MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Bradley D. Hasler
Dentons Bingham Greenebaum LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEES THE UNITED STATES OF AMERICA AND THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Zachary A. Myers
United States Attorney
Southern District of Indiana

Gina M. Shields
Assistant United States Attorney
United States Attorney's Office
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Axia Holdings, LLC,
Appellant-Plaintiff,

v.

Arieona Bell, et al.,
Appellees-Defendants,

Bradley R. Liggin and Troy D. Liggin,

August 24, 2023

Court of Appeals Case No. 23A-PL-730

Appeal from the Marion Circuit Court

The Honorable Amber Collins-Gebrehiwet, Judge

Trial Court Cause No. 49C01-2006-PL-19426

Intervenors below.

Memorandum Decision by Judge Bradford
Judges Riley and Weissmann concur.

Bradford, Judge.

Case Summary

[1] Prior to her death in February of 2019, Elizabeth Babbitt owned a property located at 8550 Christiana Lane in Indianapolis ("the Property"). In June of 2020, Axia Holdings, LLC ("Axia") acquired a purported interest in the Property from Arieona Bell, who had claimed to be Elizabeth's heir and the successor of Elizabeth's estate. In the months that followed, however, Axia was made aware that Bell was not Elizabeth's heir and that she had never had any interest in the Property. Despite being made aware of the concerns regarding Bell's claimed interest, Axia sought to quiet title to the Property without notifying the trial court of any of the concerns relating to the legitimacy of the documents and circumstances giving rise to its interest in the Property. Axia requested and was granted a declaratory judgment in its quiet-title action.

[2] The United States of America and the United States Department of Housing and Urban Development (collectively, "HUD"), which held an interest in the Property by means of a mortgage, subsequently sought to have the default judgment set aside pursuant to Trial Rule 60(B). After the trial court received evidence and heard arguments indicating that (1) Bell had never had an interest in the Property; (2) Axia knew of the concerns relating to Bell's claimed interest; (3) Axia had been made aware that Lisa Kay Mills was Elizabeth's only child and the sole heir of her estate; (4) Axia had not provided Mills with notice of the quiet-title action; and (5) despite knowing these facts prior to the trial court's entry of default judgment in Axia's favor, Axia had failed to disclose any of these facts to the trial court, the trial court granted HUD's motion. Axia appeals the trial court's order setting aside the default judgment. We affirm.

Facts and Procedural History

I. History of the Property

[3] George and Elizabeth Babbitt (collectively, "the Babbitts") are the former owners of the Property. The Babbitts executed a Home Equity Conversion Mortgage and note as to the Property in August of 2005. That mortgage was later assigned to HUD.

[4] George predeceased Elizabeth, who died in February of 2019. Both George and Elizabeth died intestate. Mills is the Babbitts' only child and sole heir to the Babbitts' estate.

II. Bell's Fraudulent Conveyance to Axia

[5] On June 4, 2020, Bell, a third-party individual not related to or shown to have had any relationship with the Babbitts, executed a quitclaim deed purporting to convey her interest in the Property to Axia. Bell attested in the quitclaim deed that she had "good right to convey" the Property. Appellant's App. Vol. II p. 50. The next day, Bell executed an heirship affidavit, in which she averred that she was "a successor of the Decedent's estate" and the "heir of Elizabeth G. Babbit"[1] and "[n]o other person has superior right to the interest of the decedent in the described property." Appellant's App. Vol. II pp. 54, 56. Bell listed Elizabeth's place of death as both "Indianapolis, Indiana & Delaware, OH" and valued the Property well below market value at just $2000.00. Appellant's App. Vol. II p. 54.

[6] Contrary to Bell's heirship affidavit, an affidavit from Mills attests that she is "the only child of and sole heir to the estate of George B. Babbitt and Elizabeth G. Babbitt" and that Bell is "neither an issue nor heir of" the Babbitts. Appellees' App. Vol. II p. 26. Mills further averred that Bell's "name is completely unfamiliar to me; she is not family." Appellees' App. Vol. II p. 26. Moreover, Elizabeth's obituary, which was publicly available, states that she was "survived by her daughter, Lisa Kay Mills," as well as other family

[1] Throughout her affidavit, Bell misspelled the Babbitts' last name as "Babbit." Appellant's App. Vol. II pp. 54–55.

members including her grandchildren and a brother. Appellees' App. Vol. II p. 34. Elizabeth's obituary does not mention Bell.

