



ATTORNEY FOR APPELLANT

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IN THE
COURT OF APPEALS OF INDIANA

RAB Performance Recoveries,
LLC,
Appellant-Plaintiff,

v.

Fred E. Knight a/k/a Fred E.
Knight, Sr.,
Appellee-Defendant.

July 16, 2021

Court of Appeals Case No.
21A-CC-342

Appeal from the Vigo Superior
Court

The Honorable Sarah K. Mullican,
Judge

Trial Court Cause No.
84D03-1011-CC-10285

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Plaintiff, RAB Performance Recoveries, LLC (RAB), appeals the trial court's Order vacating the default judgment entered against Appellee-Defendant, Fred E. Knight (Knight), on July 6, 2012.

[2] We reverse.

ISSUE

[3] RAB presents one issue for our review, which we restate as follows: Whether the trial court abused its discretion when it vacated the default judgment entered against Knight pursuant to Indiana Trial Rule 60(B).

FACTS AND PROCEDURAL HISTORY

[4] On November 30, 2010, RAB filed a Complaint against Knight for the principal sum of \$49,482.58 on an unpaid Chase bank balance. On May 14, 2012, Knight was served with the summons and Complaint. RAB filed a motion for default judgment after Knight did not answer the Complaint and the trial court subsequently entered a default judgment against Knight on July 6, 2012.

Proceedings supplemental were started to collect on the outstanding judgment and a garnishment order was entered on October 25, 2012. In response to the garnishment order, funds were withheld from Knight's wages and, through the Clerk of the Courts, distributed to RAB. Funds continued to be withheld until January 15, 2013 when Knight's employer responded that Knight was no longer in its employ. When RAB commenced garnishment proceedings at Knight's new employer in 2019, Knight objected to the garnishment. On September 29,

2020, he filed a motion to vacate the default judgment entered in 2012. On February 3, 2021, RAB filed its motion in opposition. That same day, the trial court conducted a hearing on Knight’s motion. During the proceeding, Knight’s counsel, without submitting any supporting evidence, asserted that the debt was not Knight’s, but rather was the result of “fraud perpetrated by an ex-wife.” (Transcript p. 5). Five days later, on February 8, 2021, the trial court vacated the default judgment.

[5] RAB now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

[6] RAB contends that the trial court erroneously granted Knight’s motion to vacate the eight-year-old default judgment. Whether to grant a motion for relief from judgment under Indiana Trial Rule 60(B) is within the discretion of the trial court, and we reverse only for an abuse of that discretion. *Jo.W. v. Je.W.*, 952 N.E.2d 783, 785 (Ind. Ct. App. 2011). An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances before it, or if the trial court has misinterpreted the law. *Id.* When we review a trial court’s decision, we will not reweigh the evidence. *Id.* Before reaching the merits, we initially observe that Knight has not filed an appellate brief.

“Accordingly, we do not undertake the burden of developing arguments for the appellee because that is the appellee’s duty.” *Maser v. Hicks*, 809 N.E.2d 429, 432 (Ind. Ct. App. 2004). When an appellee does not file a brief, we generally apply a less stringent standard of review and may reverse the trial court’s

decision if the appellant makes a *prima facie* showing of reversible error. *Id.* “*Prima facie*” is defined as “at first sight, on first appearance, or on the face of it.” *Id.* at 432.

[7] During the hearing, Knight alleged that the incurred debt was the result of fraud perpetrated by an ex-wife. Pursuant to Ind. T.R. 60(B)(3), a motion for relief from judgment based on intrinsic fraud, extrinsic fraud, or fraud on the court may be brought if the fraud was committed by an adverse party and had an adverse effect on the moving party. *Stonger v. Sorrell*, 776 N.E.2d 353, 356 (Ind. 2002). A motion for relief under T.R. 60(B)(3) must be filed within one year after the judgment was entered. *See* T.R. 60(B). Knight filed his motion to vacate the default judgment he now wishes to set aside more than eight years after the order was entered. Accordingly, he cannot obtain relief.

