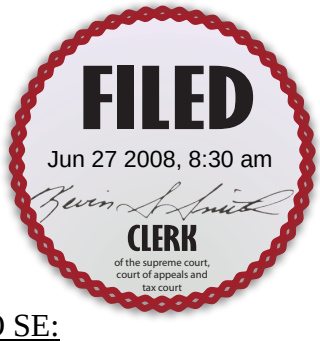


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# IN THE
# COURT OF APPEALS OF INDIANA

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| IN RE THE MARRIAGE OF: | ) | |
| | ) | |
| DEBRA L. GUYER (n/k/a Debra L. Stover), | ) | |
| | ) | |
| Appellant-Petitioner, | ) | |
| | ) | |
| vs. | ) | No. 30A05-0711-CV-655 |
| | ) | |
| STEPHEN GUYER, | ) | |
| | ) | |
| Appellee-Respondent. | ) | |

APPEAL FROM THE HANCOCK SUPERIOR COURT
The Honorable Terry K. Snow, Judge
Cause No. 30D01-9905-DR-208

**June 27, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

## Case Summary and Issue

Debra Guyer appeals the trial court's judgment awarding her $24,880 relating to Steven Guyer's failure to pay a portion of his son's college expenses pursuant to the terms of a dissolution decree. The trial court's judgment, though technically favorable to Debra, effectively granted Steven relief from judgment under Trial Rule 60(B)(8). We conclude that the trial court's grant was an abuse of discretion because, based on the evidence presented, the trial court could not have concluded that Steven filed his motion for relief within a reasonable time.

## Facts and Procedural History

On May 11, 2000, the trial court, with Judge Richard Payne presiding (the distinction between presiding judges becomes significant later on), entered a dissolution decree that, among other things, dissolved Debra and Steven's twenty-three year marriage and required Steven to pay 62 percent of college expenses for his son, Aaron Guyer, who was sixteen years old at the time.[1] At some point in late 2001 or early 2002, Aaron decided to enroll at the University of Southern California for the fall 2002 term.

On July 31, 2002, Steven filed a motion seeking modification of his obligation to pay Aaron's college expenses, arguing that his obligation to pay 62 percent of such

[1] Specifically, the provision of the dissolution decree pertaining to college expenses states as follows:

> 10. [Debra] shall also pay Thirty-eight percent (38%) of the childrens' [sic] post-secondary educational expense with [Steven] to pay Sixty-two percent (62%) of said expense after the deduction of scholarships, grants, student loans and any other form of financial aid which the child is awarded. Said college expenses shall be calculated by using the institution's standard charge for a one-half (½) share of a 2-person unit plus a 15-meal per week meal plan to which shall be added the cost of tuition, books, lab fees and activity fees. . . .

Appellant's Appendix at 50. Debra and Steven also have a daughter, but she became emancipated several months after the trial court entered the dissolution decree, and payment obligations relating to her college expenses are not at issue in this appeal.

expenses was capped at whatever the cost would have been for Aaron to attend a similar school in Indiana. On January 29, 2003, the trial court, with Judge Terry Snow presiding, denied Steven's motion (the "January 2003 Order"), stating that "[t]he parents' responsibility for Aaron Guyer's first year of college at the University of Southern California totals $17,992.00 of which [Steven] bears 62% or Eleven Thousand One Hundred Fifty-five Dollars ($11,155.00) . . . ." Id. at 73. On February 20, 2003, Steven filed a motion to correct error, which the trial court, with Judge Snow presiding, denied on July 14, 2003 (the "July 2003 Order"), explaining that there was no difference between in-state and out-of-state schools for purposes of determining Steven's obligation:

> The Court now finds that the original divorce decree issued by this Court on May 11, 2000, specifically called for the payment of post[-]secondary educational expenses. [In] Paragraph 10 of that order the Court specifically states that [Steven] shall be required to pay 62% of said expenses after deduction for scholarships, grants, student loans and orther [sic] forms of financial aid which child is awarded. Said order is clear and unambiguous on its face. Said previous order of this Court does not limit the college expenses to in[-]state school.

Id. at 102.

On February 5, 2004, Debra filed a motion alleging that Steven had not paid his portion of college expenses for Aaron's first and second years. As a remedy, Debra requested that the trial court order Steven to pay his portion through a wage withholding order. On March 1, 2004, the trial court, with Judge Payne again presiding, conducted a hearing on the motion, during which Debra limited her presentation of evidence to expenses incurred during Aaron's second year only. Debra testified that Aaron's expenses for the second year totaled $35,562 and that this amount was nearly double the

expenses for the first year because USC rescinded a scholarship it had granted Aaron for the first year and because Aaron had to live off-campus due to a shortage of on-campus housing. On March 5, 2004, the trial court granted Debra's motion (the "March 2004 Order"), finding that Aaron's college expenses for his second year totaled $35,562 and that Steven was obligated to pay 62 percent of that amount ($22,048.44) through a wage withholding order. From May to December 2004, Steven was deployed overseas with the Indiana National Guard, and Aaron graduated in the Spring of 2006 without further litigation concerning Steven's obligation.

