

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Nicole M. Carlson,
Appellant-Defendant,

v.

Consolidated Insurance
Company,
Appellee-Plaintiff.

April 27, 2023

Court of Appeals Case No.
22A-PL-2511

Appeal from the Jasper Superior
Court

The Honorable Russell D. Bailey,
Judge

Trial Court Cause No.
37D01-2109-PL-858

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

[1] Nicole M. Carlson appeals the trial court’s denial of her motion for relief from judgment. We affirm.

Facts and Procedural History

[2] On September 24, 2021, Consolidated Insurance Company (“Consolidated”) filed a complaint against Carlson alleging that it was the insurer of Kyle Miller, the owner of a 2013 Harley-Davidson, which was covered by an automobile insurance policy, and that Carlson negligently operated a motor vehicle causing the insured to incur personal injuries, medical expenses, pain and suffering, wage loss, and damage to the insured’s automobile. It alleged that it paid the insured \$54,153.25 and demanded judgment against Carlson in that amount as well as interest and costs. A Civil Summons addressed to Carlson in Wheatfield, Indiana, indicates that “[t]he following manner of service is designated: SHERIFF SERVICE, Jasper County.” Appellant’s Appendix Volume II at 10. The document includes a “Sheriff’s Return” which states “Came to hand Sept, 2021” and “Served by delivering a true copy to the within named.” *Id.* at 11. It also states: “This is the 7 day of Oct 2021.” *Id.* The words “Deputy Sheriff” appear under a signature. *Id.* It also provides: “I hereby certify that I have served this summons on the 6 day of Oct, 2021[.] (1) By delivering a copy of this summons and a copy of the Complaint to the defendant Nicole Carlson – Personal serve.” *Id.* at 12. The documents lists Patrick M. Williamson, Sr., as the Sheriff, and Tim Bruce as the Deputy. It is stamped as received by the Clerk on October 12, 2021.

- [3] On December 14, 2021, Consolidated filed a Motion for Default Judgment alleging that service was “obtained by Sheriff Service on October 7, 2021” and Carlson had not filed responsive pleadings or otherwise appeared in this action. *Id.* at 13. On December 21, 2021, the court entered default judgment in favor of Consolidated in the amount of \$54,153.25 with interest and costs.
- [4] On May 23, 2022, Carlson filed a Motion for Relief from Judgment Pursuant to Trial Rule 60B and Request for Evidentiary Hearing alleging that she was not personally served and had no memory or knowledge of being served. It requested that the default judgment be set aside pursuant to Ind. Trial Rule 60(B)(1) “in that [Carlson] was surprised to learn that the above action was filed” and pursuant to Ind. Trial Rule 60(B)(8) because “it would be unjust for the Defendant [sic] to win under default judgment as the Defendant never had an opportunity to defend herself in Court.” *Id.* at 16.
- [5] On September 22, 2022, the court held a hearing. Jasper County Sheriff’s Deputy Timothy Bruce testified that he had the responsibility of serving court papers on behalf of the department including personal service in civil cases. On direct examination by Carlson’s counsel, Deputy Bruce testified that he executed a sheriff’s return on October 7, 2021. When asked if he had a chance to meet Carlson prior to the hearing, he answered affirmatively. When asked if he recalled going to the residence that day and whether Carlson was the individual he dealt with, he answered:

I cannot say positively on that given day. Yes, I had that marked personal service. I’ve been to that same residence over a course

of time, probably at least three times. I don't know, I couldn't tell you what it was in reference to, but the same matter, same cause, but, uh, I know I met her once at the residence. After that, uh, I had an occasion where another adult female answered the door and to be honest with ya, they identified themselves as her mother, etcetera. And, but I, as I told you before and I told our sheriff, that I'm quite certain that that particular residence there was an occasion where I've met another adult female at the door. And, they indicated that she was inside the residence, Nicole was, and, that she was inside, either in the shower, possibly not awake yet. So, I gave them the paper. And, on an occasion like that I will mark it personal service, when somebody's confirmed to me that the person is inside the residence and there's a very good likelihood they're going to get the paperwork within minutes, possibly ten minutes. About an hour. I feel comfortable with it that they're going to get the paper.

Transcript Volume II at 6. He also indicated it was "entirely possible" that he left the summons with an adult female who may not have been Carlson. *Id.* at 8.