[8] However, T.R. 60(B) “does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or for fraud upon the court.” *See* T.R.60(B). Therefore, we must determine whether Knight’s motion is “an independent action.” *See id.*

[9] An independent action can be brought within a reasonable time after judgment and must allege either extrinsic fraud or fraud upon the court. *Stonger*, 776 N.E.2d at 356. An independent action is subject to the doctrine of laches, and its remedy is limited. *Id.* While intrinsic fraud involves perjury or falsification of documents, extrinsic fraud and fraud upon the court require more than just the presentation of evidence that is false. *Glover v. Torrence*, 723 N.E.2d 924,

933 (Ind. Ct. App. 2000). Extrinsic fraud is best characterized as fraud outside the issues of the case and may be found where the alleged fraud prevented “a trial of the issue in the case or improperly procured the exercise of the court’s jurisdiction.” *Id.* Fraud upon the court, while similar to extrinsic fraud, has been more narrowly limited to include only “the most egregious of circumstances where an unconscionable plan or scheme was used to improperly influence the court’s decision, and such acts prevented the opposing party from fully and fairly presenting his case.” *Id.*

[10] We conclude that Knight failed to carry his burden of proving fraud as an independent action. Despite Knight’s premise of fraud committed by an ex-wife, he failed to submit any evidence to support this allegation made by his counsel during the hearing. He did not bring forward evidence, whether in the form of perjured testimony under oath in open court or in a pleading or affidavit, necessary to support a claim for extrinsic fraud, and neither did he allude to an unconscionable plan or scheme to influence the court’s decision in entering a default judgment necessary to proceed for fraud on the court. *See Glover*, 723 N.E.2d at 932.

[11] Even if we analyze Knight’s allegation pursuant to the catch-all provision of T.R. 60(B), which allows for “any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs ... (3),” Knight’s cause fails. *See* T.R. 60(B)(8). The motion for relief pursuant to the catch-all provision of the Trial Rule must be filed within a reasonable time and the movant must present a meritorious defense. *See* T.R. 60(B). A trial court

may grant this relief “upon a showing of exceptional circumstances justifying extraordinary relief [so long as the] exceptional circumstances do not include mistake, surprise, or excusable neglect[.]” *Fields v. Safway Group Holdings LLC*, 118 N.E.3d 804, 810 (Ind. Ct. App. 2019), *trans. denied*.

[Trial Rule] 60(B)(8) is an omnibus provision which gives broad equitable power to the trial court in the exercise of its discretion and imposes a time limit based only on reasonableness. Nevertheless, under T.R. 60(B)(8), the party seeking relief from the judgment must show that its failure to act was not merely due to an omission involving the mistake, surprise or excusable neglect. Rather some extraordinary circumstances must be demonstrated affirmatively. This circumstance must be other than those circumstances enumerated in the preceding subsections of T.R. 60(B).

Brimhall v. Brewster, 864 N.E.2d 1148, 1153 (Ind. Ct. App. 2007).

[12] During the hearing, it was established that Knight was properly served with the Complaint and shortly after the default judgment was entered in 2012, his wages were garnished for a period of time. Even though he now claims that he was a road truck driver whose paycheck was “all over the board,” and thus he was unaware of the garnishment, he does not dispute that the Complaint was properly filed and served. (Tr. p. 7). We cannot say that Knight’s delay in bringing this fraud allegation before the court more than eight years later and after a second garnishment proceeding was commenced is reasonable or falls within exceptional circumstances. Accordingly, as the trial court abused its discretion in vacating the default judgment, we reverse the trial court’s Order.

CONCLUSION

[13] Based on the foregoing, we hold that the trial court abused its discretion in vacating the default judgment.

[14] Reversed.

[15] Mathias, J. and Crone, J. concur