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IN THE COURT OF APPEALS OF INDIANA

Elizabeth McGhee,
Appellant-Petitioner

v.

Roger Lamping,
Appellee-Respondent.

November 16, 2022

Court of Appeals Case No. 21A-DR-2745

Appeal from the Gibson Circuit Court

The Honorable Mary Margaret Lloyd, Special Judge

Trial Court Cause No. 26C01-0705-DR-64

Pyle, Judge.

Statement of the Case

[1] Elizabeth McGhee ("Mother") appeals the trial court's denial of her motion for relief from judgment. In this motion, Mother asked the trial court to set aside two orders, both of which required Mother to reimburse Roger Lamping ("Father") for her share of the parties' daughters' uninsured medical expenses. Mother argues that the trial court abused its discretion when it denied her

motion for relief from judgment. Concluding that the trial court did not abuse its discretion, we affirm the trial court's judgment.

[2] We affirm.

Issue

> Whether the trial court abused its discretion when it denied Mother's motion for relief from judgment.

Facts

[3] Mother and Father married in 1995. They are the parents of two daughters, J.L., who was born in June 1997, and R.L., who was born in September 1999. In 2007, Mother filed a dissolution petition. Also in 2007, Mother and Father entered into a settlement agreement. Pursuant to the terms of the agreement, Mother and Father agreed that they would share joint legal custody of their daughters. Father agreed to pay Mother $2,000 per month in child support until December 2007 and $1,500 per month beginning in January 2008. In addition, Mother and Father agreed that Mother would have the exclusive use, possession, and occupancy of the marital residence until she remarried or the last of the parties' daughters relocated outside the marital residence. Father also agreed to pay the mortgage, taxes, insurance, and reasonable repairs and maintenance at the marital residence for the benefit of the parties' daughters while they lived in the marital home with Mother. Husband further agreed to maintain health insurance for the parties' daughters and to pay for all of their daughters' reasonable medical, dental, optometric, orthodontic,

pharmaceutical, and counseling expenses that were not covered by insurance. In addition, Father agreed to pay for the parties' daughters private school education until graduation from high school. Father also agreed to pay for all college expenses for the parties' daughters.

[4] Two years later, in 2009, the trial court issued an order granting Father's petition to modify child support. In this order, the trial court found that the parties' daughters no longer resided with Mother. Although the trial court's order does not so state, it appears that the parties' daughters were then living with Father. Based upon this substantial change in circumstances, the trial court ordered the cessation of Father's obligations to pay $1,500 per month for child support and to pay for the mortgage, taxes, insurance, and reasonable repairs and maintenance at the marital residence. The trial court specifically stated that it was deviating from the Child Support Guidelines by declining to impose a child support obligation on Mother because Mother would have to assume the financial responsibilities for the marital residence and needed time to adjust to this change in her economic circumstances.

[5] In 2011, the trial court entered an agreed order, which provided that, effective January 1, 2011, Mother would pay for the parties' daughters' medical, dental, and vision insurance so long as it was reasonably available through her employer. The parties further agreed that they would equally divide their daughters' uninsured medical expenses.

[6] One year later, in 2012, the trial court issued an agreed order on Father's pending petition to hold Mother in contempt. It appears that Father had filed the contempt petition because Mother had not reimbursed Father for the parties' daughters' 2011 uninsured medical expenses. Pursuant to the agreed order, Mother agreed to reimburse Father $1,919.90 for these medical expenses. Mother also agreed to pay $300 for the attorney fees that Father incurred in filing the contempt petition.

[7] Two years later, in 2014, the trial court entered an agreed order regarding Mother's payment of the parties' daughters' uninsured medical expenses. Pursuant to the terms of the agreement, Father waived Mother's obligation to pay for their daughters' uninsured medical expenses up to December 31, 2013. Mother agreed to continue to cover the parties' daughters' health insurance on her husbands' Post Office Employee Health Insurance so long as it was reasonably available and to provide Father with insurance cards and estimate of benefits forms. In addition, Father agreed to pay on an annual basis the first $2,000 of the parties' daughters' uninsured medical expenses. The parties agreed that if the daughters' uninsured medical expenses exceeded $2,000 during a calendar year, Mother would be responsible for half of those uninsured medical expenses. The parties further agreed that Father would have sole legal and physical custody of the parties' two daughters, who were then sixteen and fourteen years old.