III. Axia's Complaint Seeking to Quiet Title

[7] On June 15, 2020, Axia sought to quiet title to the Property. The Complaint did not name Mills, the Babbitts' rightful heir, and Mills was never served with process. Neither Axia nor Bell had contacted Mills about the Property before attempting to convey it or quiet the title.

IV. HUD's Sale of its Interest in the Property

[8] At the time Axia filed its quiet-title action on June 15, 2020, HUD held a mortgage interest of record in the Property. HUD was served with notice of Axia's quiet-title action on or after June 22, 2020. During the summer of 2020, HUD sold its mortgage interest in the Property as part of an asset sale to Kondaur, and the loan file was transferred to Kondaur on August 6, 2020. A payoff in the amount of $203,204.00 was applied to HUD's balance sheet for this loan on August 10, 2020. An assignment of mortgage, memorializing the sale of HUD's interest in the Property, was publicly recorded on August 27, 2020.

[9] HUD did not file a motion to substitute or notify the trial court or Axia that it had sold its interest in the Property. However, because it had no remaining interest in the Property, HUD filed a motion to dismiss on September 2, 2020. The trial court granted HUD's motion, and dismissed HUD from Axia's quiet-title action on September 15, 2020.

V. Sale of the Property from Axia to the Liggins

[10] In or around September 2020, Troy and Bradley Liggin ("the Liggins") became interested in purchasing the Property. On September 27, 2020, the Liggins agreed to purchase the Property from Axia for $199,900.00. Victory Title was enlisted to assist with this transaction.

VI. Victory Title Raises Issues with the Transaction

[11] Irregularities arose almost immediately. A title search conducted on September 24, 2020, showed that the assignment of the mortgage from HUD to Kondaur had been recorded on August 27, 2020. On October 1, 2020, Dustin Haviland, the President of Victory Title, emailed Jim Bleier, Axia's registered agent, notifying him that "[t]he affidavit and deed that you recorded on this property did not have the correct/complete legal description. Those documents will need to be re-recorded. Who has the original recorded documents and can you ask them to re-record?" Appellant's App. Vol. II p. 235. It does not appear that Bleier responded to Haviland's request.

[12] The following day, ASK Services, a public record investigative research firm, informed Victory Title that it had "found numerous issues with [the] file and possible fraudulent activity as to current transfer(s)." Appellant's App. Vol. II p. 241. The issues included: (1) Bell's heirship affidavit and quitclaim deed were problematic because she had not been listed as a family member of the Babbitts in Elizabeth's obituary; (2) the heirship affidavit valued the Property at $2000.00, but county assessment records valued the Property at a value of over

$200,000.00, which meant that the Property would not qualify for a small-estate disposition; (3) the pending quiet-title action; and (4) an open reverse mortgage with a new assignment recorded in August of 2020, after the heirship affidavit had been filed.

[13] On October 5, 2020, at 11:56 a.m., Haviland emailed Bleier, stating:

> At this time we will not be able to move forward with this transaction. It appears the Heirship Affidavit is incorrect, the Small Estate Affidavit is not accurate and there is an assignment of reverse mortgage recorded after the affidavit for $236,625.00. According to Elizabeth Grace Babbitt['s] obituary, she has a daughter Lisa and grandchildren…. There is no mention of family member Arieona.

Appellant's App. Vol. II p. 234. At 1:59 p.m. that afternoon, Bleier responded to Haviland that "Jynell[2] did the QT on this one and against the estate and lender and got the default." Appellant's App. Vol. II p. 233. Notably, at the time these emails had been sent, Axia had not yet filed a motion for default judgment—let alone been granted default judgment—in the quiet-title action.

