



## Case Summary and Issue

Taylor and Sheryl Reynolds appeal the trial court's order denying their motion to dismiss Vernon and Sanjuanita Bothwell's complaint for failure to timely comply with Indiana Trial Rule 75(B). The Reynolds raise one issue that we restate as whether the trial court abused its discretion in denying their motion to dismiss. Concluding the trial court did not err in denying the motion, we affirm.

## Facts and Procedural History

In July 2009, the Bothwells filed a complaint against the Reynoldses in Putnam County apparently alleging damages from an automobile accident.<sup>1</sup> One month later, the Reynoldses filed a motion to dismiss or transfer the case to Marion County as a county of preferred venue. The trial court granted the motion to transfer on September 28, 2009. On October 29, 2009, the Reynoldses filed a motion to dismiss pursuant to Indiana Trial Rule 75(B)(2) for failure to transfer. The Reynoldses claimed the Bothwells had not paid the costs to transfer the case within twenty days of the order transferring venue as required by the rule. On November 4, 2009, the trial court denied the motion as moot, ordered the case transferred to Marion County, and closed the case in Putnam County. The Chronological Case Summary ("CCS") reveals that the case was transferred to Marion County that same day. The Reynoldses Motion to Reconsider was denied and the Reynoldses initiated this appeal.

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<sup>1</sup> The Reynoldses' Appendix does not include several of the pleadings to which the parties refer in their briefs, such as the complaint, answer, and motion to transfer venue. We direct the parties to Indiana Appellate Rule 22(C), which requires any record material cited in a brief to be included in an appendix.

## Discussion and Decision

The Reynoldses argue the trial court erred in denying their motion to dismiss. We reverse a trial court's denial of a motion to dismiss only for an abuse of discretion. Shelton v. Wick, 715 N.E.2d 890, 892 (Ind. Ct. App. 1999), trans. denied. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Id.

Indiana Trial Rule 75(B) provides in relevant part:

(1) Whenever a claim or proceeding is filed which should properly have been filed in another court of this state, and proper objection is made, the court in which such action is filed shall not then dismiss the action, but shall order the action transferred to the court in which it should have been filed.

(2) The person filing the action shall, within twenty (20) days, pay such costs as are chargeable upon a change of venue and the papers and records shall be certified to the court of transfer in like manner as upon change of venue and the action shall be deemed commenced as of the date of filing the action in the original court.

(3) If the party filing the action does not pay the costs of transfer within twenty (20) days of the order transferring venue, the original court shall dismiss the action without prejudice and shall order payment of reasonable attorney fees to the party making proper objection.

According to the Reynoldses, the Bothwells failed to pay the costs of transfer within twenty days of the order transferring venue as required by the rule, and the trial court therefore erred in denying the Reynoldses' motion to dismiss because subsection (3) provides the trial court "shall dismiss the action." (Emphasis added.) However, even assuming the transfer fee was paid commensurate with the actual transfer of the case after the twenty days expired,<sup>2</sup> we find no error.

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<sup>2</sup> There is no specific mention in the record of when the costs were paid. However, a CCS entry dated September 29, 2009, one day after the Motion to Transfer was granted, states "Clerk will transfer cause upon

The trial court has broad authority to order enlargements of time, which are specifically contemplated and authorized by the trial rules. Chandler v. Dillon, 754 N.E.2d 1002, 1005 (Ind. Ct. App. 2001). In this regard, Ind. Trial Rule 6(B) provides:

When an act is required or allowed to be done at or within a specific time by these rules, the court may at any time for cause shown:

- (1) order the period enlarged, with or without motion or notice, if request therefor is made before the expiration of the period originally prescribed or extended by a previous order; or
- (2) upon motion made after the expiration of the specific period, permit the act to be done where the failure to act was the result of excusable neglect; but, the court may not extend the time for taking any action for judgment on the evidence under Rule 50(A), amendment of findings and judgment under Rule 52(B), to correct errors under Rule 59(C), statement in opposition to motion to correct error under Rule 59(E), or to obtain relief from final judgment under Rule 60(B), except to the extent and under the conditions stated in those rules.

When interpreting trial rules, we apply the rules of statutory construction. Daughterty v. Robinson Farms, Inc., 858 N.E.2d 192, 197 (Ind. Ct. App. 2006), trans. denied. Our objective when construing the meaning of a rule is to ascertain and give effect to the intent underlying the rule. Id. If the language of the rule is clear and unambiguous, it is not subject to judicial interpretation. Id.

A Trial Rule 75(B) motion to transfer is not one of the express and absolute exceptions to Trial Rule 6(B). See White v. Livengood, 390 N.E.2d 696 (Ind. Ct. App. 1979). The fact that Trial Rule 75(B) is not included in this list of exceptions leaves the trial

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receipt of transfer filing fee.” Appellants’ Appendix at 5. The trial court’s November 4, 2009, denial of the Motion to Dismiss begins, “Counsel for Plaintiff files transfer to Marion County,” and a CCS entry dated that same day states, “Clerk transfers cause to Marion County.” Id. The clear implication is that the transfer costs were paid on November 4, 2009.

court with the discretion to order enlargements of time in such cases where there is excusable neglect and no prejudice to the other party. This appears to be what the trial court did in this case, and we find no error. The trial court did not abuse its discretion in denying the Reynoldses' motion to dismiss.<sup>3</sup>

### Conclusion

The trial court did not err in denying the Reynoldses' motion to dismiss.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.

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<sup>3</sup> We note that although the Reynoldses were so concerned about the Bothwells' untimely transfer of venue that they filed a motion to dismiss the Bothwells' complaint, the Reynoldses failed to timely file their own reply brief and had to seek permission from this court to file it belatedly.