MEMORANDUM DECISION

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Indiana Supreme Court
Court of Appeals
and Tax Court

IN THE

Court of Appeals of Indiana

Tammy Ann Thompson and Berton Jerome Thompson,

Appellants

v.

AAA Acceptance Corporation,

Appellee

April 26, 2024

Court of Appeals Case No.
23A-SC-2398

Appeal from the Allen Superior Court

The Honorable Jennifer L. DeGroote, Judge

The Honorable Brian D. Cook, Magistrate

Trial Court Cause No.
02D01-1001-SC-298

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

[1] Tammy Ann Thompson and Berton Jerome Thompson appeal from the denial of their motion for relief from judgment. We affirm.

Facts and Procedural History

[2] On January 11, 2010, Tammy Crouch filed a notice of claim for "[b]ack rent and damages," "Nov late fee," and "water" against the Thompsons. Appellants' Appendix Volume II at 19. An entry on January 14, 2010, in the chronological case summary ("CCS") states: "Notice of claim served/sheriff date: 01/13/2010 Type of service: leaving copy the residence." *Id*. at 7 (capitalization omitted). The CCS indicates that Crouch filed a "motion to substitute plaintiff(s)," refers to AAA Acceptance Corporation ("AAA"), and states the court granted the motion. *Id*. On March 9, 2010, the court entered default judgment against the Thompsons and in favor of AAA in the amount of $1,961.78.

[3] The CCS indicates that proceedings supplemental were filed against the Thompsons. A May 21, 2013 entry in the CCS states "Plaintiff(s) by counsel," "Defendant(s) in person," and "proceedings supplemental conducted." *Id*. at 12. An October 1, 2013 CCS entry states "Plaintiff(s) by counsel/in person," "Defendant(s) in person," and "proceedings supplemental conducted." *Id*. A

February 3, 2015 CCS entry indicates that a proceedings supplemental hearing was held at which the Thompsons were present. A CCS entry on September 15, 2023, states "Answer to Interrogatories Filed" and "Garnishee Defendant states Defendant is employed." *Id*. at 14.

[4] On October 4, 2023, the Thompsons filed a "Verified Motion to Vacate Default Judgment." *Id*. at 25. They argued the default judgment should be vacated "because the address that they were supposedly served at was incorrect," they "did not reside at [] Crouch's home where it is believed that they were supposedly served at," they "were residing at what is now the Magnuson Hotel," and they "were at the hotel because [] Crouch cut off [their] water bill and therefore effectively evicted them illegally." *Id*. On October 5, 2023, the court issued a garnishment order and the Thompsons filed an objection. On October 6, 2023, the court issued an order denying the Thompsons' Motion to Vacate Default Judgment and stating it would treat their objection to the entry of the garnishment order as a motion to reduce the garnishment order. The Thompsons later withdrew objection.

Discussion

[5] The Thompsons, *pro se*, argue the trial court's denial of their Motion to Vacate Default Judgment without a hearing was an abuse of discretion and a denial of due process. They cite Ind. Trial Rule 60(B)(3) and argue that their motion alleged "the landlord ([] Crouch) shut off the parties' water, locked them out of the house and then won a default judgment against them by misrepresenting to the court that they lived at the home." Appellants' Brief at 7. They further

argue "the failure to properly serve [them] with the complaint deprives the trial court of jurisdiction to even hear the case to begin with." *Id*. at 8. They argue: "Given that the appellee in this case illegally evicted the tenants and then misled the court about it, this notice was not given at the parties' address. As such, the court lacks jurisdiction over the parties. Because no hearing was heard to address these issues, the judgment is void." *Id*. at 9.

[6] While the Thompsons proceed *pro se*, they are held to the same standard as trained counsel and are required to follow procedural rules. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. AAA has not filed an appellee's brief. When an appellee fails to submit a brief, we may reverse if the appellant establishes prima facie error. *Bixler v. Delano*, 185 N.E.3d 875, 877 (Ind. Ct. App. 2022).

[7] When asked to review a trial court's decision not to set aside a judgment we give the trial court substantial deference on appeal. *Morequity, Inc. v. Keybank, N.A.*, 773 N.E.2d 308, 312 (Ind. Ct. App. 2002), *trans. denied*. We are limited to determining whether the trial court abused its discretion, which occurs when the trial court's judgment is clearly against the logic and effect of the facts and inferences supporting the judgment for relief. *Id.* On a motion for relief from judgment, the movant has the burden to show sufficient grounds for relief. *Id.* at 312-313. Ind. Trial Rule 60(B) provides the court may relieve a party from a judgment for the following reasons: "(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party"; or "(6) the judgment is void." 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)." Ind. Trial Rule 60(B). A movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense.

[8] As a general rule a party cannot argue on appeal an issue that was not properly presented to the trial court. *Newland Res., LLC v. Branham Corp.*, 918 N.E.2d 763, 770 (Ind. Ct. App. 2009). Appellate review of the issue is waived when it is not presented before the trial court. *Id*. On appeal, the Thompsons argue in part that the notice of claim was not properly served on them and the trial court did not have personal jurisdiction. However, in their October 4, 2023 motion, the Thompsons did not cite Trial Rule 60(B)(6) and did not argue that the judgment was void or that the court lacked personal jurisdiction. We find that, to the extent they rely on Trial Rule 60(B)(6) or argue the judgment was void for lack of personal jurisdiction on appeal, the Thompsons have waived their claim for relief. *See Morequity*, 773 N.E.2d at 314-315 (holding Morequity did not argue to the trial court that relief was warranted under Trial Rule 60(B)(6) because the judgment was void for lack of personal jurisdiction and thus the claim was waived on appeal). Further, we observe that the Thompsons appeared in person before the trial court at hearings in May and October 2013 and February 2015.

[9] Turning to the Thompsons' claim under Trial Rule 60(B)(3) alleging fraud, we note that the challenged judgment was entered in March 2010 and that the Thompson's October 2023 motion for relief from the judgment was filed well

over one year later and, as such, was untimely. *See* Ind. Trial Rule 60(B) (providing a motion "shall be filed . . . not more than one year after the judgment . . . for reasons (1), (2), (3), and (4)").

[10] As for the Thompsons' claim the court should have held a hearing, when there is no pertinent evidence to be heard on a Trial Rule 60(B) motion, a hearing is unnecessary. *Thompson v. Thompson*, 811 N.E.2d 888, 904 (Ind. Ct. App. 2004), *reh'g denied*, *trans. denied*. The Thompsons do not specify pertinent evidence not already before the court which could provide a basis for relief under Trial Rule 60(B). We cannot say that the lack of a hearing warrants reversal. *See Williams v. Tharp*, 934 N.E.2d 1203, 1215 (Ind. Ct. App. 2010) ("Appellants have failed to direct us to any pertinent evidence that was not before the trial court when it ruled on their motion."), *trans. denied*; *Thompson*, 811 N.E.2d at 904 (finding a hearing on a Trial Rule 60(B) motion was unnecessary); *Pub. Serv. Comm'n v. Schaller,* 157 Ind. App. 125, 299 N.E.2d 625, 630 (1973) ("If therefore, there is no evidence which could be pertinent to the allegations of the motion because such allegations, even if true, would not warrant the relief sought, a hearing would be a futile proceeding."). Under the circumstances, we conclude the court did not abuse its discretion in denying the Thompsons' motion for relief from judgment.

[11] For the foregoing reasons, we affirm the trial court.

[12] Affirmed.

Riley, J., and Foley, J., concur.

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