

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Calumet Lift Truck Service and
Mark Gies,
Appellants-Defendants,

v.

Ramen Deardorff and Debra
Deardorff,
Appellees-Plaintiffs.

August 25, 2023

Court of Appeals Case No.
23A-CT-406

Appeal from the Lake Circuit
Court

The Honorable Marissa
McDermott, Judge

Trial Court Cause No.
45C01-2210-CT-1005

Memorandum Decision by Judge Riley.
Judges Bradford and Weissmann concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellants-Defendants, Calumet Lift Truck Service (Calumet) and Mark Gies (Gies) (collectively, Appellants), appeal the trial court's Order, granting Appellees'-Plaintiffs', Ramen Deardorff (Ramen) and Debra Deardorff (Debra) (collectively, Deardorffs), motion to vacate the trial court's January 6, 2023, order pursuant to Indiana Trial Rule 60(B).

[2] We reverse.

ISSUE

[3] Appellants present this court with one issue on appeal, which we restate as: Whether the trial court abused its discretion in granting the Deardorffs' motion to vacate the trial court's January 6, 2023, order on the basis of mistake, when no mistake was identified by or admitted to by the Deardorffs.

FACTS AND PROCEDURAL HISTORY

[4] On May 11, 2022, Gies purportedly sprinkled chewing tobacco remnants and spit chewing tobacco onto a desk in the workplace and space of Ramen, at the offices of Calumet in South Holland, Illinois. Gies was an independent contractor of Calumet and a citizen and resident of Illinois. Subsequent to the incident, Ramen discussed the incident with his wife, Debra, at their residence in Lake County, Indiana. On October 5, 2022, the Deardorffs brought their Complaint against Appellants in Lake County, Indiana.

- [5] On October 31, 2022, counsel for Appellants filed his appearance “[f]or the limited purpose of challenging personal jurisdiction and service of process under Ind. T.R. 12.” (Appellants’ App. Vol. II, p. 34). That same day, Appellants filed a notice of extension of time to respond to the Deardorffs’ Complaint for damages pursuant to Lake County Rule 7(D). On November 2, 2022, with no other motions pending before the trial court, the Deardorffs filed a motion, titled “[Deardorffs’] response to [Appellants’] Motion under [Trial rule 12](#),” disputing any lack of service on Appellants’ and any perceived lack of personal jurisdiction by the trial court over Appellants. (Appellants’ App. Vol. II, p. 38). On November 3, 2022, the trial court scheduled a status conference for January 26, 2023.
- [6] On November 23, 2022, Appellants filed their motion to dismiss for lack of personal jurisdiction, together with a supporting memorandum and evidence, asserting that the Deardorffs’ Complaint was devoid of facts supporting personal jurisdiction and none of the factors of [Indiana Trial Rule 4.4.\(A\)](#) supported a finding of personal jurisdiction over Appellants. No responsive motion was filed by the Deardorffs. On January 4, 2023, Appellants moved the trial court for a summary ruling on their motion to dismiss, citing the Deardorffs’ failure to respond to their motion within thirty days after they were served pursuant to Lake County Local Rule 4. On January 6, 2023, the trial court dismissed the Deardorffs’ Complaint with prejudice.
- [7] On January 11, 2023, the Deardorffs filed their verified motion to vacate the order of dismissal, seeking to vacate the trial court’s January 6, 2023 order,

pursuant to Indiana Trial Rule 60(B). The Deardorffs did not further clarify the specific subpart of Trial Rule 60(B) they were proceeding under and appeared to argue that Appellants had moved for dismissal for lack of personal jurisdiction by filing a limited appearance for that purpose on October 31, 2022. On January 13, 2021, the trial court set the Deardorffs' motion to vacate for a hearing on January 26, 2023. Appellants filed their response to the Deardorffs' motion to vacate on January 23, 2023. In their response, Appellants addressed the difference between an appearance and a motion, as referenced in the Indiana Trial Rules, argued that the Deardorffs failed to timely file a response to Appellants' motion to dismiss, and focused on the Deardorffs' lack of basis to support their entitlement to relief under Indiana Trial Rule 60(B).

