MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

HomeRiver Group,
Appellant-Plaintiff/Counterdefendant,

v.

Shantoria Wills,
Appellee-Defendant/Counterplaintiff

December 18, 2023

Court of Appeals Case No. 23A-EV-1126

Appeal from the Madison Circuit Court

The Honorable Kevin M. Eads, Magistrate

Trial Court Cause No. 48C05-2211-EV-1273

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

[1] HomeRiver Group (HomeRiver) appeals an order denying a motion to set aside a $3,000 judgment in favor of Shantoria Wills. We affirm.

Facts and Procedural History

[2] In December 2021, Wills executed an agreement to lease a house located at 939 West Post Road in Anderson (the Rental). The lease period for the Rental was from January 1, 2022, through December 31, 2022. In November 2022, HomeRiver, the "management company" for the owner of the Rental, filed an eviction action (EV-1273) alleging that Wills had missed rent payments. Tr. Vol. 2 at 49.

[3] On December 19, 2022, the trial court held an eviction hearing. On that same date, Wills filed a small claims action (SC-1322) against HomeRiver that alleged "violation of lease agreement" and "property damage" and requested damages and costs totaling $8,529.63. Appellant's App. Vol. 2 at 65. The chronological case summary (CCS) contains various entries for December 19, 2022, the first of which was a hearing journal entry that reads as follows:

> Present: Plaintiff HomeRiverGroup; Defendant Wills, Shantoria [HomeRiver] appears in person. [Wills] appears in person. [Wills] ordered to vacate by 5:00 pm on December 30, 2022. Eviction to order upon [Wills's] failure to vacate. Any property of [Wills] left at the [Rental] is declared abandoned and [HomeRiver] may dispose of as it sees fit after 12/30/2022. Case reset for damages on January 27, 2023 at 10:00 am.

Id. at 3. Additionally, the CCS shows that on December 19, 2022, a "[d]amages hearing" was scheduled for both January 30, 2023, and February 27, 2023. *Id*.

[4] On December 20, 2022, a January 30, 2023 bench trial was scheduled for SC-1322. *Id*. at 6. Also on December 20, 2022, HomeRiver filed two motions concerning SC-1322: a motion to consolidate SC-1322 with EV-1273, and a motion for discovery. *Id*. at 69-70, 72.[1] In a January 2, 2023 order, the trial court granted HomeRiver's motion to consolidate the two cases, and thus EV-1273 became the cause number for both the eviction suit and the small claims property damages action. The January 2, 2023 order also vacated the January 30, 2023 hearing and stated: "Issues in this matter will be heard at the hearing on damages set in 49C05-2211-EV-001273 on February 27, 2023 at 10:00 AM." *Id*. at 74.

[5] On Friday, February 24, 2023, HomeRiver, by counsel, filed a motion to dismiss, which noted that Wills had "paid the balance in full." *Id.* at 75. In the motion, HomeRiver also requested that the trial court dismiss "this action without prejudice and for all other just and proper relief." *Id*. Our review of Odyssey, the case management system, shows that along with its motion to

[1] HomeRiver's appendix is missing page 3 of the 5-page CCS, resulting in the omission of a few entries between December 20, 2022, and March 2, 2023. *See* Appellant's App. Vol. 2 at 3, 4.

dismiss, HomeRiver submitted a proposed "Order Dismissing Case Without Prejudice." The trial court did not sign the proposed order.

[6] On Monday, February 27, 2023, Wills arrived for the damages hearing without legal representation. When, after waiting twenty-four minutes, neither HomeRiver nor its counsel appeared, the trial court held the hearing. Tr. Vol. 2 at 18-31. Wills testified that beginning in March 2022, the lower level of the split-level Rental "floods" when heavy rain occurs, and that water comes in through the middle level due to ceiling leaks. *Id*. at 20, 26-28. She stated that the water damaged furniture and caused black mold. In turn, Wills and her family had to spend "multiple nights" in a hotel, and she had to take her service animals to the veterinarian "multiple times due to the black mold causing medical conditions to them and their breathing." *Id.* at 21. Wills testified that she notified HomeRiver of the water problem via an online portal, text messages, and email and that she had a "back and forth" with Sherry Culivan, a HomeRiver representative. *Id*. at 23. Wills acknowledged that a mold inspector came out in October or November 2022, but she did not receive a copy of the inspector's report. *Id.* at 23-24.