However, on December 11, 2006, after Aaron had graduated, Debra filed a motion alleging that Steven had an arrearage of $61,176.16. On December 29, 2006, Steven filed a motion for relief from judgment pursuant to Indiana Trial Rule 60(B)(8), alleging, among other things, that Aaron's expenses increased substantially following his first year and that Steven was unable to petition for a modification of his obligation after the first year because Debra "did not inform [him] that Aaron had lost virtually all of his financial assistance from USC after his first year of college." Id. at 122. As relief, Steven requested that the trial court limit his obligation for each year to an amount similar to that of the January 2003 Order ($11,155), subject to a reasonable rate of inflation.

On March 27 and June 25, 2007, the trial court, with Judge Snow again presiding, conducted hearings on the parties' motions. On August 22, 2007, the trial court entered findings of fact and conclusions of law. In its findings and conclusions, the trial court concluded that, regarding Steven's obligation for the first and second years, it was bound by the January 2003 Order and the March 2004 Order, and therefore determined Steven

had to pay the amounts stated in those orders – $11,155 and $22,048, respectively. As to Steven's obligation for the third and fourth years, the trial court made the following relevant findings:

> 11. That on the 29th day of January, 2003, in response to [Steven's July 31, 2002, motion], this Court entered an Order which provided, in part, as follows:
>
> > "The Parties' responsibility for Aaron Guyer's first year of college at University of Southern California totaled $1[7],992, of which [Steven] bears 62% or $11,155, . . ." (emphases added)
>
> 12. That [the January 2003 Order] did not in any way deal with the Parties' responsibilities for the cost of Aaron's education at USC after his first year. It was this courts [sic] intention that the [January 2003 Order] only apply to the first year due to the large amount of aid to the child and the court's experience showing that many schools front load aid to induce students to attend only to have that aid withdrawn for later years.
>
> 13. That the evidence at the hearing established that after deducting all the financial aid provided by USC the cost of Aaron's first year at USC was $17,992; that [Steven] stipulated in his testimony at trial that he believed that cost would increase by 3-5% each year for the remaining three years of Aaron's education and such an increase was reasonable and necessary; that applying a 4% cost increase factor to the basic cost for the first year supports a Finding that [Steven] believed that the cost for Aaron's remaining three years at USC, if you use the first year as the starting point, would have been $18,711, $19,459, and $20,241, respectively[,] if aid had continued. [Steven's] 62% share would be $11,600, $12,064 and $12,549, respectively.
>
> . . .
>
> 18. That neither [Debra] nor Aaron ever informed [Steven] that USC had withdrawn nearly all of the financial aid package which it had provided to Aaron during his Freshman year.
>
> 19. That for reasons related to housing shortages at USC, after his first year[,] Aaron could not live in a double occupancy room in [a] dormitory and eat his meals in a cafeteria as contemplated by Paragraph 10 of the Decree of Dissolution of Marriage.
>
> 20. That the total cost of Aaron's education at USC increased substantially due to the fact USC withdrew nearly all of the financial aid package it had provided to Aaron for his first year at USC and because USC did not provide dormitory housing or meals during Aaron's second and third years.

> 21. That [Debra] nor [Steven] had the financial resources to allow them to pay their respective shares of the cost of Aaron's college education after his first year.
>
> 22. That [Debra] has remarried and her husband gave to [her] all the funds necessary for Aaron to finish his education at USC. . . .

Id. at 136-38. Based on these findings, the trial court determined that Steven's obligation for the third and fourth years was $12,064 and $12,549, respectively. The trial court then added these amounts to Steven's obligation for the first and second years ($11,155 and $22,048, respectively) to arrive at a total obligation of $57,816. From this amount, the trial court subtracted the sum of payments Steven had made previously, $36,936, resulting in a total unpaid obligation of $20,880. The trial court then awarded Debra $4,000 in attorney fees and entered judgment in her favor in the amount of $24,880. Debra now appeals.

