulings on motions for relief from judgment and to correct error for an abuse of discretion. *See Speedway SuperAmerica, LLC v. Holmes*, 885 N.E.2d 1265, 1270 (Ind. 2008), *reh'g denied*. Relief from judgment under Ind. Trial Rule 60 is an equitable remedy. *In re Adoption of C.B.M.*, 992 N.E.2d 687, 691 (Ind. 2013). Ind. Trial Rule 60(B) provides in part that, "[o]n 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," "(4) entry of default or judgment by default was entered against such party who was served only by publication and who was without actual knowledge of the action and

judgment, order or proceedings," or "(8) any reason justifying relief from the operation of the judgment." The burden is on the movant to demonstrate that relief is both necessary and just. *Wagler v. W. Boggs Sewer Dist., Inc.*, 980 N.E.2d 363, 372 (Ind. Ct. App. 2012), *trans. denied*, *cert. denied*, 571 U.S. 1131, 134 S. Ct. 952 (2014).

[15] The record reveals that Craig elicited testimony from Emmons that she provided the trial court with an email address when she filed her first pleading in the case, the court issued an order denying Emmons's motion to set aside default judgment on May 10, 2021, and an entry in the CCS on May 11, 2021, indicates that notice of the May 10th order was sent to the parties. Further, while Emmons claimed in her motion to set aside default judgment that she did not receive notification of Cause No. 37 until March 10, 2021, Craig presented evidence the pleadings were sent to Emmons by "certified mail return receipt requested" and "the green card" was returned indicating the mailing was delivered to Emmons's residence on September 30, 2020. Transcript Volume II at 17. Moreover, in a letter to Craig in October 2020 and in a disciplinary complaint filed in November 2020, Emmons acknowledged that she received the original pleadings on September 30, 2020. We agree that Emmons has not shown a reason justifying relief from the entry of default.

[16] We reach a different conclusion with respect to damages. We have previously held:

> [D]efault judgments actually consist of two stages in cases of this type: (1) the entry of default and (2) the entry of appropriate relief including

> damages. An entry of default is interlocutory until it determines all the rights of the parties at which time it becomes a final judgment. Clearly, where the action is for a sum certain and liquidated, the final judgment can be entered and no hearing on damages would be necessary. On the other hand, if the judgment is that the defendant is defaulted and the plaintiff should recover damages but the amount is unliquidated or not otherwise determined, the order is interlocutory and the defaulted defendant may still appear and be heard as to the amount of damages resulting from such an interlocutory judgment.
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> * * * * *
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> At such a hearing, the defendant may cross-examine the plaintiff's witnesses and he may call witnesses of his own to prove any matters which extenuate or mitigate the damages alleged by the plaintiff. The defendant may not, however, introduce a substantive defense . . . .

Stewart v. Hicks, 182 Ind. App. 308, 313-314, 395 N.E.2d 308, 312 (1979) (citations, quotation marks, and footnote omitted). In *Stewart*, we held: "The default proceedings herein actually consisted of two distinct stages. Consequently, we have authority to set aside the damage portion of the final default judgment while permitting the initial default to stand." *Id*. at 315-316, 395 N.E.2d at 313-314.

[17] Further, we note that prejudgment interest is generally computed from the time the principal amount was demanded or due. *Abex Corp. v. Vehling*, 443 N.E.2d 1248, 1260 (Ind. Ct. App. 1983), *reh'g denied*. Prejudgment interest is proper only where a simple mathematical computation is required, and an award of prejudgment interest rests on a factual determination. *Oil Supply Co. v. Hires Parts Serv., Inc.*, 670 N.E.2d 86, 94 (Ind. Ct. App. 1996), *aff'd in relevant part*, 726

N.E.2d 246, 250 n.3 (Ind. 2000). In addition, an award of prejudgment interest is justified only where there has been an unreasonable delay in payment of an ascertainable amount. *Id*. Where a good faith dispute exists concerning a portion of a claim, interest should be limited to the undisputed portion of the claim. *Id*. Also, Ind. Professional Conduct Rule 1.5(a) provides that "[a] lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."

[18] Here, the record reveals that Craig began her representation of Woodruff on March 19, 2015. The record also shows that Emmons asserted in her motion to set aside default judgment that she had one interaction with Craig when presenting her with a check for a retainer, Craig said that Emmons was present for a discussion of the fee agreement and "the eighteen percent" in September 2015, Transcript Volume II at 44, and Woodruff testified that Emmons went to Craig's office with her, paid the retainer, and then waited in her vehicle and was not present for the initial consultation. Craig did not produce an engagement letter or written agreement setting forth the terms of representation and payment. Further, the invoices contained in the record show Woodruff's address, Emmons stated that she never received an invoice, and Craig indicated her invoices were sent to Woodruff's address. The invoices in the record from February 24, 2016, through December 8, 2016, reflect charges for professional services, the first charge on the invoice dated February 24, 2016, was for a meeting on March 19, 2015, and most of those invoices reflect that payments

had been made.[10] The invoice dated January 20, 2017, indicates a charge on December 21, 2016, for "Court Appearance Withdraw," which appears to be the last charge for professional services reflected in the invoices in the record, and the balance due shown on that invoice was $7,823.35. The invoices in the record dated September 1, 2017, through October 3, 2018, show charges only for interest on the overdue balance. Craig filed her complaint in August 2020, and her affidavit states the pleadings were delivered to Emmons's residence on September 30, 2020. Craig does not point to evidence that the invoices or other demand for payment were presented to Emmons prior to September 30, 2020. *See Abex Corp.*, 443 N.E.2d at 1260 (prejudgment interest generally computed from time the principal amount was demanded). We also note certain clerical work was billed at Craig's hourly attorney rate.

[19] Based upon the record, we conclude that Emmons may still be heard as to the amount of damages and may present evidence of matters which extenuate or mitigate the damages she owes. We remand to the trial court for a hearing to determine the damages to which Craig is entitled and to enter an appropriate final judgment. *See Allstate Ins. Co. v. Love*, 944 N.E.2d 47, 53 (Ind. Ct. App. 2011) ("Applying *Stewart's* reasoning to this case, we conclude that the trial court's award of $225,000 was interlocutory and therefore Allstate may still appear and be heard as to the amount of damages resulting from the judgment."); *Stewart*, 182 Ind. App. at 316, 395 N.E.2d at 314 ("The trial court

[10] Woodruff testified that she paid $150 per week until Craig withdrew from the case.

is further instructed to permit Hicks to appear and defend at a hearing to determine the amount of damages to which Stewart is entitled and, thereafter, to enter an appropriate final judgment.").

[20] Based on the foregoing, we affirm the entry of default against Emmons and in favor of Craig, and we remand for a hearing on the damages award.[11]

[21] Affirmed in part, reversed in part, and remanded.

Bailey, J., and Mathias, J., concur.

[11] Craig also requests attorney fees pursuant to Ind. Appellate Rule 66(E). Our discretion to award attorney fees under Ind. Appellate Rule 66(E) is limited to instances when an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay. *Thacker v. Wentzel*, 797 N.E.2d 342, 346 (Ind. Ct. App. 2003). A party must show the appellant's arguments are utterly devoid of all plausibility or the appellant flagrantly disregarded the form and content requirements of the rules of appellate procedure, omitted and misstated relevant facts, and filed briefs written in a manner calculated to require the maximum expenditure of time both by the opposing party and the reviewing court. *Id.* at 346-347. We deny Craig's request for appellate attorney fees.