[8] Also in 2014, J.L. began experiencing significant health issues. Specifically, J.L. began "having tics in her neck and her shoulder where they would jerk

uncontrollably[,] [which] led to many doctor visits, many specialists trying to figure out what that was." (Tr. Vol. 2 at 12). Eventually, J.L. began experiencing vocal tics "where it sounded like she had very, very loud hiccups." (Tr. Vol. 2 at 12). Father took J.L. to several neurologists, who ordered MRIs, and to a children's psychiatric center in Louisville. The insurance carrier denied several of these claims.

[9] One year later, in November 2015, Father filed a petition to modify and to hold Mother in contempt, wherein he explained that there was an on-going problem with insurance coverage for the parties two daughters. Father specifically explained that because he was not the insured, he did not have the authority to discuss his daughters' claims with the insurance company. Further, according to Father, Mother had refused to get involved and rectify the problem with her household provided insurance coverage. In addition, Father explained that Mother had failed to pay her share of their daughters' uninsured medical expenses. According to Father, there were "thousands of dollars in outstanding and previously paid medical bills with no insurance coverage as a result of the denial of coverage, and [he was] being threatened with collection action on some of the bills." (App. Vol. 2 at 39). Father asked the trial court to order Mother "to pay the additional costs, via Wage Withholding Order, associated with her failure to see that insurance coverage [was] provided for the children's past medical bills, as she [was] obligated under the current order." (App. Vol. 2 at 39). Father also asked the trial court to modify the order in effect at the time by allowing him to provide insurance coverage for his daughters. Father

explained that he would thereafter be responsible for dealing with future insurance issues.

[10] The trial court scheduled a hearing on Father's petition to modify and to hold Mother in contempt. Following many continuances requested by Mother, in January 2017, Mother filed a response to Father's petition. In her response, Mother explained that Father had failed to notify her about their daughters' medical care within a reasonable time for Mother to assist with the insurance claims. According to Mother, she had assisted with the claims processing to the best of her ability. Mother also told the trial court that it had to "consider Mother's financial resources, or lack thereof, in determining the issue of payment of medical expenses." (App. Vol. 2 at 43). Mother also told the trial court that Father had asked her to pay for expenses that were not reasonable or medically necessary. According to Mother, she did not have the ability to pay the amount of medical expenses incurred due to Father's failure to handle the claims and expenses properly, and she should be relieved of the obligation to do so. Mother further "request[ed] termination of any and all child support obligations regarding [J.L.] who turned nineteen (19) in June of 2016." (App. Vol. 2 at 43).

[11] Also in January 2017, the trial court issued a partial agreed order regarding Mother's failure to pay for the parties' daughters' uninsured medical expenses.[1]

[1] This order was filed as a nunc pro tunc entry on November 11, 2021.

Pursuant to the parties' partial agreement, Mother agreed "to waive any argument that medical bills incurred for the minor children in 2014 and 2015 (which [were] the years at issue) were medically unnecessary[.]" (App. Vol. 2 at 242). Mother and Father also agreed that "after Father's payment of his $2,000 annual obligation, any remaining outstanding medical bills at issue w[ould] be split 50-50 under the terms of the existing Order." (App. Vol. 2 at 242). Mother further agreed to resubmit past bills to the insurance company and to ask providers to resubmit past claims. In addition, Mother and Father agreed that they would meet "to sit down and go through what they h[ad] and what ha[d] been learned about these bills/claims." (App. Vol. 2 at 243). Mother agreed to "begin making payments towards this as yet undetermined sum for the children's non-covered medical expenses at the rate of $77.00 per pay, beginning Friday, January 27, 2017 via Voluntary Wage Withholding Order." (App. Vol. 2 at 244).