[14] At 2:56 p.m. that same day, Haviland responded to Bleier:

> Unfortunately, it appears that the wrong heir transferred interest. The ownership interest should be from the daughter, Lisa Kay Mills. If the appropriate heir(s) were not named in the QT it does not extinguish their ownership interest. Do you have proof

---

[2] Jynell refers to Axia's counsel, Jynell Berkshire.

> of the satisfaction of the reverse mortgage held by Separate Trustee of Matawin Ventures Trust Series 2020–1?

Appellant's App. Vol. II p. 233. Three minutes later, at 2:59 p.m., Axia filed its motion for default judgment in the quiet-title action.

VII. Axia's Motion for Default Judgment and Victory Title's Continued Concerns

[15] Axia's motion for default judgment did not mention Mills, the issues with the small-estate affidavit, or the recorded assignment of a mortgage interest from HUD to Kondaur. Rather, Axia's motion indicated that it had effected service by publication in the Indiana Business Journal on Bell, the unknown heirs or devisees of George B. "Babbit" and Elizabeth G. "Babbit," HUD, and John Doe/Mary Doe, as unknown occupants and their heirs.[3] Appellant's App. Vol. II p. 92. Apart from effecting service on HUD, Axia stated that had it unsuccessfully attempted personal service on the other named defendants after "conduct[ing] a diligent search." Appellant's App. Vol. II p. 97.

[16] Shortly after filing the motion, at 3:03 p.m., Axia's counsel, Jynell Berkshire, informed Haviland via email of the "final legal pleadings filed earlier today." Appellant's App. Vol. II p. 232. With respect to the outstanding reverse mortgage on the Property, Berkshire stated that "HUD has disclaimed any interest in the property…. This addresses the reverse mortgage issues."

---

[3] Axia misspelled the Babbitts' last name as "Babbit" in its motion. Appellant's App. Vol. II p. 92.

Appellant's App. Vol. II p. 232. Haviland responded to Berkshire's email on October 12, 2020, asking how the interests of Babbitt's heirs, as named in her obituary, had been addressed. It does not appear that either Bleier or Berkshire responded to this inquiry.

[17] Despite being aware of the issues relating to the Property's title prior to the issuance of the trial court's order granting their motion for a default judgment, Axia made no attempt to correct the record, amend or withdraw the motion, or correct its representations to the trial court. In fact, Axia did not file anything with the trial court between the October 5, 2020 filing date and October 15, 2020, that would have alerted the trial court to the issues that Victory Title had identified, the suspicious circumstances surrounding Bell's heirship affidavit, or Mills's outstanding interest in the Property. The trial court issued its final judgment quieting the title to the Property on October 15, 2020.

VIII. Axia's Continued Refusal to Respond to Victory Title's Concerns

[18] On October 19, 2020, after receiving no response to his October 12th inquiry, Haviland followed up with Bleier and Berkshire, again asking how the interests of the heirs were addressed and noting that Victory Title could not "move forward without evidence [that] the named heirs have released their interest." Appellant's App. Vol. II p. 231. It does not appear that Bleier or Berkshire ever responded to the request regarding the proper heirs. Haviland unequivocally told Bleier that "due to the obituary naming the rightful heirs," Victory Title could not proceed with the quiet-title action. Appellant's App. Vol. II p. 228.

[19] The Liggins' mortgage banker, Supreme Lending, contacted Victory Title on October 27, 2020, to check on the status of the title work. Victory Title responded that "[a]s the title stands, we are unable to insure. We have been waiting for a follow-up from the seller's attorney regarding a[n] outstanding interest of a prior owner. We will not be moving forward until additional information is provided by the seller or his attorney." Appellant's App. Vol. II p. 221.

[20] The Liggins' real estate agent, Summer Hudson, was copied on an email sent the following day from a Supreme Lending employee who had asked Victory Title for additional information about the outstanding interest. Haviland responded that

> There appears to be an outstanding interest to the heirs of the deceased previous owner. According to the obituary of Elizabeth Grace Babbit,[4] deceased, heirs, daughter, Lisa Kay Mills, grandchildren, Chase and Alexis Fetherolf, brother Bob Stogdill. We have an Heirship Affidavit that appears to be incomplete and/or inaccurate and a Quiet Title Action that does not specifically address the interest of the appropriate heirs. In our opinion, it is uninsurable in its current state as there is uncertainty in the ownership[.]