[8] On January 26, 2023, the trial court conducted a hearing on the Deardorffs' motion to vacate. During the proceedings, the Deardorffs argued that their November 2, 2022 motion was “not illegal[,] [] even though it was not in response to a motion” and the Deardorffs were not going to “sit back and allow [Appellants] to get this first bite[]” to brief the personal jurisdiction issue. (Transcript p. 5). Later in the hearing, the Deardorffs attempted to litigate the personal jurisdiction issue, but the trial court interrupted their counsel as he was “putting the cart before the horse [] [b]ecause first the [c]ourt has to determine whether its Order that it issued in January needs to be set aside.” (Tr. p. 12). In response, Appellants advised the trial court that the Deardorffs had failed to present any evidence or legal argument supporting relief under any subsection of Trial Rule 60(B). At the close of the parties' arguments, the trial court

granted the Deardorffs' motion to vacate. During its ruling from the bench, the trial court noted that it had "never seen a response filed to a motion that ha[d]n't been filed yet" and provided the following commentary to color the basis of its ruling:

So, until the [c]ourt got the motion to vacate, which was very confusing because it referenced a response that the [c]ourt had never seen, and the [c]ourt had to comb through the exhibits to that motion to find the filed date from that response to the motion that hadn't been filed yet, the [c]ourt was absolutely flummoxed. At first I thought maybe I had missed a response being filed after the motion, but that wasn't the, the case; it was a response that was filed before the motion was filed.

The [c]ourt frankly is astonished at the lack of insight that [Deardorffs'] counsel has into how royally, how, how, how, how big of a mess, mess up this was on his part, and the [c]ourt is really disappointed that [Deardorffs'] counsel would come in and start throwing allegations of fraud, allegations of a, untimely filings against [Appellants'] counsel. Come in and argue that somehow the [c]ourt's setting the motion for hearing was something that he relied upon to not file a response brief, and in all of the argument that you have made today, [Deardorffs' counsel], I haven't heard one time you say, I messed up. Because you did, and I'm very disappointed and frankly upset that the [c]ourt is made to feel defensive. [Appellants'] counsel's made to feel defensive. When filing a response to a motion that hasn't been filed yet is not a thing; it doesn't exist under the trial rules. And the reason why the [c]ourt is setting, vacating its January 6th Order is not because it's impressed with your argument. It's not because I'm impressed with your humility that you bring today, it's because I don't want your clients to suffer because of your mistake, and the [c]ourt does find that this was a mistake. I'm just really disappointed that you didn't come

in and say I made a mistake, and if that's the way that this case is going to proceed where it's [Appellants' counsel's] fault. It's the [c]ourt's fault. It's everybody else's fault except your own, then we're going to have a really long difficult case. And I really do not, I mean, I was hoping, [Deardorffs' counsel], that you would come in today and take a little bit of responsibility for what happened. Instead, you're blaming the [c]ourt and [Appellants' counsel] for filing a limited appearance, and the [c]ourt for setting this for hearing. It's just astonishing to me. And believe me, I don't enjoy having this conversation with you, but I do want to make things very clear about how this is going to go, and if someone makes a mistake and they come in and say, Judge, I made a mistake, I am extremely forgiving about it. But if you come in and start blaming [Appellants' counsel] and blaming the [c]ourt and while your staff called and scheduled; yeah, we, we, we coordinated a, a hearing date because we have a very busy calendar and we want to make sure we can get it heard.

And, well, why didn't the [c]ourt see that a response was filed? Well, because it was filed before the motion was filed[.] We don't go back and look for responses that pre-date the motion. I don't have the time to do that.

So, the [c]ourt is grudgingly granting the motion to vacate. I really wish you had come in with a little more self-reflection about this, and not throwing all sorts of extraneous argument to this, but here we are.

(Tr. pp. 17, 18-19).

[9] Appellants now appeal. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

[10] Appellants contend that the trial court abused its discretion in granting the Deardorffs' motion to vacate the trial court's order of dismissal pursuant to Indiana Trial Rule 60(B)(1). The decision whether to set aside a default judgment is given substantial deference on appeal. *Biodynamic Extraction, LLC v. Kickapoo Creek Botanicals, LLC*, 187 N.E.3d 295, 299 (Ind. Ct. App. 2022). Our standard of review is limited to determining whether the trial court abused its discretion. *Id.* An abuse of discretion may occur if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Id.* The trial court's discretion is necessarily broad in this area because any determination of excusable neglect, surprise, or mistake must turn upon the unique factual background of each case. *Id.* A cautious approach to the grant of motions for default judgment is warranted in "cases involving material issues of fact, substantial amounts of money, or weighty policy determinations." *Id.* In addition, the trial court must balance the need for an efficient judicial system with the judicial preference for deciding disputes on the merits. *Id.* Furthermore, reviewing the decision of the trial court, we will not reweigh the evidence or substitute our judgment for that of the trial court. *Id.* Upon a motion for relief from a default judgment, the burden is on the movant to show sufficient grounds for relief under Indiana Trial Rule 60(B). *Id.*