## Discussion and Decision

### I. Propriety of Trial Court's Decision

#### A. Standard of Review

We note initially the somewhat unusual procedural posture of this case, as Debra is appealing a judgment that technically is in her favor. However, as the foregoing indicates, by limiting Steven's obligation for the third and fourth years to amounts that are consistent with those requested in his motion for relief from judgment, the trial court effectively granted that motion. We therefore review whether the trial court properly granted Steven relief from judgment. Our standard of review prohibits us from reversing such a grant unless the trial court abused its discretion. Crafton v. Gibson, 752 N.E.2d

78, 83 (Ind. Ct. App. 2001). Abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and inferences supporting it. Id.

We also note that in cases such as this one where the trial court enters findings of fact and conclusions of law pursuant to a party's request, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second whether the findings support the judgment. Stronger v. Sorrell, 776 N.E.2d 353, 358 (Ind. 2002). The trial court's findings and conclusions will be set aside only if they are clearly erroneous. Id. In making this determination, we neither reweigh evidence nor judge witness credibility. Id. Instead, we accept the ultimate facts as stated by the trial court if there is evidence to support them. Id.

B. Trial Rule 60(B)(8)[2]

Debra argues the trial court improperly granted Steven relief from judgment because Steven did not file his motion within a reasonable time. Trial Rule 60(B)(8) states in relevant part:

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[2] Although we characterize the trial court's judgment as granting Steven relief pursuant to Trial Rule 60(B)(8), another possible explanation is that the trial court was interpreting its decree as importing an obligation to Steven only if Aaron attended an in-state school. Indeed, the trial court's findings indicate it may have based its judgment on such a rationale. See Appellant's App. at 136 (trial court's finding that "[i]t was this courts [sic] intention that the [January 2003 Order] only apply to the first year due to the large amount of aid to the child and the court's experience showing that many schools front load aid to induce students to attend only to have that aid withdrawn for later years").

However, to the extent the trial court's judgment was an interpretation of the original decree, it lacked authority to interpret the decree in a manner that conditioned Steven's obligation on Aaron attending in-state school. Although a trial court has the power to interpret its own dissolution decree, Fackler v. Powell, 839 N.E.2d 165, 167 (Ind. 2005), it must do so in a manner that is consistent with principles governing the construction of contracts, see Dewbrew v. Dewbrew, 849 N.E.2d 636, 645 (Ind. Ct. App. 2006). One of these principles is that if the terms of the decree are unambiguous, they must be given their plain and ordinary meaning. Niccum v. Niccum, 734 N.E.2d 637, 639 (Ind. Ct. App. 2000). Here, the decree does not condition Steven's obligation on Aaron attending an in-state school. Remarkably, the trial court recognized this in its July 2003 order, stating explicitly that the decree "does not limit the college expenses to in[-]state school." Appellant's App. at 102. Thus, we fail to see how the trial court was authorized to base its judgment on an interpretation that Steven's obligation was conditioned on Aaron attending an in-state school.

> On motion and upon such terms as are just the court may relieve a party or his legal representative from an entry of default, final order, or final judgment . . . for the following reasons:
>
> . . .
>
> (8) any reason justifying relief from the operation of judgment . . . . The motion shall be filed within a reasonable time for reason[] . . . (8) . . . . A movant filing a motion for reason[] . . . (8) must allege a meritorious claim or defense. . . .

This court has stated repeatedly that a party seeking relief from judgment pursuant to Trial Rule 60(B)(8) must affirmatively demonstrate some extraordinary circumstance to come within the rule's purview. See Rissler v. Lynch, 744 N.E.2d 1030, 1034 (Ind. Ct. App. 2001); McIntyre v. Baker, 703 N.E.2d 172, 175 (Ind. Ct. App. 1998); cf. In re Marriage of Jones, 180 Ind. App. 496, 498, 389 N.E.2d 338, 340 (1979) ("[Trial Rule] 60(B)(8) is addressed to the residual powers of a court of equity . . . and may only be invoked upon a showing of [e]xceptional circumstances justifying extraordinary relief."). As explained below, Steven has not met this requirement because the trial court could not have concluded that Steven filed his motion within a reasonable time.

The trial court apparently concluded that Steven filed his motion within a reasonable time based on findings that neither Debra nor Aaron had notified him of the substantial increase in college expenses following the first year, due primarily to USC rescinding Aaron's scholarship and Aaron's move to off-campus housing. See Appellant's App. at 137-38 (trial court's findings 17 to 20). Steven received notice of these developments at some point, but the trial court's findings do not address when this notification occurred. Nevertheless, our review of the record indicates that Steven was aware of these developments as early as the March 1, 2004, hearing, which was toward