Appellant's App. Vol. II p. 220. Haviland attached a copy of Elizabeth's obituary to his response.

---

[4] Haviland misspelled Elizabeth's last name in his email.

IX. Axia Finds a New Title Company

[21] Rather than address the issues that Victory Title had raised, Axia enlisted a new title company, Hocker Title, to insure the transaction. The Liggins' mortgage officer was so concerned about what she had perceived to be ethical issues surrounding the sale of the Property that she forwarded Haviland's October 27, 2020 response to a title specialist at Hocker Title, copying Hudson. The title specialist for Hocker Title responded: "There was an heirship affidavit recorded for her interest in the property and along with the completed Quiet Title action, this is not an issue for us. We have cleared that issue with our attorney." Appellant's App. Vol. II p. 193.

[22] The Liggins closed on the purchase of the Property on November 13, 2020, paying Axia $193,000.00. As the trial court subsequently noted, the purchase price was $191,000.00 more than the valuation of the Property provided by Bell in her heirship affidavit, which had been executed just five months earlier.

X. Kondaur's Motion to Intervene and HUD's Repurchase of the Note

[23] On January 19, 2021, Kondaur, who, despite having had a reverse mortgage on the Property since August 2020, had never been named as a defendant, filed a motion to intervene and a motion to set aside the quiet-title judgment, along with a supporting brief. In April of 2021, HUD repurchased the mortgage interest from Kondaur, thereby reacquiring an interest in the Property. HUD was then substituted in Kondaur's place as the movant on the motion to

intervene and set aside. After engaging in discovery, the parties filed additional briefing. The trial court held a hearing on the motion on January 5, 2023.

XI. The Trial Court's Order Setting Aside the Judgment

[24] On March 3, 2023, the trial court issued an order setting aside the quiet-title judgment. With respect to Bell, the trial court found that "[n]o party submitted any evidence that would tend to show that Arieona Bell had any relationship whatever to George and/or Elizabeth Babbitt" and that it "has seen no evidence to contradict the fact that Lisa Kay Mills is the only child and sole heir to the estate of George B. Babbitt and Elizabeth G. Babbitt." Appellant's App. Vol. II p. 25. The trial court further found that Bell "is neither an issue nor heir of the Estate of Elizabeth G. Babbitt or George B. Babbitt. Her name is completely unfamiliar to Ms. Mills, the only child of the Babbitts. Nor does Ms. Mills identify her as any kin to the family at all." Appellant's App. Vol. II p. 26.

[25] As for HUD, the trial court found that although HUD had originally had an interest in the Property, it had sold its interest, only to subsequently reacquire an interest after repurchasing the mortgage from Kondaur. Thus, the trial court concluded that HUD had standing to move to set aside default judgment quieting title to the Property.

[26] With respect to its prior default-judgment order, the trial court concluded that

88. In this case, the Default Judgment was entered by the Court based on a lack of having all of the relevant evidence, thus by mistake or perhaps as a result of fraud.

89. The Court would have never issued a Default Judgment to Quiet Title to this property had the Court known there existed an outstanding reverse mortgage.

90. The Court would not have issued a Default Judgment to Quiet Title to the Property had the Court known that Lisa K. Mills, the true heir of the Babbitts, has an actual ownership interest in the property but was never named or served with notice of the Quiet Title action.

91. The Court would not have entered an order for Default Judgment to Quiet Title had the Court known that Axia received its interest from a woman who was not really an heir to the Babbitts.

92. It is clear that at the time the Court entered its Order for Default Judgment Quieting Title, neither the Court, Kondaur, nor HUD was aware that Axia Holdings had acquired its interest in the property from an Heirship Affidavit signed by a woman who had no relationship to the original owners of the property, the Babbitts.

93. In fact, the only parties who were aware that there existed an issue with Arieona Bell's Affidavit of Heirship were the Plaintiff, Axia Holdings, and at least, the agent for the Intervenors, the Liggins.