[11] Here, the trial court granted the Deardorffs' motion to vacate the order of dismissal issued on January 6, 2022, based on the mistake prong of Indiana

Trial Rule 60(B)(1), which provides that a trial court “may relieve a party [] from a judgment, including a judgment by default, for the following reasons: (1) mistake, surprise, or excusable neglect.” On appeal, both parties agree and acknowledge that the trial court abused its discretion by granting Deardorff’s motion to vacate based on mistake. The Deardorffs assert that they “d[id] not intend to state that there was a mistake. The [Deardorffs’] motion to vacate dismissal was premised upon fraud and nothing in that motion referred to a mistake. Thus, the [t]rial [c]ourt, by selecting mistake as a reason for granting [Deardorffs’] motion to vacate could be nothing more than Scrivener’s Error brought about by the confused, divisive, misleading, and fraudulent pleadings of [Appellants].” (Appellees’ Br. p. 19).

[12] At the hearing, the Deardorffs admitted that their November 2 filing, which encompassed Deardorffs’ response to Appellants’ “Motion under Trial rule 12,” and which was filed in response to Appellants’ counsel’s limited appearance, was a strategy to avoid Appellants getting the “first bite” in presenting argument to the trial court on the issue of jurisdiction and service. (Tr. p. 5). The Deardorffs claimed that they did not want the trial court to consider the reference to jurisdiction in Appellants’ limited appearance while they did nothing, so they responded by filing a “motion preliminary” on November 2, 2022. (Tr. p. 6). The Deardorffs contend that their decision to file the motion on November 2, 2022, prior to Appellants filing their T.R.12 motion, and then subsequent choice not to respond once Appellants’ motion was filed, was a strategic decision, and not evidence of mistake, surprise or excusable neglect.

Rather, the Deardorffs claims that they relied on Indiana Trial Rule 60(B)(3) as the basis for their motion to vacate the January 6, 2023, dismissal order. To grant relief from a final judgment under Indiana Trial Rule 60(B)(3), would require “a movant to show that fraud prevented the movant from fully and fairly presenting the movant’s case.” *Outback Steakhouse of Fla., Inc. v. Markley*, 856 N.E.2d 65, 73 (Ind. 2006). In support of their argument, the Deardorffs advance that by filing their November 2, 2022, motion, they presented evidence to the trial court reflecting that jurisdiction resided with the trial court. Accordingly, the Deardorffs claim that as Appellants were aware by the November 2, 2022, filing that “no legitimate grounds existed” to contest the jurisdiction of the trial court or the service of process, Appellants’ challenge by filing their motion represented fraud. (Appellee’s Br. p. 19).

[13] Although the Deardorffs devoted several pages of briefing related to allegations of fraud, they never advanced that this fraud instigated their failure to respond to Appellants’ motion to dismiss. Instead, Deardorffs’ allegations of fraud litigated the substantive issue of jurisdiction and service of process, but did not reference any “procedural or equitable grounds justifying relief from the legal finality of the final judgment.” *Blichert v. Brososky*, 436 N.E.2d 1165, 1167 (Ind. App. 1982); Ind. T.R. 60(B).

[14] While we understand the trial court’s reluctance to “grudgingly grant[] the motion to vacate” based on the existence of a mistake, “an equitable attack on a final judgment is allowed [] only by the discretion of the trial court and only within the terms prescribed under T.R.60.” *Id*; (Tr. p. 19). As such, the trial

court's discretion is "circumscribed and limited by the eight categories listed in T.R. 60(B)." *Id.* Here, both Appellants and the Deardorffs acknowledge and adamantly posit that no mistake was present. The Deardorffs also failed to identify any fraud on the part of Appellants which could have contributed to the Deardorffs' failure to respond to Appellants' motion to dismiss. Accordingly, as the trial court's decision to grant the Deardorffs' motion to vacate on a finding of mistake was against the logic and effect of the facts presented and no facts exist to support a finding of fraud, we reverse the trial court's grant of the Deardorffs' motion to vacate.

CONCLUSION

[15] Based on the foregoing, we conclude that the trial court abused its discretion in granting the Deardorffs' motion to vacate the trial court's January 6, 2023, Order.

[16] Reversed.

[17] Bradford, J. and Weissmann, J. concur