MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Hobart Auto Sales, Inc., et al.,
Appellants-Defendants,

v.

Nathan Qualls, Jr.,
Appellee-Plaintiff

May 1, 2023

Court of Appeals Case No. 22A-CT-1813

Appeal from the Lake Superior Court

The Honorable Thomas P. Hallett, Special Judge

Trial Court Cause No. 45D03-2001-CT-59

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

[1] Hobart Auto Sales, Inc. (Hobart Auto) appeals the trial court's denial of its motion to set aside a default judgment that had been entered against it and in favor of Nathan Qualls. Hobart Auto presents the following restated issue for our review: Was the default judgment void for lack of personal jurisdiction due to inadequate service of process?

[2] We affirm.

Facts & Procedural History

[3] On November 11, 2019, while delivering pizzas on the premises of Hobart Auto and Hobart Smoke City, Inc. (Smoke City), Qualls slipped and fell and sustained injuries. As a result, he filed a complaint against both parties on January 16, 2020, alleging that they had failed to provide Qualls, an invitee, with safe ingress and egress.[1]

[4] Hobart Auto's president and registered agent is Fadma Alburei. The address of 1165 W. 37th Avenue, Hobart, IN 46342 was listed with the Indiana Secretary of State as that of the principal office, the registered office, and Alburei.

[1] Though a party below, Smoke City was defaulted and did not file a motion to set aside the default judgment entered against it. Smoke City does not participate in this appeal. Accordingly, from this point on, we will focus only on the facts related to Hobart Auto.

[5] On January 16, 2020, through the Lake County Sheriff, Qualls attempted service of process upon Hobart Auto at the above address. The addressee on the summons was listed as:

> Fadma Alburei
> Hobart Auto Sales, Inc.

The summons and complaint were returned unserved on June 22, 2020, with a notation "Bad Address." *Amended Appellant's Appendix* at 60.

[6] Thereafter, on June 29, 2020, Qualls attempted service on Hobart Auto by certified mail, return receipt requested. The mailing was addressed as follows:

> Fadma Alburel
> Hobart Auto Sales
> 1171 W. 37th Ave.
> Hobart, IN 46342

Id. at 34. This street address was the address at which Hobart Auto publicly operated its business, as opposed to the address listed with the Secretary of State. Further, Alburei's name was incorrectly spelled as ending with an "l" rather than "i." The certified mailing was delivered on July 2, 2020. No signature appeared on the certified mail green card. Rather, the signature line appears to read: "CC Covid 19." *Id*. Neither the agent nor addressee block was checked and the "Received by (Printed Name)" section was blank. *Id*.

[7] On August 26, 2020, Qualls had an alias summons issued to:

> Fadma Alburei
> Hobart Auto Sales, Inc.

1171 W. 37th Avenue
Hobart, IN 46342

The return of service indicated that the alias summons, along with the complaint, was served by the Sheriff on September 1, 2020, by leaving a copy at the listed address and then mailing a copy by first class mail.

[8] With still no appearance or responsive pleading filed in the case, Qualls's attorney sent a certified letter, return receipt requested, to "Fadma Alburel" on October 28, 2020. *Id*. at 38. The mailing was sent to the 1171 W. 37th Avenue address and included a copy of the complaint and alias summons. The letter warned that Qualls would file for a default judgment if Hobart Auto did not respond to the complaint by November 11, 2020. This mailing was delivered on November 2, 2020. While the signature and received by (printed name) sections were filled out, the writing on both was indecipherable.

[9] Qualls filed a motion for default judgment on November 13, 2020. Thereafter, he sent to Hobart Auto, by two separate certified mailings to the 1171 W. 37th Avenue address, the motion for default judgment and the order setting the default judgment hearing. The green cards for both mailings came back with signature lines referencing Covid 19 with no acknowledgment of receipt by an agent or representative of the addressee.

[10] Following a hearing, at which Hobart Auto did not appear, the trial court entered a default judgment in favor of Qualls on the issue of liability on

February 4, 2021. In its order, the trial court expressly found that Hobart Auto had received "adequate service." *Id*. at 24.

[11] On March 16, 2021, after a damages hearing, the trial court awarded damages to Qualls in the amount of $50,000. Hobart Auto and Smoke City, both defaulted parties, were made jointly and severally liable for this judgment.

[12] About a year later, Qualls initiated proceedings supplemental, and the trial court scheduled a hearing for April 21, 2022, ordering Hobart Auto to appear. On February 24, 2022, new counsel for Qualls attempted to serve Hobart Auto with notice of the order to appear at the hearing. This was sent by regular mail to the address listed with the Secretary of State for Hobart Auto's registered agent, 1165 W. 37th Avenue. The mail was returned to sender with the notation "vacant." *Id*. at 87. The paper notice sent by the court, however, to the 1171 W. 37th Avenue address was not returned.

[13] A representative of Hobart Auto, Omar Alburei, appeared at the proceedings supplemental hearing on April 21, 2022. Omar was examined on the record concerning the assets of Hobart Auto. Thereafter, Omar retained counsel for Hobart Auto to set aside the default judgment.

