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IN THE
COURT OF APPEALS OF INDIANA

People for Community,
Inc./PFC, Isaac Fincher,
Appellant-Plaintiff,

v.

City of Fort Wayne
Neighborhood Code
Compliance,
Appellee-Defendant.

October 24, 2022

Court of Appeals Case No.
22A-MI-447

Appeal from the Allen Circuit
Court

The Honorable Wendy W. Davis,
Judge

Trial Court Cause No.
02C01-2106-MI-559

Tavitas, Judge.

Case Summary

- [1] People for Community, Inc. (“PFC”) filed a complaint for judicial review of an order of the City of Fort Wayne’s Neighborhood Code Compliance (“NCC”) authorizing the demolition of a building owned by PFC. The trial court

granted NCC's motion to dismiss PFC's complaint for judicial review because PFC was not represented by an attorney. PFC appeals and argues that the trial court abused its discretion in dismissing its complaint for judicial review of NCC's demolition order. We conclude that the trial court did not abuse its discretion in dismissing PFC's complaint due to PFC's failure to obtain an attorney to represent it in this matter. Accordingly, we affirm.

Issue

- [2] PFC presents one issue, which we restate as whether the trial court abused its discretion by dismissing PFC's complaint due to PFC's continued failure to obtain an attorney to represent it in this matter.

Facts

- [3] PFC is a not-for-profit organization that owns property located at 1304 South Anthony Boulevard in Fort Wayne, Indiana ("the Property"). PFC was unable complete its plans for the Property due to the COVID-19 pandemic, and the building on the Property was dilapidated and in a state of disrepair. Specifically, the first and second floors of the building had collapsed; the chimney had partially collapsed, with bricks falling to the ground near the building; water had accumulated in the basement, which created a breeding ground for insects; and there were numerous openings in the building allowing rodents to enter. The building was situated right off a public sidewalk, creating a hazard to pedestrians. Accordingly, on February 18, 2021, the NCC, acting

as the City of Fort Wayne’s enforcement agency, pursuant to Indiana Code Section 36-7-9-5(a), issued an order to demolish the property as unsafe.

[4] On March 30, May 24, and June 21, 2021, administrative hearings were held to afford PFC an opportunity to challenge the demolition order. *See* Ind. Code § 36-7-9-7(a). At this hearing, Rev. Isaac Fincher (“Rev. Fincher”), the President of PFC, represented PFC. *See id.* § 7(c).¹ At the conclusion of the final hearing, the hearing officer affirmed the demolition order.

[5] On June 30, 2021, Rev. Fincher, on behalf of PFC, filed a Verified Complaint to Request Appeal—in essence a complaint for judicial review of the hearing officer’s order affirming NCC’s demolition order. In his complaint, Rev. Fincher claimed that, despite the photographic evidence to the contrary, the building on the property was not a hazard and did not need to be demolished.

[6] On July 20, 2021, NCC filed its answer to Rev. Fincher’s complaint. NCC asserted that Rev. Fincher was PFC’s property agent, but he was not a licensed attorney and was, therefore, without authority to represent PFC in its complaint for judicial review, citing Indiana Code Section 34-9-1-1(c). This statute requires corporations, including non-profit corporations such as PFC, to be represented by an attorney in all actions except small claims actions.

¹ This subsection provides: “The person to whom the order was issued, any person having a substantial property interest in the unsafe premises that are the subject of the order, or any other person with an interest in the proceedings may appear in person or by counsel at the hearing.” I.C. § 36-7-9-7(c).

- [7] The trial court scheduled a pretrial conference for November 30, 2021. On October 5, 2021, NCC filed a motion to dismiss due to PFC not being represented by an attorney. In the alternative to dismissal, NCC asked the trial court to set a deadline by which Rev. Fincher and PFC had to hire an attorney to represent PFC in the matter. Consequently, on October 8, 2021, the trial court entered an order stating in relevant part: “Pursuant to I.C. 34-9-1-1, Plaintiff has thirty (30) days to retain counsel. Counsel for Plaintiff must file an appearance on or before November 8, 2021. Failure to retain counsel by November 8, 2022 will result in dismissal of this cause of action.” Appellant’s App. Vol. II p. 33.
- [8] At the October 28, 2021 pretrial conference, Rev. Fincher appeared on behalf of PFC without an attorney. The trial court repeatedly explained to Rev. Fincher the need for PFC to be represented by an attorney, and Rev. Fincher indicated that he understood. The trial court specifically warned Rev. Fincher that PFC’s attorney needed to file an appearance and that the trial was scheduled for November 30th. The trial court scheduled another pretrial conference for November 2nd, informed Rev. Fincher that PFC needed an attorney to represent it at that hearing, and issued an order stating: “Pursuant to I.C. 34-9-1-1 Counsel for Plaintiff must file an appearance on or before November 8, 2021. Failure to retain counsel by November 8, 2021 will result in a dismissal of this cause of action.” *Id.* at 34.
- [9] Despite these warnings, Rev. Fincher appeared at the November 2nd pretrial conference without an attorney. Rev. Fincher informed the trial court that an