94. It is evident that Axia Holdings knew or should have known there was an issue with the ownership of the property based on the email from Mr. Haviland, who was the president of Victory Title, to Mr. Bleier, the agent of Axia Holdings on October 5, 2020 at 2:56 p.m. that stated, "unfortunately, it appears that the wrong heir transferred interest. The ownership interest should be

from the daughter, Lisa Kay Mills. If the appropriate heir(s) were not named in the QT it does not extinguish their ownership interest. Do you have proof of the satisfaction of the reverse mortgage held by Separate Trustee of Matawin Ventures Trust Series 2020-1?"

****

97. Axia Holdings never informed the Court of the potential issues with the title to the property that were raised by Victory Title.

98. Axia Holdings never attempted to serve the additional heir that was discovered, Lisa Kay Mills.

99. Indiana Code 32-30-3-14(e)(1) states, "The plaintiff shall file with the complaint an affidavit that states the following: (1) The complaint contains the names of all persons disclosed by public record by or through whom a claim or interest in the real estate may be asserted.

100. Since Lisa Kay Mills is an heir to the Babbitts, an heir that was easily identifiable in a public obituary, Axia had a duty to find her and serve her with its Petition to Quiet Title.

101. Axia did not.

102. Certainly, when Axia was told by Mr. Haviland about Lisa Kay Mills, Axia then had a duty to serve her with its Petition to Quiet Title.

103. Axia did not.

104. Therefore, it is appropriate to vacate the Order Granting Default Judgment pursuant to Indiana Trial Rule 60(b)(1) and (2) because there exists newly discovered evidence, an entire heir with a valid ownership interest, that Plaintiff failed to disclose to

> both the HUD and the Court. There also exists mistake or fraud because the Court was given the impression that Arieona Bell was actually an heir who had the right to transfer the property to Axia. She is not an heir. She has no interest in this property. She had no right to transfer the property.
>
> 105. Thus, pursuant to Indiana Trial Rule 60(b)(8), Arieona Bell seemingly committed fraud when she transferred the title to Axia Holdings without any apparent interest in the property.
>
> 106. Therefore, the Court sets aside the Default Judgment Quieting Title pursuant to Indiana Trial Rule 60(b)(1), 60(b)(2), and 60(b)(8).

Appellant's App. Vol. II pp. 38–41. The trial court further concluded that neither Axia nor the Liggins qualified as bona fide purchasers, stating that "[s]ince both Axia and the Liggins were aware of the outstanding rights of others, and continued with the sale of the property, they are barred from claiming Bona Fide Purchaser status." Appellant's App. Vol. II p. 42. The trial court then vacated its prior order granting Axia's request for default judgment.

Discussion and Decision

[27] > A default judgment is not generally favored, and any doubt of its propriety must be resolved in favor of the defaulted party. It is an extreme remedy and is available only where that party fails to defend or prosecute a suit. It is not a trap to be set by counsel to catch unsuspecting litigants.

Allstate Ins. Co. v. Watson, 747 N.E.2d 545, 547 (Ind. 2001) (cleaned up).

[28] Axia contends on appeal that the trial court abused its discretion in setting aside the default judgment. A motion to set aside a judgment made under Trial Rule 60(B) "is addressed to the equitable discretion of the trial court." *Destination Yachts, Inc. v. Pierce*, 113 N.E.3d 645, 655 (Ind. Ct. App. 2018) (internal quotation omitted), *trans. denied*. Thus,

> [t]he decision whether to set aside a default judgment is given substantial deference on appeal. Our standard of review is limited to determining whether the trial court abused its discretion. An abuse of discretion may occur if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law.

Kmart Corp. v. Englebright, 719 N.E.2d 1249, 1253 (Ind. Ct. App. 1999) (internal citations omitted), *trans. denied*. "An abuse of discretion will not have occurred so long as there exists even slight evidence of mistake, surprise, or excusable neglect." *Pierce*, 113 N.E.3d at 655.

