MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Richard F. Ashley, Jr.,
Appellant-Respondent,

v.

Caitilin Ashley,
Appellee-Petitioner.

May 20, 2022

Court of Appeals Case No. 21A-DR-2014

Appeal from the Marion Superior Court

The Honorable John M.T. Chavis, II, Judge

The Honorable Geoffrey Gaither, Judge

Trial Court Cause No. 49D09-1510-DR-35333

Mathias, Judge.

[1] Richard F. Ashley, Jr. ("Husband") appeals the Marion Superior Court's grant of a motion to correct error filed by Caitilin Ashley ("Wife"). The procedural

history of this consolidated appeal is convoluted, but the essence of the case is this: after Husband filed his initial notice of appeal, the parties' arbitrator realized that the judgment she had submitted to the trial court, and which the trial court had entered as the judgment of the court, was the wrong document. The arbitrator then submitted a signed, written notice of her error with the trial court and attached an amended judgment to her notice.

[2] Our Court then remanded jurisdiction to the trial court for it to consider this apparent error. Husband moved for relief from judgment in the trial court under Indiana Trial Rule 60(A) on the ground that the arbitrator had committed a clerical error when she submitted the wrong document to the trial court for judgment. After a hearing on remand, the trial court agreed, and it accepted the arbitrator's amended judgment as the judgment of the court and vacated the original judgment. Wife then filed a motion to correct error and asserted that the trial court had no legal authority to vacate the original judgment. After another hearing, the trial court agreed with Wife and reinstated the original judgment.

[3] On appeal, Husband raises two issues for our review, but we need only address the following dispositive issue: whether the trial court abused its discretion when it granted Wife's motion to correct error. We reverse and remand with instructions.

Facts and Procedural History

[4] Husband and Wife were married in August 1986 and accumulated numerous assets during their marriage. In October 2015, Wife filed her petition for dissolution of the marriage, and, thereafter, the parties entered into a Mediated Marital Settlement Agreement ("the Settlement Agreement"). In relevant part, the Settlement Agreement distributed the marital property between the parties, dissolved their marriage, and provided that further disputes between them would be resolved through arbitration under Indiana's Family Law Arbitration Act, Ind. Code §§ 34-57-5-1 to -13 (2016) ("the Act").

[5] In 2019, a dispute between the parties arose with respect to the sale of certain real property. In 2020, the trial court ordered the parties to have their dispute resolved through arbitration. The parties agreed that Katherine Harmon ("the Arbitrator") would be the parties' arbitrator.

[6] Following a hearing, in November, the Arbitrator submitted to the trial court a twenty-four-page document titled "Arbitration Order" ("the Initial Order"). The Initial Order appeared to resolve the parties' disputes before the Arbitrator, and, among other things, it ordered Husband to pay to Wife approximately $32,000 in damages and $55,000 in attorney's fees. Three days after the Arbitrator submitted the Initial Order, on November 9, 2020, the court entered the Initial Order as its judgment.

[7] Husband filed a timely notice of appeal from the trial court's entry of the Initial Order in our case number 20A-DR-2228.[1] In December, Husband filed with the trial court a motion to stay the execution and enforcement of the Initial Order pending appeal.

[8] One day after Husband filed his motion to stay, the Arbitrator filed a written and signed notice with the trial court stating as follows:

> Arbitrator . . . notifies the Court that the incorrect Arbitrator's Order was inadvertently submitted [as the Initial Order] . . . . Arbitrator was unaware the erroneous Order had been filed until she saw [Husband's] Motion to Stay . . . , and Arbitrator immediately notified Counsel of the error.

Appellant's App. Vol. 2 p. 131 ("the Arbitrator's Notice" or "Notice"). Attached to the Arbitrator's Notice was an "Amended Arbitrator's Order" ("the Amended Order"). The Amended Order provided for a payment to Husband in a net amount of about $59,000 and had no provision for either party to pay the other's attorney's fees. Amended Order at 14.[2]

[9] In light of the Arbitrator's Notice and the Amended Order, after various filings in our Court and in the trial court, we dismissed Husband's appeal without

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[1] We have since consolidated Husband's first appeal with this one.

[2] The Amended Order is not included in the parties' appendices on appeal. However, as the Record on Appeal includes "all proceedings before the trial court . . . whether or not transcribed or transmitted to the Court on Appeal," we have obtained the Amended Order from the trial court's docket via Odyssey. Ind. Appellate Rule 2(L).

prejudice and remanded jurisdiction to the trial court. In doing so, we specifically instructed the trial court "to issue an order or orders regarding the arbitration award." Appellant's App. Vol. 2 p. 164.