attorney was supposed to represent PFC but that the attorney could not make it to the hearing. When the trial court asked which attorney was supposed to represent PFC, Rev. Fincher told the court that PFC had retained attorney Mark GiaQuinta. The trial court informed Rev. Fincher to make sure that PFC's attorney filed an appearance and warned him of the impending November 30th trial date. NCC's attorney informed the court that he would reach out to attorney GiaQuinta, to which Rev. Fincher agreed.

[10] On November 4, 2021, NCC's counsel sent a message to attorney GiaQuinta inquiring whether he was representing PFC. The following day, NCC's counsel spoke with attorney GiaQuinta by telephone, and attorney GiaQuinta stated that he was not representing PFC in this matter. No attorney filed an appearance on behalf of PFC by the November 8th deadline set by the trial court. Accordingly, on November 9th, NCC filed a renewed motion to dismiss PFC's complaint due to its failure to comply with Indiana Code 34-9-1-1, which requires corporations to be represented by an attorney. The trial court granted NCC's motion to dismiss PFC's complaint on November 10th.²

[11] On November 29, 2021, PFC's current counsel filed an appearance on behalf of PFC and filed what was titled a "motion to reconsider." Appellant's App. Vol. II p. 40. The trial court set the matter for a hearing on December 16th. That

² The trial court's order dismissing PFC's complaint was a final judgment because it disposed of all issues as to all parties. See Ind. Appellate Rule 2(H)(1) ("A judgment is a final judgment if: (1) it disposes of all claims as to all parties[.]"); see also *Hamilton v. Prewett*, 860 N.E.2d 1234, 1247 (Ind. Ct. App. 2007) (holding that order granting defendant's motion to dismiss all of plaintiff's claims was a final judgment), *trans. denied*.

same day, after the hearing, the trial court entered an order denying PFC’s motion to reconsider, which order states in relevant part:

On November 29, 2021, almost three (3) weeks after the deadline for counsel to file an appearance had passed and over four (4) months after Plaintiff was made aware he needed to retain counsel, [PFC’s current counsel] filed his Appearance for Plaintiff and filed a Motion to Reconsider. . . .

* * * * *

This Court finds Plaintiff Isaac Fincher was given ample opportunities to understand both the need for him to hire counsel by November 8, 2021 and the consequences in this lawsuit if he failed to do so. . . .

Appellant’s App. Vol. II pp. 13-14. Undeterred, PFC filed a “motion to correct error” on January 17, 2022. Again, PFC argued that it was not required to proceed by an attorney based on Indiana Code Section 34-9-1-1(c)(4). The trial court entered an order on January 31, 2022, denying PFC’s motion to correct error. PFC filed its notice of appeal on March 2, 2022, and this appeal ensued.³

³ We note that PFC’s notice of appeal appears to have been untimely. Following the trial court’s final order, PFC filed a “motion to reconsider.” A motion to reconsider, however, cannot be filed after a final judgment, and must be treated as a motion to correct error. *Newman v. State*, 177 N.E.3d 888, 892 (Ind. Ct. App. 2021), *trans. denied*. Accordingly, PFC’s “motion to reconsider” was—as a matter of law—a mistitled motion to correct error. The trial court entered an order denying PFC’s motion on December 17, 2021. PFC then had thirty days from December 17, 2021, i.e., January 16, 2022, to file its notice of appeal. *See* Ind. Appellate Rule 9(A)(1). Instead of filing a notice of appeal, PFC filed what it titled as a motion to correct error, which was merely a subsequent, repetitive motion to correct error. Such repetitive motions cannot extend the deadline to file a notice of appeal. *Walters v. Austin*, 968 N.E.2d 233, 235 (Ind. Ct. App. 2012). PFC did not file its notice of appeal until March 2, 2022, forty-five days after the January 16, 2022 deadline. Thus, PFC’s notice of appeal was untimely. Our Supreme Court has held that an untimely filing of a notice of appeal is “not a jurisdictional defect depriving the appellate courts of authority to entertain the appeal.” *In re Adoption*