[14] The unverified motion to set aside the default judgment was filed on April 26, 2022. In the motion, Hobart Auto noted "service issues" related to the misspelling of the registered agent's last name, the green cards that did not indicate who accepted the certified mailings of the complaint and summons/alias summons, and the address to which the mailings were sent

(that is, not the 1165 W. 37th Avenue address listed with the Secretary of State). *Id*. at 26. Particularly relevant here, the motion alleged:

> 8. It should be further noted that the registered agent for Hobart Auto Sales is named "Fadma Alburei", rather than "Fadma Alburel". Her name is correctly spelled with the Indiana Secretary of State.
>
> 9. The owner of the business, specifically Mrs. Alburei, assumed the documents received were fraudulent or a scam of some sort on the basis of the misspelling and the large number of bulk mailings the business receives.

Id. at 52. Ultimately, Hobart Auto requested that the default judgment to be set aside pursuant to Ind. Trial Rule 60(B)(1) for "excusable mistake, surprise, or neglect." *Id*. at 53.

[15] A brief hearing on Hobart Auto's motion was held on June 21, 2022, at which neither party presented evidence. The parties' counsel and the court addressed Qualls's various attempts to serve Hobart Auto. The trial court acknowledged: "I don't know, for purposes of establishing service, whether or not the green card signed COVID-19 which is what the post office is … was regularly doing … um … constitutes sufficient acceptance." *Transcript* at 8 (ellipses in original). Counsel for Qualls argued, in turn, that Hobart Auto acknowledged in paragraph 9 of its motion to set aside that Alburei received service but thought the documents were fraudulent due to the misspelling of her name. Counsel for Hobart Auto responded that regardless of whether there was actual service, the circumstances presented good cause to set aside the default judgment.

Regarding excusable neglect under T.R. 60(B)(1), counsel for Qualls noted that the motion to set aside had been filed more than a year after the default judgment was entered and that Hobart Auto had not presented the court with any evidence – not even a verified motion – that it had a meritorious defense.

[16] The trial court took the matter under advisement and, on July 1, 2022, issued an order denying Hobart Auto's motion to set aside the default judgment. Hobart Auto appeals from this order. Additional information will be provided below as needed.

Discussion & Decision

[17] On appeal, Hobart Auto abandons its claim based on T.R. 60(B)(1)[2] – excusable neglect – and argues only that the trial court lacked personal jurisdiction over Hobart Auto due to insufficient service of process. Thus, without citing to the subsection, it is apparent that Hobart's argument is based on T.R. 60(B)(6) – applicable to void judgments. *See Citimortgage, Inc. v. Barabas*, 975 N.E.2d 805, 816 (Ind. 2012) ("A judgment issued without personal jurisdiction is void, and a court has no jurisdiction over a party unless that party receives notice of the proceeding.").

[2] This is understandable because Hobart Auto's motion to set aside was not filed within one year of the default judgment, and T.R. 60(B) requires a motion alleging mistake, surprise, or excusable neglect to be filed "not more than one year after the judgment." Such a limitation does not apply to motions alleging that the judgment was void.

[18] A trial court's decision whether to set aside a default judgment is generally given substantial deference on appeal. *Huntington Nat. Bank v. Car-X Assoc. Corp.*, 39 N.E.3d 652, 655 (Ind. 2015). Where a judgment is void, however, a trial court has no discretion and must grant a motion based on T.R. 60(B)(6). *Anderson v. Wayne Post 64*, 4 N.E.3d 1200, 1205 (Ind. Ct. App. 2014), *trans. denied*. That said, if the determination regarding personal jurisdiction turns on disputed facts, the trial court's findings in this regard are reviewed for clear error. *Id*. at 1205-06. Where the trial court is provided only with a paper record, though, as in the case at hand, we are in as good of a position as the trial court to determine the existence of jurisdictional facts and will employ a de novo standard of review. *Id*. at 1206.

[19] A trial court does not acquire personal jurisdiction over a party if service of process is inadequate. *Id*. While a plaintiff is responsible for presenting evidence of a court's personal jurisdiction over the defendant, "the defendant ultimately bears the burden of proving the lack of personal jurisdiction by a preponderance of the evidence, unless that lack is apparent on the face of the complaint." *Thomison v. IK Indy, Inc.*, 858 N.E.2d 1052, 1055 (Ind. Ct. App. 2006).

[20] Indiana Trial Rule 4.6 provides that service upon an organization's registered agent shall be made in the same manner as for service upon individuals. In turn, T.R. 4.1 addresses service on individuals and permits service by, among other things, "sending a copy of the summons and complaint by registered or

certified mail … to his residence, place of business or employment with return receipt requested and return showing receipt of the letter."