[10] Husband moved for relief from judgment in the trial court in relevant part under Indiana Trial Rule 60(A), asserting that the Arbitrator's submission of an incorrect document as the judgment was a clerical error. The trial court held a hearing Husband's motion in February 2021. Following that hearing, the court concluded in relevant part as follows:

> On December 9, 2020, the [A]rbitrator notified the Court that she made an error in the submission of the [Initial Order] that the Court entered on November 9, 2020. On December 17, 2020, [Husband] moved for relief from judgment citing this error pursuant to Ind. Trial Rule 60(A) . . . . Furthermore, the Court also has the authority to exercise its own initiative to correct court orders, clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight and omission. At a minimum, the [A]rbitrator's error falls into this latter category.

Id. at 167. The court directed that the Initial Order be set aside and that the Amended Order be entered as the judgment of the court. *Id.* at 168.[3]

[11] Thereafter, Wife filed a motion to correct error. In her motion, Wife argued in relevant part that the Act did not authorize the court to substitute the Amended

[3] We conclude that this order was in effect a *nunc pro tunc* entry that substituted, albeit by reference, the Amended Order for the Initial Order.

Order for the Initial Order. Wife also asserted that the substitution of the two Orders was a substantive change to the judgment that was outside the scope of relief under Trial Rule 60. And Wife argued that there was no admissible evidence in support of the court's adoption of the Amended Order because the Arbitrator herself did not testify at the hearing on remand. Accordingly, Wife asked the trial court to set aside the Amended Order and to reinstate the Initial Order as the judgment of the court.

[12] After another hearing, the trial court, relying mainly on the purported lack of evidence in support of its judgment under Trial Rule 60, granted Wife's motion to correct error. In doing so, the court set aside the Amended Order and reinstated the Initial Order as the judgment of the court. This appeal ensued.

Standard of Review

[13] Husband appeals the trial court's judgment granting Wife's motion to correct error. We generally review a ruling on a motion to correct error for an abuse of discretion. *Berg v. Berg*, 170 N.E.3d 224, 227 (Ind. 2021). We will reverse "where the trial court's judgment is clearly against the logic and effect of the facts and circumstances before it or where the trial court errs on a matter of law." *Id.* (quotation marks omitted).

The Trial Court Abused its Discretion When it Reinstated the Erroneous Initial Order.

[14] Husband asserts that the trial court abused its discretion when it granted Wife's motion to correct error and, in doing so, reinstated the Initial Order as the judgment of the court. We agree.

[15] Indiana Trial Rule 60(A) provides that a party may seek relief from a judgment in the following circumstances:

> **Clerical mistakes.** Of its own initiative or on the motion of any party and after such notice, if any, as the court orders, *clerical mistakes in judgments*, orders or other parts of the record and errors therein *arising from oversight or omission may be corrected by the trial court* at any time before the Notice of Completion of Clerk's Record is filed under Appellate Rule 8. After filing of the Notice of Completion of Clerk's Record and during an appeal, such mistakes may be so corrected with leave of the court on appeal.[4]

(Emphasis added.) As we have explained:

> A "clerical error" has been defined as a mistake by a clerk, counsel, judge[,] or printer *which is not a result of judicial function and cannot reasonably be attributed to the exercise of judicial consideration or discretion*. The purpose of T.R. 60(A) is to recognize that[,] in the case of clearly demonstrable mechanical errors[,] the interests of fairness outweigh the interests of finality

[4] There is no question here that the trial court had jurisdiction to hear Husband's motion for relief from judgment under Trial Rule 60(A) following this Court's order dismissing Husband's first appeal without prejudice.

> which attend the prior adjudication. On the other hand, where the mistake is one of substance the finality principle controls.

Rosentrater v. Rosentrater, 708 N.E.2d 628, 631 (Ind. Ct. App. 1999) (emphasis added; citations and quotation marks omitted).

[16] Here, after Husband appealed the Initial Order, the Arbitrator *sua sponte* filed her Notice with the trial court and represented to the court that she had erroneously submitted the Initial Order for entry of judgment. Husband then moved for relief from judgment on the ground that the Arbitrator had committed a clerical error when she submitted the wrong document to the court for entry of judgment. After a hearing, the trial court agreed, and it directed that the Amended Order be substituted for the Initial Order as the judgment of the court.

[17] The trial court's judgment on Husband's motion for relief under Trial Rule 60(A) was correct. The Arbitrator was akin to a judge in resolving the parties' disputes, and her mistake—the submission of the wrong document for entry of judgment—was not a mistake resulting from the exercise of her judicial function and cannot be reasonably attributed to the exercise of judicial consideration or discretion. *See id.* It was, rather, a clearly demonstrable mechanical error, not an error in substance. *See id.* As the trial court aptly put it when it granted Husband's motion under Trial Rule 60(A), the Arbitrator's mistake arose out of "oversight and omission." Appellant's App. Vol. 2 p. 167.