[7] Wills testified that in February 2023, new flooring was installed at the Rental, but the Rental still has a "mildewy" odor. *Id.* at 25. [2] She estimated that she paid roughly $500 for about two weeks of hotel stays and approximately $4,000

[2] At a later hearing, evidence was introduced confirming that the flooring installation was completed on February 17, 2023. *Id*. at 54.

to replace saturated/ruined furniture, including a bedroom set, a mattress, a box spring, two televisions that had been on the floor, a sofa, a loveseat, and a recliner chair. *Id.* at 27-29. In addition, Wills explained that she filed a claim with her renter's insurance company but was denied coverage because "nobody ever came out to check or to give me a possible cause, even though I think it's the foundation now[.]" *Id*. at 29. She commented that besides the water damage, "the house is fine." *Id.* at 30.

[8] At the conclusion of the February 27, 2023 hearing, the trial court awarded Wills a total of $3,000. The trial court stated that of the $3,000, $500 would reimburse Wills for hotel fees, and $750 would reimburse her for approximately half of one month's rent that Wills paid while not living at the Rental. The trial court explained that the remainder would repay Wills for court costs and provide partial reimbursement for the $4,000 that Wills estimated she spent on replacement furniture. *Id*. at 30-31.

[9] The next day, the court issued an order stating that the matter had been set for a February 27, 2023 trial but that HomeRiver "failed to appear." Appellant's App. Vol. 2 at 77. The February 28, 2023 order also stated that the consolidation of the eviction case with Wills's damages countersuit was known to HomeRiver and that the parties are "obligated to be apprised of developments in their cases contained in court entries." *Id*. The order further stated that HomeRiver "filed a motion to dismiss the case without prejudice noting that [Wills] had brought herself current." Recognizing that HomeRiver both moved to dismiss its claim and acknowledged that Wills was current, the

trial court dismissed HomeRiver's claim with prejudice. The trial court reiterated HomeRiver's "unexplained failure to appear for trial" on Wills's counterclaim and stated that its February 27, 2023 $3,000 judgment against HomeRiver "remains as entered." *Id*.

[10] On March 1, 2023, HomeRiver filed its "Motion to Set Aside; Motion to Reset Hearing," citing Indiana Trial Rule 60(B). *Id*. at 78-79. On April 17, 2023, the trial court held a hearing on HomeRiver's motion. The hearing was attended by Wills, HomeRiver representatives, and HomeRiver's counsel. The day after the hearing, the trial court issued an order denying HomeRiver's motion to set aside judgment. HomeRiver appeals.

Discussion and Decision

[11] We begin by observing that Wills has not filed an appellee's brief. Where an appellee fails to file a brief, we do not undertake to develop arguments on that party's behalf; rather, we may reverse upon a prima facie showing of reversible error. *Morton v. Ivacic*, 898 N.E.2d 1196, 1199 (Ind. 2008). Prima facie error is error "at first sight, on first appearance, or on the face [of] it." *Id*. The "prima facie error rule" relieves this Court from the burden of controverting arguments advanced for reversal, a duty which remains with the appellee. *Geico Ins. Co. v. Graham*, 14 N.E.3d 854, 857 (Ind. Ct. App. 2014). Nevertheless, we are obligated to correctly apply the law to the facts in the record in order to determine whether reversal is required. *Id*.

[12] On appeal, HomeRiver phrases the issue as follows: "When the Tenant filed for a Notice of claim for Violation of The Lease/Property Damage, did the trial court err in granting damages outside of the four corners of the lease agreement." Appellant's Br. at 2, 3. HomeRiver cites the standard of review for small claims actions plus caselaw discussing contract interpretation. HomeRiver focuses on a lease provision wherein Wills agreed to hold harmless HomeRiver "from any loss or damage to such property arising from any cause whatsoever" and to secure insurance for her personal property.[3] Appellant's App. Vol. 2 at 25.