the end of Aaron's second year. See, e.g., Transcript at 87 (March 1, 2004, hearing) ("[Steven]: . . . Aaron is living off campus at USC in an apartment that is more costly than if he lived on campus in a dorm, is that correct? A: That is correct . . . ."); id. at 93 ("THE COURT: Your divorce decree talks about children's post secondary educational expenses, what percentage you are to pay. Does Aaron have any scholarships from the University? [Debra]: He did his first year. THE COURT: Does he this year? [Debra]: No, he has some financial aid."); id. ("THE COURT: Does he have any other form of financial aid that defrays the costs of his education in California? [Debra]: No, not at this time. He has applied for other things that we haven't heard back on. He's applied for a lot of grants and scholarships that we won't know until probably Summer for the next school year."). Because Steven was aware by March 1, 2004, of the facts giving rise to his motion for relief from judgment, the question becomes whether his filing of the motion on December 29, 2006, a period of over thirty-four months, constitutes a filing within a reasonable time.

"Determining what is a reasonable time period depends on the circumstances of each case, as well as the potential prejudice to the party opposing the motion and the basis for the moving party's delay." K.E. v. Marion County Office of Family & Children, 812 N.E.2d 177, 180 (Ind. Ct. App. 2004), trans. denied. We note initially that during approximately seven months (May 2004 to December 2004) of the thirty-four month period, Steven was deployed overseas with his National Guard unit and therefore was not able to file a motion for relief from judgment during this time. However, Steven has not presented any evidence or argument to explain why, following his return in

December 2004, he waited approximately twenty-four more months to file his motion. Lack of explanation concerning a delay can be fatal to a motion for relief from judgment, see Whitt v. Farmer's Mutual Relief Ass'n, 815 N.E.2d 537, 541 (Ind. Ct. App. 2004) (affirming trial court's denial of the defendant's motion for relief from default judgment under Trial Rule 60(B)(8) in part because the defendant "has not offered a basis for his delay in moving to set aside the default judgment"), but an additional point convinces us that Steven's motion was not filed within a reasonable time. During the March 1, 2004, hearing, and in response to Steven's attempts to raise the issue that the costs of attending USC were too high compared to similar schools in Indiana, the trial court repeatedly reminded Steven that the issue was not before the trial court and that the proper way to raise the issue was to file a motion for modification of his obligation. See tr. at 89, 90-91, 97-98; see also id. at 102 ("But I can't stress to you, I don't know how many times I've said it, if you feel that you can't pay what you're paying, then you need to address it. And the only way you can address it, . . . you must file a Petition to Modify this order.").[3] Thus, Steven's lack of explanation concerning his twenty-four month delay, coupled with the fact that the trial court made it abundantly clear that the proper way to address Steven's claim was to file a motion to modify his obligation, convinces us that the trial court could not have concluded that Steven's motion for relief from judgment was filed

[3] We note that the trial court's advice to Steven is entirely correct; as long as Aaron was still in school, nothing prevented Steven from obtaining relief through a petition to modify. However, if Steven had filed a petition to modify after Aaron graduated, the trial court would have lacked authority to modify Steven's obligation retroactively. Provisions for the payment of college expenses are in the nature of child support and therefore may be modified pursuant to Indiana Code section 31-16-8-1. See Hay v. Hay, 730 N.E.2d 787, 791-92 (Ind. Ct. App. 2000). However, a trial court's authority under that statute to modify retroactively cannot affect any time period prior to the date the motion for modification was filed. See Thacker v. Thacker, 710 N.E.2d 942, 945 (Ind. Ct. App. 1999).

within a reasonable time. Thus, it follows that the trial court abused its discretion when it granted Steven relief from judgment.

II. Procedure on Remand

The trial court's decision to grant Steven relief from judgment necessarily required that it deny Debra's December 11, 2006, motion. On remand, we instruct the trial court to determine Steven's obligation for the third and fourth years in a manner consistent with the dissolution decree and to correct its judgment accordingly. Moreover, because the trial court already conducted a hearing and received evidence regarding Aaron's expenses for those years, it may choose to rule without conducting an additional hearing.

Conclusion

The trial court improperly granted Steven relief from judgment. Accordingly, we reverse and remand with instructions to the trial court to correct its judgment in a manner consistent with this opinion.

Reversed and remanded with instructions.

RILEY, J., concurs.

BAKER, C.J., concurs in result with opinion.

# IN THE
# COURT OF APPEALS OF INDIANA

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| DEBRA L. GUYER (n/k/a Debra L. Stover) | ) | |
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**Baker, Chief Judge, concurring in result.**

I concur in the result reached by the majority only because of the two-year delay after Stephen returned from his overseas deployment in December 2004. I believe that the result reached by the trial court herein was equitable and would prefer to leave this matter to the trial court's discretion. Given the delay, however, I am compelled to concur in the majority's conclusion that Stephen's Trial Rule 60(B) motion was untimely filed.