[18] Nonetheless, in granting Wife's ensuing motion to correct error, the trial court disregarded its well-reasoned judgment on Husband's Trial Rule 60(A) motion and instead concluded that the evidence did not support granting Husband's request for relief. The trial court's reasoning is contrary to the facts and circumstances before it.

[19] The Arbitrator had submitted her written and signed Notice to the court, placing her at risk of contempt for any misrepresentations in doing so. Further, the trial court had already deemed the Arbitrator's Notice sufficient and credible in relying on it when it granted Husband's Trial Rule 60(A) motion. The court's original reliance on the Arbitrator's Notice was supported by the record; the court's apparent change of mind is not. And while Wife asserts on appeal that the trial court could not "enter an entirely different judgment with no basis in fact (no sworn testimony or documents to consider)," Wife fails to acknowledge that the Arbitrator's written Notice was before the court, and Wife cites no authority for the proposition that the trial court must call witnesses to address a clerical mistake. Appellee's Br. at 20; *see* Ind. Appellate Rule 46(A)(8)(a).

[20] But Wife's main argument on appeal asserts that the Amended Order was contrary to the Act for various reasons. Specifically, Wife argues that the Arbitrator's submission of the Amended Order was untimely under the Act and, further, that none of the circumstances in which the Act permits the

modification of an arbitrator's award are present here. *See* Appellee's Br. at 16-20.[5]

[21] Assuming Wife's argument is that we should affirm the trial court's decision on her motion to correct error under one of these alternative legal theories, we conclude that they both fail for the same reason: the order on Husband's motion for relief from judgment, which the court vacated in granting Wife's motion to correct error, was based not on the Act but on Trial Rule 60(A). What the Act does or does not provide for is not relevant under Rule 60(A). Where a statute and the Indiana Trial Rules are "incompatible to the extent that both could not apply in a given situation," *Bowyer v. Ind. Dep't. of Nat. Res.*, 798 N.E.2d 912, 917 (Ind. 2003), "the rule governs" on matters of procedure, *Garner v. Kempf*, 93 N.E.3d 1091, 1099 (Ind. 2018) (citation omitted). Additionally, our Supreme Court has made clear that our Trial Rules supersede procedural statutes. *See A.C. v. Ind. Dep't. of Child Servs.*, 140 N.E.3d 279 (Ind. 2020). Thus, Wife's apparent argument that the Act prohibited Husband's motion for relief from judgment under Trial Rule 60(A) is incorrect.

[22] Finally, Wife asserts that the trial court's order granting Husband's motion for relief from judgment under Trial Rule 60(A) was erroneous because the

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[5] Wife also repeatedly states that the trial court failed to sign the Amended Order in accordance with Indiana Code section 34-57-5-7(d). *See* Appellee's Br. at 20. But the trial court's order granting Husband's Trial Rule 60(A) motion is signed and makes clear that substituting the Amended Order for the Initial Order was the intent and judgment of the trial court. For purposes of appellate review at least, we have no question that the Amended Order was the order of the court at that time.

Amended Order was a change in substance to the court's final judgment, and "Indiana Trial Rule 60(A) motions are meant to address clerical error, not errors of substance." Appellee's Br. at 21 (quoting *Sommerville Auto Transp. Serv., Inc. v. Auto. Fin. Corp.*, 12 N.E.3d 955, 963 (Ind. Ct. App. 2014), *trans. denied*). But, as explained above, we agree with the trial court's conclusion on Husband's Trial Rule 60(A) motion that the error here, the erroneous submission of an incorrect document to the court instead of the correct document, was a mechanical error under Rule 60(A). To be sure, the error had a substantive impact—the money flowing between the parties went from about $87,000 for Wife to about $59,000 for Husband—but the error *itself* was not an error in the exercise of the judicial function or attributable to the exercise of judicial consideration or discretion. Therefore, Wife's argument fails.

[23] For all of the above reasons, we agree with Husband that the trial court abused its discretion when it granted Wife's motion to correct error and vacated the court's judgment on Husband's motion for relief from judgment under Trial Rule 60(A). We reverse the trial court's grant of Wife's motion to correct error and remand with instructions to reinstate its order granting Husband's motion for relief from judgment and reinstating the Amended Order as a judgment of the court.

[24] Reversed and remanded with instructions.

Bailey, J., and Altice, J., concur.