[29] Where, as here, the trial court enters findings of fact and conclusions thereon, our standard of review is two-tiered:

> we first determine whether the evidence supports the trial court's findings and second, we determine whether the findings support the judgment. Findings of fact are clearly erroneous when the record lacks any reasonable inference from the evidence to support them and the trial court's judgment is clearly erroneous if it is unsupported by the findings and the conclusions which rely upon those findings. In determining whether the findings on the judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences to be

> drawn therefrom.
>
> In conducting our review, we cannot reweigh the evidence or judge the credibility of any witnesses, and must affirm the trial court's decision if the record contains any supporting evidence or inferences. However, while we defer substantially to findings of fact, we do not do so to conclusions of law. We evaluate questions of law *de novo* and owe no deference to a trial court's determination of such questions.

Roberts v. Feitz, 933 N.E.2d 466, 475–76 (Ind. Ct. App. 2010) (internal citations omitted, emphasis in original).

[30] In this case, the trial court made seventy-six factual findings relating to its prior issuance of a default judgment and the subsequent motion to set aside. Axia does not challenge the accuracy of any of the trial court's findings, which accordingly stand as proven. *See Winters v. Pike*, 171 N.E.3d 690, 698 (Ind. Ct. App. 2021) ("Unchallenged findings stand as proven."). Axia contends only that the trial court's determination that the default judgment should be set aside is not supported by the evidence. We disagree.

I. Order Setting Aside Default Judgment

[31] In its order setting aside the default judgment, the trial court concluded that the default judgment should be set aside "pursuant to Indiana Trial Rule 60(b)(1), 60(b)(2), and 60(b)(8)." Appellant's App. Vol. II p. 41. Indiana Trial Rule 60(B) provides, in relevant part, as follows:

> **Mistake--Excusable Neglect--Newly Discovered Evidence--Fraud, etc.** 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;
> >
> > (2) any ground for a motion to correct error, including without limitation newly discovered evidence, which by due diligence could not have been discovered in time to move for a motion to correct errors under Rule 59;
> >
> > (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
> >
> > (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;
> >
> > ****
> >
> > (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).
>
> … A movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense.

[32] "The burden is on the movant to establish grounds" for Trial Rule 60(B) relief. *Pierce*, 113 N.E.3d at 655. The Indiana Supreme Court has further explained that

> Indiana Rule 60(B)'s requirement of a meritorious defense … merely requires a prima facie showing of a meritorious defense, that is, a showing that will prevail until contradicted and overcome by other evidence. The movant 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) (cleaned up, emphasis in original).

A. Trial Rule 60(B)(1)

[33] A motion to set aside a judgment "under Rule 60(B)(1) 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." *KWD Industrias SA DE CV v. IPM LLC*, 129 N.E.3d 276, 281 (Ind. Ct. App. 2019). In setting aside the judgment pursuant to Trial Rule 60(B)(1), the trial court concluded that the judgment had been "entered by the Court based on a lack of having all of the relevant evidence, thus by mistake or perhaps as a result of fraud." Appellant's App. Vol. II p. 38. Specifically, the trial court stated that it

- "would have never issued a Default Judgment to Quiet Title to this property had the Court known there existed an outstanding reverse mortgage[;]"
- "would not have issued a Default Judgment to Quiet Title to the Property had the Court known that Lisa K. Mills, the true heir of the Babbitts, has an actual ownership interest in the property but was never named or served with notice of the Quiet Title action[;]" and
- "would not have entered an order for Default Judgment to Quiet Title had the Court known that Axia received its interest from a woman who was not really an heir to the Babbitts."

Appellant's App. Vol. II p. 38. The trial court further concluded that

> [i]t is clear that at the time the Court entered its Order for Default Judgment Quieting Title, neither the Court, Kondaur, nor HUD was aware that Axia Holdings had acquired its interest in the property from an Heirship Affidavit signed by a woman who had no relationship to the original owners of the property, the Babbitts.

Appellant's App. Vol. II p. 39. The trial court concluded, however, that Axia had known, or, at the very least, should have known, that there had been questions regarding Elizabeth's heirs and the falsity of Bell's heirship affidavit before it requested that the default judgment be entered.

