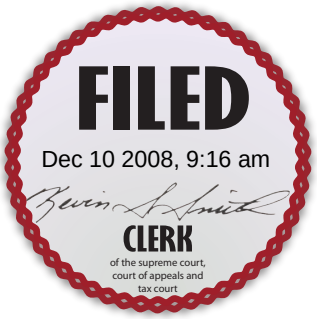

ATTORNEY FOR APPELLANT:

MICHAEL L. MUENICH
Highland, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MARRIAGE OF DEL CORNO,	)	
	)	
FRANK DEL CORNO,	)	
	)	
Appellant-Respondent.	)	
	)	
vs.	)	No. 45A05-0804-CV-252
	)	
JUDITH DEL CORNO n/k/a JUDITH SPILA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE LAKE CIRCUIT COURT
The Honorable Cheryl A. Kuechenberg, Judge
Cause No. 45C01-0606-DR-483

December 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Frank Del Corno appeals the trial court's denial of his motion to set aside default judgment. We reverse.

Issue

Del Corno raises two issues. We address the dispositive issue, which we restate as whether the trial court properly denied his motion to set aside default judgment.

Facts

In 1996, Del Corno and his wife, Judith Spila, were divorced in Illinois. In 2004, post-dissolution disputes arose. At some point, Del Corno petitioned the Illinois court to transfer jurisdiction to Indiana because he lived in Mexico and Spila lived in Indiana. This motion apparently was granted.

On July 13, 2006, Spila filed a petition to domesticate the Illinois decree in Indiana. On August 17, 2006, via registered mail, Spila sent notice of the proceedings to Del Corno's last known address in Mexico. This document was apparently refused and returned to Spila unsigned. It is unclear who refused to the document. Spila sent further notices to Del Corno via regular mail, and these items were not returned to her. Del Corno did not personally appear at any of the hearings.

On January 22, 2007, the trial court entered default judgment against Del Corno in the amount of $491,539.87 based on the Illinois decree and an attorney fee award. Spila then filed proceedings supplemental to collect on that judgment. On May 2, 2007, the trial court held a hearing on this motion at which Del Corno was not present but was

represented by counsel. At that hearing, counsel indicated that he was preparing to file a motion to set aside default judgment on Del Corno's behalf.

On August 21, 2007, Del Corno filed a motion to set aside default judgment. On February 28, 2008, the trial court held a hearing on Del Corno's motion. Del Corno did not personally appear and his attorney relied only on the trial court's docket to establish a factual basis for his motion. On April 17, 2008, the trial court denied Del Corno's motion to set aside because he had not established a meritorious defense. Del Corno now appeals.

Analysis

As an initial matter, we point out that Spila did not file an appellee's brief. "When the appellee has failed to submit an answer brief we need not undertake the burden of developing an argument on the appellee's behalf." Trinity Homes, LLC v. Fang, 848 N.E.2d 1065, 1068 (Ind. 2006). "Rather, we will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error." Id. Prima facie error is defined as at first sight, on first appearance, or on the face of it. Id. If Del Corno is unable to meet this burden, we will affirm. See id.

Del Corno argues that the denial of his motion to set aside default judgment was improper because the judgment was void for lack of personal jurisdiction. We review a trial court's denial of a motion to set aside judgment for an abuse of discretion. Goodson v. Carlson, 888 N.E.2d 217, 220 (Ind. Ct. App. 2008). We determine whether the trial court's judgment is clearly against the logic and effect of the facts and inferences before the court. Id.

The existence of personal jurisdiction over a defendant is a question of law, and we review a trial court's determination regarding personal jurisdiction de novo. Id. A plaintiff must present evidence of a court's personal jurisdiction over the defendant, but the defendant ultimately bears the burden of proving the lack of personal jurisdiction by a preponderance of the evidence, unless that lack is apparent on the face of the complaint. Id. Where, as here, only a paper record has been presented to the trial court, we are in as good a position as the trial court to resolve factual disputes and will employ de novo review as to those facts. Id.

"Ineffective service of process prohibits a trial court from having personal jurisdiction over a defendant." Id. A judgment entered against a defendant over whom the trial court did not have personal jurisdiction is void. Id.

In his motion to set aside default judgment, Del Corno argued that because he was not properly served, the trial court lacked personal jurisdiction over him, rendering the default judgment void. Indiana Trial Rule 4.1 governing service on an individual provides in part:

> (A) In General. Service may be made upon an individual, or an individual acting in a representative capacity, by:
>
> > (1) sending a copy of the summons and complaint by registered or certified mail or other public means by which a written acknowledgment of receipt may be requested and obtained to his residence, place of business or employment with return receipt requested and returned showing receipt of the letter; or
> >
> > (2) delivering a copy of the summons and complaint to him personally; or

> (3) leaving a copy of the summons and complaint at his dwelling house or usual place of abode; or
>
> (4) serving his agent as provided by rule, statute or valid agreement.

In support of his argument, Del Corno attached the affidavit of his attorney to his motion to set aside. The affidavit provided in part:

> 6. On or about May 7, 2007, Julie A. Demange, counsel for Petitioner Judith del Corno nka Judith Spila, provided me with a copies [sic] of documents that she had allegedly filed in the above-captioned case, identifying one of the documents as a copy of the "envelope and card showing an attempt to deliver [the Summons and Notice of Hearing in Proceedings for Dissolution] to Mr. Corno." A true and correct copy of that envelope and card are attached hereto as Exhibit 1. That envelope and return receipt card reflect that the Summons and Notice of Hearing In Proceedings for Dissolution were returned as undeliverable.
>
> 7. Ms. Demange's correspondence lists other correspondence allegedly served on Mr. Del Corno, none of which appear to have included a summons and none by certified or registered mail. A true and correct copy of Ms. Demange's correspondence (without exhibits) is attached hereto as Exhibit 2.

App. pp. 59-60 (second alteration in original). The returned letter contains numerous markings and stamps in Spanish.

In addition to this evidence, at the hearing, Spila, who speaks Spanish, stated about the markings on the returned envelope, "it's very hard to - - the handwriting - - that first word, I'm not even familiar with what it would be. And then Mr. Rafael, whatever his last name is, (inaudible) - - it's saying that he changed addresses. He is no longer there. That's what it's saying in Spanish." Tr. p. 50.

"Service upon a defendant's former residence is insufficient to confer personal jurisdiction." Mills v. Coil, 647 N.E.2d 679, 681 (Ind. Ct. App. 1995), trans. denied. Although Del Corno was not at the hearing and there is no evidence that he had actually moved, the return envelope is enough to establish that he was not properly served. The trial court made no finding regarding the propriety of service and based its decision on the fact that Del Corno did not present a meritorious defense. As was noted in Goodson, pursuant to Indiana Trial Rule 60(B)(6), "Where a judgment is void, the existence of a meritorious defense need not be established." Goodson, 888 N.E.2d at 222 n.9.

Del Corno established that service was not proper. Thus, because the default judgment was void based on the improper service, Del Corno has made a prima facie showing that the trial court improperly denied his motion to set aside default judgment.

Conclusion

Because Del Corno established that he was improperly served, the trial court lacked personal jurisdiction over him and the default judgment against him is void. The trial court improperly denied his motion to set aside default judgment. We reverse.

Reversed.

FRIEDLANDER, J., and DARDEN, J., concur.