[12] One month later, in February 2017, Father filed another petition asking the trial court to hold Mother in contempt, wherein he told the trial court that Mother had failed to comply with the previous month's partial agreed order. According to Father, Mother had told him that certain claims had been covered. However, Father had continued to receive bills stating that J.L. was not covered under the insurance policy. Father further explained that Mother had indicated that an ambulance bill from July 2016 was covered by insurance. However, Father had just "received a billing statement dated 2/3/17 reflecting still no coverage applied[.]" (App. Vol. 2 at 49). Father further pointed out that he had

"repeatedly entered agreements waiving past medical debt owed by the Mother, so long as an agreement going forward [was] in place, only to have the Mother again violate the new Court Order." (App. Vol. 2 at 50). Father asked the trial court to schedule an immediate hearing and to enter an order requiring Mother to pay additional costs incurred by Father, including attorney fees.

[13] The trial court held a hearing on Father's petition to hold Mother in contempt in July 2017. Following the hearing, in July 2017, the trial court entered an order, which noted the ongoing issues with the parties' daughters' insurance coverage. The trial court noted that for 2015, after Father's $2,000 required annual contribution to his daughters' uninsured medical expenses, there were outstanding uninsured medical expenses in the amount of $8,250.80. The majority of those expenses was attributable to an MRI bill that the insurance carrier had not paid. The trial court ordered Mother to pay her share of her daughters' uninsured medical expenses as well as Father's attorney fees in $50 per week payments.

[14] Also in July 2017, Mother filed a pro se "Petition to Terminate Child Support Due to Emancipation of Minor Child(ren)." (App. Vol. 2 at 63). Father filed a response to Mother's petition, wherein he argued that Mother had never paid child support. Rather, Father argued that the automatic payments had been put in place for Mother to pay Father for the parties' daughters uninsured medical expenses. Father requested that Mother's wage withholding order, which was paid through the child support collection office, be modified to a biweekly payment of $177. This payment would include Mother's agreed payment of

$77 per pay period that was set forth in the January 2017 order and $50 per week payment that the trial had just ordered Mother to pay.

[15] In September 2017, Mother wrote the trial court a letter asking it to emancipate J.L. Also in September 2017, the trial court held a hearing on Mother's petition to terminate child support. On January 19, 2018, the trial court issued an order denying Mother's petition ("the January 2018 order"). The trial court's order provides in relevant part as follows:

> 1. The current Order is for repayment of uninsured medical expenses, not child support. The Mother cites to the emancipation statute, when this is not an emancipation issue. The Mother's only financial obligation to the Father is payment of her share of uninsured medical expenses – she has no support obligation (and never has had one), and thus nothing changes when a child reaches 19. She is paying on past due uninsured medical expenses. Further, their oldest child, a full time college student, remains subject to an order on uninsured medical expenses (as Mother's only college contribution).

(App. Vol. 2 at 94). After further reviewing the facts and procedural history of the case, the trial court concluded that Mother owed Father a total of $19,880.61 for uninsured medical expenses and attorney fees. The trial court amended Mother's withholding order to $88.50 per week. Mother did not appeal the January 2018 order.

[16] One year later, in February 2019, Father filed another petition asking the trial court to hold Mother in contempt. According to Father, Mother had failed to

comply with the January 2018 order. On April 1, 2019, the trial court issued an order finding that Mother owed Father for additional uninsured medical expenses and attorney fees ('the April 2019 order"). Mother did not appeal the April 2019 order.

[17] In August 2020, Mother obtained counsel and filed a motion for change of venue from the judge that had issued the orders in this case for the previous eleven years. Also in August 2020, Mother filed a verified motion for emancipation and voiding of prior orders. In this motion, Mother sought to void the January 2018 and April 2019 orders. Mother argued that the trial court did not have authority to enter these orders because Father had not filed a motion for post-secondary educational expenses pursuant to INDIANA CODE § 31-16-6-6 before the parties' daughters had turned nineteen years old. Therefore, according to Mother, "all Orders entered after the child(ren) turned age 19 obligating Mother to pay for uninsured healthcare costs and attorneys fees incurred after each child turned age 19 are void as the Trial court lacked the necessary jurisdiction and cannot be enforced." (App. Vol. 2 at 130) (grammatical errors in the original).