[34] In challenging the trial court's order, Axia asserts that "[t]here is no finding that HUD made a mistake, was surprised, or committed excusable neglect." Appellant's Br. p. 12. In its reply brief, Axia cites our opinion in *Logansport/Cass County Airport Authority v. Kochenower*, 169 N.E.3d 1143 (Ind. Ct. App. 2021), for the proposition that "relief under Trial Rule 60(B)(1) must be based on a party's mistake, surprise or excusable neglect." However, we find Axia's reliance on *Kochenower* to be misplaced.

[35] In *Kochenower*, funds being paid to Bank of New York Mellon by the Logansport/Cass County Airport Authority ("the Airport") were intercepted by an unknown third party and deposited into a Chase Bank account opened in Kochenower's name. 169 N.E.3d at 1145. The funds were transferred to several other third parties before the Chase Bank account was closed. The Airport moved for, and was granted, a default judgment against Kochenower in

the amount of $164,452.50 in damages, $12,900 in attorney's fees, and $296.36 in court costs. *Id.* at 1146. Kochenower eventually moved to set aside the default judgment, arguing that he had not opened the Chase Bank account and had not had anything to do with the theft of the Airport's funds. *Id.* The trial court granted Kochenower's request. *Id.* On appeal, we affirmed, concluding that

> Kochenower's motion to set aside the default judgment made a *prima facie* showing of a meritorious defense under Rule 60(B), namely, that he was a victim of identity theft and, therefore, was not the person who opened the Chase Bank account that had been used to defraud the Airport Authority.

Id. at 1149 (emphasis in original). We further concluded that Kochenower had

> stated enough facts for the trial court to measure whether his defense has any potential, for the court to doubt the propriety of the default judgment, for the court to determine that to vacate the default judgment will not be an empty exercise, and for the court to conclude that, under the facts alleged, if credited, a different result would be reached and it would be unjust to allow the judgment to stand[.]

Id. at 1150 (cleaned up). While the mistake at issue in *Kochenower* may have been, at least in part attributable to the Airport, as it had relied on information from Chase Bank indicating that the account in question had been opened by Kochenower, our opinion does not indicate that a mistake warranting that a judgment be set aside *must* be attributable to a party.

[36] While we cited Trial Rule 60(B)(1) in *Kochenower*, stating that judgment by default "may be set aside based on a party's" mistake, we do not read our opinion as requiring that the mistake be attributable to a party. *Id.* at 147. We also do not read the language of Trial Rule 60(B)(1) as requiring that the mistake be attributable to a party rather than the trial court. Trial Rule 60(B) merely states that a trial court "may relieve a party … from a judgment … for the following reasons: (1) mistake, surprise, or excusable neglect[.]" Furthermore, our review did not uncover any authority indicating that a mistake may justify relief only if attributable to a party.

[37] In this case, the trial court expressly stated that its prior judgment had been based on a mistake of fact, and it would not have granted Axia's motion for default judgment had it known the truth. The trial court's order makes it clear that the mistake at issue in this case was the result of Axia's omissions and misrepresentations to the trial court. One may reasonably infer from the trial court's order that the trial court concluded that "it would be unjust to allow the judgment to stand." *Kochenower*, 169 N.E.3d at 1150.

[38] A trial court's discretion in setting aside a prior judgment pursuant to Trial Rule 60(B)(1) "is necessarily broad because any determination of mistake, surprise, or excusable neglect turns upon the particular facts and circumstances of each case. Because the circumstances of each case differ, there are no fixed rules or standards for determining what constitutes mistake, surprise, or excusable neglect." *Fitzgerald v. Cummings*, 792 N.E.2d 611, 614–15 (Ind. Ct. App. 2003) (internal citation omitted). Based on the record before us, we cannot say that

the trial court abused its discretion in setting aside its prior judgment pursuant to Trial Rule 60(B)(1).[5]

[39] The judgment of the trial court is affirmed.

Riley, J., and Weissmann, J., concur.

[5] Because we conclude that the trial court acted within its discretion with respect to Trial Rule 60(B)(1), we need not consider whether the trial court acted within its discretion with respect to Trial Rule 60(B)(2) or (8).