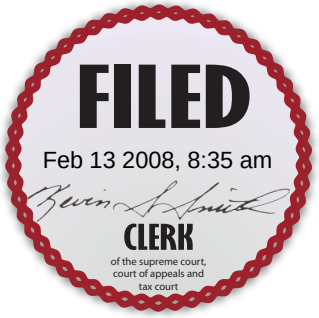

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IN THE
COURT OF APPEALS OF INDIANA

BROTHERHOOD MUTUAL INSURANCE COMPANY a/s/o CAPITAL CITY BAPTIST CHURCH,	)	
Appellant-Plaintiff,	)	
vs.	)	No. 32A01-0709-CV-439
NATHAN LAUBE and JACQUELINE LAUBE d/b/a LAUBE CONSTRUCTION,	)	
Appellees-Defendants.	)	

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable David H. Coleman, Judge
Cause No. 32D02-0703-CC-48

February 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Brotherhood Mutual Insurance Company ("Brotherhood") appeals from the trial court's denial of its motion to correct error following a judgment in favor of Jacqueline Laube. Brotherhood presents a single dispositive issue for our review, namely, whether the trial court erred when it set aside a default judgment against Jacqueline.

We reverse and remand with instructions.

FACTS AND PROCEDURAL HISTORY

After a severe hail storm hit Indianapolis on April 14, 2006, Tim Thorne, the Pastor at Capital City Baptist Church ("the Church"), hired Nathan Laube, d/b/a Laube Construction, to inspect the roof of the church. After that inspection, Nathan told Thorne that the roof had sustained hail damage and needed to be replaced. But a subsequent inspection by an engineer hired by Brotherhood revealed that the damage had not been caused by hail, but was the result of vandalism. The Church submitted a claim for the damage, and Brotherhood paid $25,021.79 on that claim.

Brotherhood, as subrogee of the Church, filed a complaint against Nathan and Jacqueline, d/b/a Laube Construction, alleging damages as a result of Nathan's use of a "blunt object to negligently or intentionally damage the Church's shingles." Appellant's App. at 7. The complaint alleged that Jacqueline is a "principal and/or co-owner of Laube" Construction and is, therefore, "jointly and severally liable for the damage Nathan caused." Id. Brotherhood requested trial by jury. Neither Nathan nor

Jacqueline filed answers to the complaint,[1] and on May 8, 2007, Brotherhood filed a motion for default judgment against each of them.

The trial court granted the motion for default judgment. At a hearing to determine damages, Jacqueline appeared, pro se. No Answer had yet been filed, and Jacqueline had not filed any pleading with the trial court. During the damages hearing, however, Jacqueline testified that Nathan is her son, but that she has nothing to do with Laube Construction. She further testified that she picked up a check from Thorne on Nathan's behalf on one occasion. And Jacqueline acknowledged having received a copy of the complaint naming her a defendant.

After taking the matter under advisement, the trial court issued its final judgment, stating in relevant part:

> Although she received the Summons and Complaint and failed to file an Answer, the court finds that Jacqueline Laube, who is Nathan Laube's mother, does not own and was not a partner with her son in the business during the time in question. She admitted that she picked up a check for her son from the church because he had "blown his leg out." She stated that Laube Construction Company was solely owned by Nathan, and that he now lives in Northern Wisconsin.
>
> The court concludes that the plaintiff is entitled to judgment against Nathan Laube, d/b/a Laube Construction, as follows:
>
> compensatory damages in the amount of $25,021.79; treble damages in the amount of $50,043.58 pursuant to I.C. [§] 34-24-3-1 and I.C. [§] 35-43-1-2; and prejudgment interest in the amount of $1,486.23. The court finds the plaintiff is not entitled to judgment against Jacqueline Laube.

Appellant's App. at 22-23 (emphasis added).

[1] Nathan faxed a letter to Brotherhood's counsel denying responsibility for the damage to the roof. Brotherhood's counsel, in turn, wrote Nathan a letter stating that he was required to file an Answer or he would face a possible default judgment.

Brotherhood filed a motion to correct error alleging that the trial court improperly set aside the default judgment as to Jacqueline. Brotherhood argued that there was no basis for setting the judgment aside since Jacqueline had not moved the court to do so. Further, Brotherhood argued that it was denied its right to due process. The trial court denied the motion to correct error, and this appeal ensued.

DISCUSSION AND DECISION

We review a trial court's decision to deny a motion to correct error for an abuse of discretion. Principal Life Ins. Co. v. Needler, 816 N.E.2d 499, 502 (Ind. Ct. App. 2004). An abuse of discretion will be found when the trial court's action is against the logic and effect of the facts and circumstances before it and the inferences that may be drawn therefrom. Id. An abuse of discretion also results from a trial court's decision that is without reason or is based upon impermissible reasons or considerations. Id.

Initially, we note that Jacqueline has failed to file an appellee's brief. In such a case, we need not undertake the burden of developing arguments for Jacqueline. Butrum v. Roman, 803 N.E.2d 1139, 1142 (Ind. Ct. App. 2004), trans. denied. Applying a less stringent standard of review, we may reverse the trial court if the appellant establishes prima facie error. Id.

While the trial court had discretion to conclude that Brotherhood was not entitled to recover any damages from Jacqueline, the court's findings and conclusions indicate that the court sua sponte set aside the default judgment against Jacqueline. But that is not permitted under the facts of this case. While Trial Rule 60(A) permits the modification of a judgment sua sponte for the purpose of correcting clerical errors, Trial

Rule 60(B), the only rule that might apply here, permits setting aside a judgment only upon the motion of a party. Town of St. John v. Home Builders Ass'n of Northern Ind., Inc., 428 N.E.2d 1299, 1302 (Ind. Ct. App. 1981).

Our Supreme Court squarely addressed this issue in State ex rel. Dale v. Superior Court of Boone County, 260 Ind. 661, 299 N.E.2d 611, 611 (1973), and held:

> We find that [Trial Rule 60] does not authorize a court on its own motion to modify or vacate a judgment except under paragraph 'A' thereof entitled 'Clerical Mistakes.'. . . If the grounds for such modification or vacation of such a judgment fall under Paragraph (B) of Rule 60, it must be presented by a motion of the parties which specifically provides for a hearing under paragraph (D) thereof. [When those prerequisites are not met,] the court ha[s] no power or authority to modify a judgment on its own motion. . . .

Here, there is no question that Trial Rule 60(A) is inapplicable. The record shows that Jacqueline did not file a Trial Rule 60(B) motion or any other pleadings with the trial court. Further, at no time did the trial court notify the parties that it was considering Jacqueline's testimony at the damages hearing as support for setting aside the default judgment under Trial Rule 60(B). Without any motion or notice of a Trial Rule 60(B) hearing, the trial court had no authority to set aside the default judgment against Jacqueline. See id.

We hold that the trial court erred as a matter of law when it set aside the default judgment entered against Jacqueline on May 9, 2007, and we remand with instructions to reinstate the default judgment, and for such other proceedings that are not inconsistent with this opinion.

Reversed and remanded with instructions.

BAILEY, J., and CRONE, J., concur.