[13] We stress that HomeRiver is appealing from the denial of a Trial Rule 60(B) motion in which HomeRiver alleged "mistake, surprise or excusable neglect" and a "meritorious defense." *Id*. at 79. A motion made under Trial Rule 60(B) to set aside a judgment is addressed to the equitable discretion of the trial court. *U.S. Bank, Nat'l Ass'n v. Miller*, 44 N.E.3d 730, 738 (Ind. Ct. App. 2015), *trans. denied* (2016). "Typically, we review a trial court's ruling on a motion to set aside a judgment for an abuse of discretion, meaning that we must determine whether the trial court's ruling is clearly against the logic and effect of the facts and inferences supporting the ruling." *Hair v. Deutsche Bank Nat'l Tr. Co.*, 18 N.E.3d 1019, 1022 (Ind. Ct. App. 2014) (citation omitted). When we review the

[3] HomeRiver cites the incorrect lease provision throughout its argument. *See* Appellant's Br. at 5, 6, 8 (citing paragraph 34 rather than paragraph 35). However, HomeRiver's initial citation was to paragraph 35; hence, our review was not unduly hampered. *See* Appellant's Br. at 4.

trial court's determination, we do not reweigh evidence. *KWD Industrias SA DE CV v. IPM LLC*, 129 N.E.3d 276, 280 (Ind. Ct. App. 2019).

[14] Indiana Trial Rule 60(B)(1) provides that a trial court may relieve a party or its legal representative from a judgment based on mistake, surprise, or excusable neglect if the motion is filed within one year of the judgment and the moving party alleges a meritorious claim or defense. Rule 60(B) "affords relief only in 'extraordinary circumstances' that are not the result of the moving party's fault or negligence." *State v. Moody*, 51 N.E.3d 281, 283 (Ind. Ct. App. 2016) (quoting *Z.S. v. J.F.*, 918 N.E.2d 636, 640 (Ind. Ct. App. 2009)). The movant must carry the burden to demonstrate that relief is necessary and just. *Z.S.*, 918 N.E.2d at 639.

[15] "There are no fixed standards" as to what constitutes mistake, surprise, or excusable neglect for purposes of a Rule 60(B) motion. *Menard, Inc. v. Lane*, 68 N.E.3d 1106, 1113 (Ind. Ct. App. 2017), *trans. denied*. Nevertheless, a movant must go beyond a mere recitation of the words "mistake, surprise, or excusable neglect" and describe the actual error that occurred. *Moody*, 51 N.E.3d at 284. "A trial court's discretion in this area is necessarily broad because any determination of mistake, surprise, or excusable neglect turns upon the particular facts and circumstances of each case." *Z.S.*, 918 N.E.2d at 640 (quoting *Fitzgerald v. Cummings*, 792 N.E.2d 611, 614 (Ind. Ct. App. 2003)).

[16] In its 60(B) motion, HomeRiver acknowledged that the cases were consolidated in early January 2023 but stated that it "believed" that HomeRiver and Wills

"were in agreement as to the disposition of all matters in advance of the hearing set" for February 27, 2023.[4] Appellant's App. Vol. 2 at 78. HomeRiver claimed that had it known that "all issues were not resolved," it would not have filed its motion to dismiss and would have appeared at the hearing. *Id*. at 79. Based upon conversations with her client, HomeRiver's counsel claimed "complete surprise." *Id*. HomeRiver alleged a "meritorious defense," claiming that it was not provided with notice of problems or an opportunity to cure per Indiana Code Section 32-31-8-6(b) and asserting that it would "defend the counterclaim with vigor." *Id*. [5]

[17] At the April 17, 2023 hearing on the motion to set aside judgment, HomeRiver's counsel stated that it was her understanding that HomeRiver and Wills had "worked everything out[.]" Tr. Vol. 2 at 40. HomeRiver's counsel argued that she "would have thought" that Wills would not have paid "back rent that was owing" if Wills still had a claim for damages. *Id.* at 40-41. Much of the hearing centered around evidence of work orders and communication about repairs. Shortly before the hearing ended, HomeRiver's counsel mentioned renter's insurance required by the lease. The trial court stated that

[4] HomeRiver's motion lists a hearing date of February 28, 2023, rather than February 27, 2023. However, this typographical error does not affect our analysis or the outcome of this case.

[5] Indiana Code Section 32-31-8-6((b) sets forth the notice, timeframe, and failure/refusal to repair requirements that must exist before a tenant may bring an action against a landlord.

insurance and subrogation would be questions addressed "if the judgement was set aside and we retried this[.]" *Id*. at 57.