[21] In this case, Qualls's initial attempt at service was at the address Hobart Auto provided to the Secretary of State for the company's registered agent, Alburei. Personal service failed on June 22, 2020, because the address was, according to the Sheriff, a bad address.[3]

[22] Shortly thereafter, Qualls found the address for Hobart Auto's actual business location – 1171 W. 37th Avenue – and sent the summons and complaint by certified mail to this address. Although correctly spelled on the summons, Alburei's name on the address label of the mailing was incorrectly spelled as "Alburel." Hobart Auto was listed on the label under her name. The green card/return receipt indicated that the mailing was delivered on July 2, 2020, but did not specify who received it. The signature section of the green card read simply: "CC Covid 19." *Amended Appellant's Appendix* at 34.

[23] When Hobart Auto failed to respond to the summons and complaint, Qualls made another attempt to ensure service at the end of August. He had an alias summons issued, which listed Alburei's correct name, along with Hobart Auto, and changed the address to 1171 W. 37th Avenue. On September 1, the Sheriff

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[3] Similarly, in February 2022, when Qualls sent the notice to appear in the proceedings supplemental to the registered agent's listed address, the mail was returned with an indication that the address was vacant. On the other hand, of the many documents in the record that were served in this case by certified mail to the 1171 W. 37th Avenue address, not one was returned as undeliverable.

served the alias summons and complaint by leaving copies at this address and then mailing copies to the same address by first class mail.

[24] About two months later, Qualls followed up with a letter to "Alburel" and Hobart Auto, which included copies of the alias summons and complaint, and reference to the previous service by the Sheriff. This certified mailing was delivered on November 2, 2020, but the signature and printed name on the green card are indecipherable.

[25] Hobart Auto complains that the multiple attempts at service of the summons and complaint after the first failed attempt by the Sheriff were to "the wrong address" – not the address listed with the Secretary of State for Hobart Auto's registered agent. *Appellant's Amended Brief* at 11. As set forth above, two of these subsequent attempts were made by certified mail and the other was delivered by the Sheriff and followed by regular mail. Regarding the first certified mailing, delivered in July, Hobart Auto notes that there was no signature of an agent of Hobart Auto provided on the green card, which was signed with initials (presumably of the mail carrier) and a reference to COVID-19. Aside from noting the address, Hobart Auto does not directly discuss the subsequent service by the Sheriff or the second certified mailing sent by counsel for Qualls.

[26] Hobart Auto attempts to liken this case to that of *Overhauser v. Fowler*, 549 N.E.2d 71 (Ind. Ct. App. 1990). In *Overhauser*, the plaintiff attempted service by certified mail and "failed to request the clerk to reissue service after the

original service was returned unaccepted." *Id*. at 73. While the defendant subsequently received notice of the lawsuit due to receiving service of a summons with a co-defendant's cross-complaint, the defendant was never served with the plaintiff's complaint. This court held that the defendant's general knowledge of the suit's existence, without him ever receiving service of the complaint, did not satisfy due process or personal jurisdiction.

[27] Here, the facts are vastly different than in *Overhauser*. The record establishes that Qualls made repeated attempts to serve Hobart Auto after the initial failed attempt. None of the subsequent attempts was returned as unserved, and each included both the summons and complaint.

[28] We find it telling that Hobart Auto presented no evidence that it did not actually receive service of the summons and complaint by certified mail or by the Sheriff at the 1171 W. 37th Avenue address.[4] Alburei certainly could have filed an affidavit or testified at the hearing in this regard, but she did not. Thus, we are left with the only evidence before us being that service by certified mail was delivered on July 2, 2020, and that the Sheriff completed copy service at Hobart Auto's business on September 1, 2020. Further, we observe that Hobart

[4] Qualls's multiple attempts to serve Hobart Auto at the 1171 W. 37th Avenue address were reasonably calculated to inform Hobart Auto of the lawsuit. *See Anderson*, 4 N.E.3d at 1208 ("[T]hough Anderson did not comply with our Trial Rules, her attempt to serve process on the American Legion may still have been adequate if, in light of the facts and circumstances, her method was obviously better calculated to give notice.") (internal quotations omitted); *see also* T.R. 4.15(F) ("No summons or the service thereof shall be set aside or be adjudged insufficient when either is reasonably calculated to inform the person to be served that an action has been instituted against him, the name of the court, and the time within which he is required to respond.").

Auto's own motion to set aside reveals that Alburei received mail concerning the lawsuit at the 1171 W. 37th Avenue address but assumed the documents were fraudulent due to the (minor) misspelling of her name.

[29] On the record before us, we conclude that Qualls presented prima facie evidence of the court's personal jurisdiction over Hobart Auto, and Hobart Auto, in turn, failed to present evidence to the contrary or to otherwise prove lack of personal jurisdiction by a preponderance of the evidence. *See Thomison*, 858 N.E.2d at 1058 (concluding that lack of personal jurisdiction was not apparent on the face of the complaint even though Sheriff's return failed to indicate that a copy was mailed following copy service at defendant's home). Therefore, the trial court did not err in denying the motion to set aside the default judgment.

[30] Judgment affirmed.

Riley, J. and Pyle, J., concur.