[18] In his August 2020 response, Father argued that the $19,880.61 payment included in the trial court's January 2018 order "was owed by Mother prior to the children reaching the age of 19." (App. Vol. 2 at 135). In February 2021, the trial court granted Mother's motion for change of venue from the judge.

[19] In September 2021, Mother filed a motion for relief from judgment as an "addition[al] . . . legal basis for Mother's currently pending Motion for Emancipation and Voiding of Prior Orders." (App. Vol. 2 at 165). Mother argued that she was seeking relief under Trial Rule 60(B)(8). In this motion, Mother alleged that Father had "filed an unverified pleading containing false information" and had "falsely claimed that Mother [had] continued to litigate without legal basis." (App. Vol. 2 at 166). Mother further argued that Father had "continued his false and mistaken claims" when he had "submitted the Order to the Court that resulted in [the January 2018 order]." (App. Vol. 2 at 167). According to Mother, "Father's false and mistaken actions . . . [had] resulted in an unsupported Order being entered[.]" (App. Vol. 2 at 168). Mother further argued that "Father's wrongful actions ha[d] resulted in Mother paying to Father thousands of dollars that he [had] never [been] entitled to[.]" (App. Vol. 2 at 169). Mother asked the trial court to set aside the January 2018 and April 2019 orders, to require Father to reimburse Mother for all of the uninsured medical expenses and attorney fees that she should not have had to pay, to sanction Father for his wrongful conduct, and to order Father to pay Mother's legal expenses for bringing her motion for emancipation and voiding of prior orders and her motion for relief from judgment.

[20] Following a two-day hearing in October and November 2021, the trial court denied Mother's motions. Mother now appeals.

Decision

[21] Mother argues that the trial court abused its discretion when it denied her motion for relief from judgment. We disagree.

[22] Indiana Trial Rule 60(B) provides a mechanism by which a party may obtain relief from the entry of a final judgment. *Bello v. Bello*, 102 N.E.3d 891, 894 (Ind. Ct. App. 2018). The propriety of relief under Trial Rule 60(B) is a matter entrusted to the trial court's equitable discretion. *Fish v. 2444 Acquisitions, LLC*, 46 N.E.3d 1261, 1263 (Ind. Ct. App. 2015), *trans. denied*. The trial court abuses its discretion when the judgment is clearly against the logic and effect of the facts and circumstances before the trial court. *Id*.

[23] Trial Rule 60(B) provides:

> 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:
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> > (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;

(5) except in the case of a divorce decree, the record fails to show that such party was represented by a guardian or other representative, and if the motion asserts and such party proves that

> (a) at the time of the action he was an infant or incompetent person, and
>
> (b) he was not in fact represented by a guardian or other representative, and
>
> (c) the person against whom the judgment, order or proceeding is being avoided procured the judgment with notice of such infancy or incompetency, and, as against a successor of such person, that such successor acquired his rights therein with notice that the judgment was procured against an infant or incompetent, and
>
> (d) no appeal or other remedies allowed under this subdivision have been taken or made by or on behalf of the infant or incompetent person, and
>
> (e) the motion was made within ninety [90] days after the disability was removed or a guardian was appointed over his estate, and
>
> (f) the motion alleges a valid defense or claim;

(6) the judgment is void;

(7) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

> (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in subparagraphs (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). *Fish*, 46 N.E.3d at 1264 (citing T.R. 60(B)). A movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense. *Id*.

[24] "Under a motion for relief from judgment, the trial court's discretion is circumscribed and limited by the eight categories listed in T.R. 60(B)." *Bello*, 102 N.E.3d at 894 (internal quotation marks and citation omitted). "As such, T.R. 60(B) is meant to afford relief from circumstances which could not have been discovered during the period a motion to correct error could have been filed; it is not meant to be used as a substitute for direct appeal or to revive an expired attempt to appeal." *Id*. (internal quotation marks and citation omitted). The burden is on the movant to establish grounds for relief under T.R. 60(B). *Id*.