Discussion and Decision

[12] PFC contends that the trial court erred by dismissing its complaint for judicial review on grounds that PFC was not represented by an attorney. PFC does not deny that it was required to be represented by an attorney. Indeed, Indiana Code Section 34-9-1-1(c) provides:

A corporation and any organization required to make application to the secretary of state under IC 25-11-1-3 must appear by attorney in all cases. However, corporations organized under:

- (1) IC 23-1 [business corporations];
- (2) IC 23-1.5 [professional corporations];
- (3) IC 23-7-1.1 (before its repeal on August 1, 1991) [not-for-profit corporations; or
- (4) IC 23-17 [non-profit corporations];

are not required to appear by attorney in civil cases filed on a small claims docket of a circuit or superior court.

[13] In support of PFC's claim that the trial court should have afforded PFC more time to hire an attorney, PFC first cites *Yogi Bear Membership Corp. v. Salnaker*, 571 N.E.2d 331 (Ind. Ct. App. 1991). In that case, the plaintiff, Yogi Bear Membership Corporation ("YBMC"), brought a small claims action against Stalnaker. YBMC was not represented by an attorney but was instead

of O.R., 16 N.E.3d 965, 971 (Ind. 2014)). Because NCC does not raise this issue and because we prefer to consider the merits of an argument when possible, *Dridi v. Cole Kline LLC*, 172 N.E.3d 361, 364 (Ind. Ct. App. 2021), we choose to address PFC's appellate argument on its merits.

represented by its manager and vice president. The small claims court awarded YBMC nominal damages, and YBMC appealed. On appeal, this Court noted that corporations must be represented by counsel. *Id.* at 333 (citing *State ex rel. Western Parks, Inc. v. Bartholomew Cnty. Ct.*, 270 Ind. 41, 44, 383 N.E.2d 290, 293 (1978); *see also* Ind. Code § 34-1-60-1 (1976)).⁴

[14] We held, therefore, that the trial court exceeded its authority by allowing YBMC to proceed without counsel. *Id.* at 334. We stated that, on remand, the trial court should dismiss the case “if YBMC fails to retain counsel,” after giving YBMC the chance to obtain counsel. *Id.* We do not read *Yogi Bear Membership Corp.* as supporting PFC’s claim here. In that case, the trial court permitted YBMC to proceed without an attorney, and the case was remanded to dismiss if YBMC did not obtain counsel. Thus, *Yogi Bear Membership Corp.* simply stands for the proposition that trial courts must abide by Indiana Code 34-9-1-1(c), which requires corporations to be represented by counsel.

[15] PFC next cites *Christian Business Phone Book, Inc. v. Indianapolis Jewish Community Relations Council*, 576 N.E.2d 1276 (Ind. Ct. App. 1991). In that case, the plaintiff corporation filed a complaint against the defendant council. The council filed a motion to dismiss based on the corporation’s failure to be represented by counsel pursuant to Indiana Code Section 34-1-60-1. On the day of the hearing on the defendant’s motion to dismiss, an attorney filed an appearance on behalf of the corporation and represented the corporation at the

⁴ This statute was repealed in 1998 and recodified as Indiana Code Section 34-9-1-1.

hearing. The trial court still granted the motion to dismiss. On appeal, we held that this “terminal result” was not justified. *Id.* at 1277. Noting that dismissal is disfavored, we held that “the corporate litigant must be given a fair opportunity to correct its error and retain competent counsel before dismissal would be appropriate.” *Id.* Accordingly, we concluded that the trial court erred in dismissing the corporation’s cause of action *after* an attorney had appeared for the corporation. *Id.*

[16] Again, this case does not support PFC’s position that the trial court here was required to give PFC even more time to secure counsel. The trial court did not dismiss PFC’s complaint *after* it had secured counsel. Instead, the trial court dismissed PFC’s complaint only after giving PFC multiple warnings that it needed to be represented by counsel and giving PFC ample time in which to secure such representation.

[17] In *Sears v. Blubaugh*, 613 N.E.2d 468 (Ind. Ct. App. 1993), plaintiff Blubaugh sued Sears Corporation in small claims court. The summons stated that Sears did not need to have an attorney, which was incorrect. Sears sent an employee to the small claims trial without an attorney. The small claims court then explained to the employee that Sears had to be represented by counsel. The employee requested a continuance to get an attorney, which the court denied, in part because Sears’s employee had already obtained one continuance prior to the trial date. The small claims court then entered default judgment against Sears.