[18] In its order, issued the day after the hearing on HomeRiver's motion to set aside judgment, the trial court provided detailed findings to support its denial. The findings relevant to this appeal are as follows:

> [HomeRiver] seeks to set aside the judgment for mistake, surprise, or excusable neglect and asserts that it has a meritorious defense.
>
> The testimony from [HomeRiver's] representatives at motion hearing establishes that a [HomeRiver] representative had reported to [HomeRiver's] counsel that the matter was resolved and the case could be dismissed. No evidence was presented to establish that [Wills] had agreed to any resolution of *her* claim. No mutual release of claims has been submitted. [HomeRiver's] motion to dismiss [its] claim spoke only to [its] claim.
>
> [HomeRiver] asserts a meritorious defense and has presented some evidentiary support that [it] was not made aware by [Wills], in a timely manner, of complaints regarding needed repairs which led to the basis for [Wills's] claim. Further, once [HomeRiver] was made aware, [Wills's] complaints were quickly addressed. However, one [HomeRiver] representative testified about an inspection of the property made in October, 2022. That inspection revealed a leak in the roof. Exhibit 9 also included photos as part of the October inspection report showing ceiling damage from a leak. No evidence was presented to show that the roof leak was addressed until at least January, 2023.

Appealed Order at 1-2 (emphasis added). Stated otherwise, the trial court found as follows: HomeRiver failed to demonstrate mistake, surprise, or excusable

neglect because it presented no evidence that HomeRiver could reasonably believe that Wills had dropped her claim; and HomeRiver failed to present evidence that it addressed known ceiling leaks in less than three months, hence undercutting its meritorious defense of notice and lack of reasonable opportunity to cure. Accordingly, the trial court found no justification for setting aside the $3,000 judgment.

[19] On appeal, HomeRiver does not challenge the finding that no evidence was presented to establish that Wills had agreed to any resolution of her claim. Likewise, HomeRiver does not challenge the finding that no mutual release of claims was submitted. Additionally, and importantly, HomeRiver does not contest the trial court's finding that HomeRiver's motion to dismiss spoke only to its eviction claim.[6] Therefore, these findings stand as proven. *See In re De.B.*, 144 N.E.3d 763, 772 (Ind. Ct. App. 2020) ("Any unchallenged findings stand as proven."). Considering that no exhibit contradicted these findings, no testimony revealed that Wills was withdrawing or surrendering her damages claim, HomeRiver's dismissal motion had not been granted, and the February 27, 2023 damages hearing date was confirmed in the trial court's January 2, 2023 order, any challenge to the lack of mistake, surprise, or excusable neglect determination would have been difficult, to say the least.

[6] At one point during the hearing on the motion to set aside judgment, the trial court asked HomeRiver's counsel, "[H]ow could you think that you could dismiss the defendant's counterclaim?" Tr. Vol. 2 at 40.

[20] Instead, in its appellant's brief, HomeRiver focuses exclusively upon the meritorious defense prong of Trial Rule 60(B). HomeRiver highlights one paragraph in the lease that references renter's insurance and a hold harmless provision. However, given that on appeal HomeRiver does not challenge the trial court's determination that HomeRiver failed to demonstrate mistake, surprise, or excusable neglect because it presented no evidence that HomeRiver could have reasonably believed that Wills had dropped her claim, we need not analyze the trial court's determination concerning a meritorious defense.

[21] Simply put, absent an initial showing of mistake, surprise, or excusable neglect, we do not reach the question of whether HomeRiver made a prima facie showing of a meritorious defense. We reiterate that to prevail on a Trial Rule 60(B) motion, a movant is required to show both mistake, surprise, or excusable neglect as well as a meritorious defense. *See Li v. NextGear Cap., Inc.*, 136 N.E.3d 313, 321 (Ind. Ct. App. 2019). Where, as here, a trial court finds no mistake, surprise, or excusable neglect and the appellant does not challenge that finding, a meritorious defense argument, even if compelling, does not by itself demonstrate prima facie error in the trial court's denial of a motion to set aside the judgment. In light of the trial court's broad discretion in such matters and the particular circumstances presented in this case, we cannot say that the trial

court's decision was clearly against the logic and effect of the facts and inferences supporting the ruling.[7] Therefore, we affirm.

[22] Affirmed.

Riley, J., and Mathias, J., concur.

[7] Incidentally, within its $3,000 judgment, the trial court included reimbursement for only a fraction of the estimated cost of replacement furniture and no reimbursement for veterinarian bills. The judgment constitutes just slightly more than one third of the $8,529.23 in damages and costs requested by Wills.