[25] Here, Mother argues that she was entitled to relief pursuant to Rule 60(B)(8), which allows for setting aside 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)." Under T.R. 60(B)(8), Mother must show that her failure to act was not merely due to an omission involving a mistake, surprise, or excusable neglect. *See Indiana Insurance Company v. Insurance*

Company of North America, 734 N.E.2d 276, 279-80 (Ind. Ct. App. 2000), *trans. denied*. Rather, Mother must affirmatively demonstrate "extraordinary circumstances." *See id.* Stated differently, "these residual powers under subsection (8) may only be invoked upon a showing of *exceptional circumstances justifying extraordinary relief*[.]" *Id*. at 279. (emphasis in the original) (internal quotation marks and citation omitted). We further note that "Subdivision (8) is not available if the grounds for relief properly belong in another of the enumerated subdivision[s] of T.R. 60(B)." *Fish*, 46 N.E.3d at 1267 (quotation marks and internal citation omitted).

[26] Here, our review of the evidence reveals that Mother's argument fails for two reasons. First, it is readily apparent from a reading of Mother's motion for relief from judgment that she has not raised any new issues. Rather, the essence of her motion is that based on the facts as set forth at the original hearings, the trial court's January 2018 and April 2019 decisions were erroneous. These claims of error were based on matters that were known to Mother within the time to file a motion to correct error. Accordingly, Mother has made no showing of exceptional circumstances justifying extraordinary relief. *See Indiana Insurance*, 734 N.E.2d at 279.

[27] Second, Mother's motion for relief from judgment is fraught with allegations that Father had made false claims and that his actions had been false and wrongful. Based on these multiple allegations, Mother's grounds for relief more properly belong in Rule 60(B)(3) as misrepresentations or fraud allegations. *See Fish*, 46 N.E.3d at 1267. Mother cannot bypass the one-year time limitation for

fraud claims simply by arguing that Rule 60(B) applies. *See id*. The trial court did not abuse its discretion when it denied Mother's motion for relief from judgment.[2]

[28] Affirmed.

Robb, J., and Weissmann, J., concur.

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[2] Mother also argues that the trial court erroneously denied her motion for emancipation and voiding of prior orders because "[t]he Trial Court was without authority to issue [the January 2018 and April 2019 orders] pertaining to Mother's obligation to pay uninsured healthcare costs and attorneys fees that were incurred after each child turned 19 and was emancipated pursuant to I.C. 31-16-6-6 since there was never a Motion for Post Secondary Educational Expenses filed by either party." (Mother's Br. 24). Mother specifically argues that the January 2018 and April 2019 orders were void. Mother is correct that void judgments can be attacked, directly or collaterally, at any time. *See Anderson v. Wagner Pos 64, American Legion Corporation*, 4 N.E.3d 1200, 1205 (Ind. Ct. App. 2014), *trans. denied*. Further, we review de novo a trial court's determination of whether a judgment is void. *Id*. Our review of the evidence in this case reveals that the trial court did not err in determining that the prior trial court's January 2018 and April 2019 orders were not void. First, the trial court's January 2018 order clearly states that, at the time of the order, J.L. was a full time college student who "remain[ed] subject to an order on uninsured medical expenses (as the Mother's only college contribution)." (App. Vol. 2 at 94). Because an order on uninsured medical expenses was already in place, it was unnecessary for Father to file a motion for post-secondary educational expenses pursuant to INDIANA CODE § 31-16-6-6. We further note that it appears that many of the uninsured medical expenses included in the trial court's January 2018 order were incurred in 2014 and 2015 when J.L. was suffering from significant health issues. During that time, J.L., who was born in 1997, was less than nineteen years old. We find no error here.

Mother further argues that the trial court erroneously denied her a hearing on her motion for relief from judgment. However, our review of the record reveals that the trial court held a two-day hearing in October and November 2021 on all pending motions. We find no error.