[18] On appeal, Sears acknowledged the requirement to be represented by counsel per statute and per small claims rules. *Id.* (citing Ind. Small Claims Rule 8(C)).⁵ Sears, however, claimed that it should have been afforded the opportunity to obtain counsel before suffering default judgment. We agreed and noted that corporations must be given an opportunity to obtain counsel before suffering dismissal. *Id.* at 470-71. We further noted that the summons erroneously instructed that Sears was not required to be represented by counsel. We held that the trial court should have given Sears an opportunity to obtain counsel before suffering dismissal. *Id.* at 471. Again, we find the present case distinguishable; unlike Sears, PFC was given multiple opportunities to hire counsel before the trial court dismissed its complaint.

[19] We similarly find PFC's reliance on *Destination Yachts, Inc. v. Fine*, 22 N.E.3d 611 (Ind. Ct. App. 2014), to be misplaced. In that case, plaintiff Fine filed a small claims action against Destination Yacht's president claiming breach of warranty. Fine later amended his complaint to add Destination Yachts as a corporate defendant. At the scheduled trial date, Destination Yacht's president appeared in person without counsel. The trial court informed the defendant that the corporation had to be represented by counsel and denied the president's

⁵ At the time, Small Claims Rule 8(c) provided: "A corporation must appear by counsel or, in unassigned claims not exceeding seven hundred fifty dollars (\$750), by a full-time employee of the corporation designated by the Board of Directors to appear as the corporation in the presentation or defense of claims arising out of the business of the corporation." Ind. Small Claims R. 8(C) (1993). This rule currently provides: "All corporate entities . . . may be represented by counsel, owner, or by a designated full-time employee of the corporate entity, or, in the case of a trust by a trustee, in the presentation or defense of claims arising out of the business if the claim does not exceed six thousand dollars (\$6,000.00). However, claims exceeding six thousand dollars (\$6,000.00) must be defended or presented by counsel." Ind. Small Claims R. 8(C).

request to continue the trial the corporation could secure counsel. The small claims court entered default judgment against the corporation.

[20] On appeal, we noted that Destination Yacht's president was clearly confused about whether he needed representation by an attorney. We concluded that the trial court abused its discretion by denying the corporation's request for a continuance to secure counsel. *Id.* Unlike the defendant corporation in *Destination Yachts*, PFC was given multiple warnings that failure to obtain counsel would result in dismissal, and the trial court gave PFC ample time to secure counsel.

[21] We glean from these cases that, if a corporation participates in litigation without an attorney, it must be afforded the opportunity to rectify this error and obtain counsel. A trial court should, therefore, not grant a motion to dismiss or motion for default judgment without giving the corporation such an opportunity. And it is error to dismiss a corporation's action, or grant default judgment against a corporation, that does in fact hire counsel prior to the trial court's action on the motion to dismiss or motion for default judgment. The facts in the present case do not require us to reverse the trial court here.

[22] PFC was on notice no later than July 20, 2021, the day NCC filed its answer noting that PFC was unrepresented. The trial court gave PFC explicit notice of the attorney requirement on October 7, 2021, when it ordered PFC to obtain counsel within thirty days. The trial court also repeatedly warned PFC of the need to obtain counsel at both the October 28, 2021 pre-trial conference and the

November 2, 2021 attorney status hearing. No attorney filed an appearance on behalf of PFC by the November 8th deadline set by the trial court, and the trial court granted NCC's motion to dismiss PFC's complaint on November 10th.

[23] Under the facts and circumstances of this case, we cannot say that the trial court abused its discretion by failing to give PFC even more time to secure counsel. *See Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1386 (11th Cir. 1985) (affirming district court's dismissal of corporate plaintiff's complaint for failure to secure attorney representation after original counsel withdrew because plaintiff had been "fully advised of the need for proper representation of the corporate claims" and district court gave the corporation thirty days to obtain counsel, but the corporation failed to do so even after being granted additional time).

Conclusion

[24] PFC's argument fails on the merits because the trial court gave PFC ample opportunities to secure counsel, and we cannot say that the trial court abused its discretion by failing to give PFC even more time to secure counsel.

Accordingly, we affirm the judgment of the trial court.

[25] Affirmed.

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