[6] On cross-examination by Consolidated's counsel, Deputy Bruce testified that he delivered the summons and complaint to the address in Wheatfield, Indiana. Upon questioning by the court, Deputy Bruce testified that he spoke with an adult female and stated: "I was greeted by an adult female at the door, but I can't tell you whether that was absolutely Nicole on that day, or potentially her mother." *Id.*

[7] Carlson testified as to her address which matched the address to which Deputy Bruce testified he delivered the summons and complaint. She testified that she

had lived there for at least six months, her mother would have been the only other adult female in the residence, she did not recall meeting Deputy Bruce at her residence on October 7, 2021, and she “would have been at work.” *Id.* at 10. She testified that no family member made any comment to her about an officer coming to the door and she first learned of the lawsuit when she “had it on notice from the DMV they had [her] license as (indecipherable) suspended due to a pending court case.” *Id.* at 11. She indicated her mother suffers from multiple sclerosis and has memory issues.

[8] Christina Miller, Carlson’s mother, testified that she lived with Carlson and she did not have any memory of Deputy Bruce delivering a summons. She also testified that she suffers from multiple sclerosis and memory problems.

[9] After the presentation of evidence, Carlson’s counsel argued: “I have no doubt that Officer Bruce went to that house. I have no doubt that Officer Bruce, um, you know, gave somebody a, a summons, but what’s very evident is that we don’t know exactly who that was.” *Id.* at 26. He also stated: “[I]t’s very evident that the female who received this notice was my client’s mother, and her testimony of having memory problems and not having any memory of this due to that medical ailment, . . . I think it would just be very unjust . . . to let this stand with that fact.” *Id.* at 29-30.

[10] On September 23, 2022, the court entered an order denying Carlson’s motion for relief from judgment. The court found that “the weight of the evidence supports that [Carlson] was served notice pursuant to TR 4.1 A in that a copy of

the complaint was properly served upon [her] by leaving a copy at her home due to the actions of Deputy Bruce.” Appellant’s Appendix Volume II at 30-31. It also found that Carlson “asserts that there is a meritorious defense to the action, but no evidence was presented to show that there is a meritorious defense to the action,” and, “[a]lthough, this is not required under the law as the basis of the motion is that there was inadequate notice.” *Id.* at 31.

Discussion

[11] Carlson claims that she was entitled to relief from default judgment under Ind. Trial Rule 60(B)(1) and (8). She contends her “excusable neglect was just that, excusable,” and she was not even aware of the judgment being entered against her until she received notice from the BMV that her license was suspended. Appellant’s Brief at 18. She asserts she sought legal counsel upon the discovery of the complaint and judgment and would be severely prejudiced if the default judgment is not set aside. She argues the trial court erred by finding that she received satisfactory service under Ind. Trial Rule 4.1 because she was not “personally served” and Deputy Bruce did not serve a copy by first class mail. *Id.* at 17.

[12] We generally review trial court rulings on motions for relief from judgment for an abuse of discretion. *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 within the trial court’s discretion. *In re Adoption of C.B.M.*, 992 N.E.2d 687, 691 (Ind. 2013). When reviewing the trial court’s determination, we will not reweigh the evidence. *Wagler v. W. Boggs Sewer Dist.*,

Inc., 980 N.E.2d 363, 371 (Ind. Ct. App. 2012), *reh'g denied, trans. denied, cert. denied*, 571 U.S. 1131, 134 S. Ct. 952 (2014). The burden is on the movant to demonstrate that relief is both necessary and just. *Id.* at 372.

[13] Ind. Trial Rule 60(B) provides in part:

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;

* * * * *

(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). A movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense.

[14] Ind. Trial Rule 4.1 is titled “Summons: Service on Individuals” and provides:

(A) In General. Service may be made upon an individual, or an individual acting in a representative capacity, by:

(1) sending a copy of the summons and complaint by registered or certified mail or other public means by which a written acknowledgment of receipt may be requested and obtained to his residence, place of business or employment with return receipt requested and returned showing receipt of the letter; or

(2) delivering a copy of the summons and complaint to him personally; or

(3) leaving a copy of the summons and complaint at his dwelling house or usual place of abode; or

(4) serving his agent as provided by rule, statute or valid agreement.

(B) Copy Service to Be Followed With Mail. Whenever service is made under Clause (3) or (4) of subdivision (A), the person making the service also shall send by first class mail, a copy of the summons and the complaint to the last known address of the person being served, and this fact shall be shown upon the return.

[15] The record reveals that the Sheriff's Return of Service states: "Served by delivering a true copy to the within named." Appellant's Appendix Volume II at 11. It also states: "I hereby certify that I have served this summons on the 6 day of Oct, 2021[.] (1) By delivering a copy of this summons and a copy of the Complaint to the defendant Nicole Carlson – Personal serve." *Id.* at 12. Further, Deputy Bruce testified that he delivered the complaint and summons to an adult female at the address where Carlson acknowledged she resided. Based upon the record, we cannot say Carlson has met her burden of showing that service of process was not effected upon her consistent with Trial Rule 4.1 or that she was entitled to relief under Ind. Trial Rule 60(B).

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

[17] Affirmed.

Bailey, J., and Weissmann, J., concur.