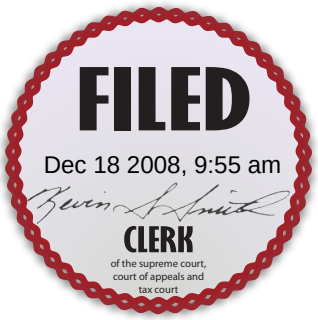

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IN THE
COURT OF APPEALS OF INDIANA

LOWELL ABBE and CAROLYN ABBE,	)	
	)	
Appellants-Defendants,	)	
	)	
vs.	)	No. 32A01-0805-CV-239
	)	
THE CADLE COMPANY,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HENDRICKS CIRCUIT COURT
The Honorable Jeffrey V. Boles, Judge
Cause No. 32C01-0608-MI-82

December 18, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Lowell Abbe and Carolyn Abbe ("the Abbes"), pro se, appeal the trial court's order granting the motion of The Cadle Company ("Cadle") to reconsider the denial of Cadle's motion for relief from judgment under Trial Rule 60(B). The Abbes present a single issue for review, namely, whether the trial court erred when it reconsidered its denial of Cadle's motion for relief under Trial Rule 60(B) and granted relief from judgment to Cadle.

We affirm.

FACTS AND PROCEDURAL HISTORY

On July 3, 2006, Cadle served on the Abbes a Notice of Filing of Foreign Judgment, informing the Abbes that Cadle had filed a petition in the Hendricks Circuit Court under Cause Number 32C01-0607-CC-161 ("CC-161") to domesticate a $2.3 million judgment obtained in the United States District Court for the District of Massachusetts against the Abbes. The Abbes filed in the Hendricks Circuit Court defenses to the petition, and, in response, Cadle filed a release. The court later dismissed case CC-161 pursuant to Trial Rule 41(E).

On August 4, 2006, Cadle filed a petition in the instant case ("MI-82") to domesticate a $150,000 foreign judgment entered by an Ohio state court against the Abbes.[1] Cadle filed the petition pursuant to the Uniform Enforcement of Foreign

[1] The Abbes included in their appendix a copy of the Notice filed in CC-161, which is immaterial to the issue presented on appeal. But they did not include in the Appendix a copy of the notice filed in MI-82, which is material to the issue before us. We remind the Abbes that the appendix should contain, in part, the "pleadings and other documents from the Clerk's Record . . . that are necessary for resolution of the issues raised on appeal[,]" Ind. Appellate Rule 50(A)(2)(f), and that "[i]t is well settled that pro se

Judgments Act, Indiana Code Section 34-54-11-1 to -5 ("Enforcement of Foreign Judgments Act"). The Abbes did not file a response. On January 11, 2007, the trial court issued, sua sponte, an order to show cause why MI-82 should not be dismissed pursuant to Indiana Trial Rule 41(E) for failure to prosecute. On March 30, 2007, the Abbes appeared at the hearing pro se, Cadle did not appear, and the trial court dismissed MI-82 with prejudice.

On April 18, 2007, Cadle filed a motion requesting relief from judgment under Trial Rule 60(B), alleging that its failure to attend the Trial Rule 41(E) hearing was due to excusable neglect. Specifically, Cadle argued that it had "mistakenly assumed that the Order to Show Cause related to [CC-161] and concluded that since the judgment in that cause number had already been released no further action was required on Cadle's part." Appellants' App. at 4. On May 21, 2007, the Abbes filed a response to Cadle's motion and their own motion for relief under Trial Rule 60(B). The Abbes requested relief under Trial Rule 60(B), alleging that: (1) Cadle had not given the Abbes notice of the filing of the judgment in MI-82 and, therefore, it was excusable neglect that they had not filed a response within the twenty-one-day time period required by statute, and (2) Cadle had perpetrated fraud in CC-161, as well as in other cases unrelated to the Abbes, and therefore the Abbes were entitled to damages and costs.

The court held a hearing on May 29. On May 30, the court denied Cadle's motion for relief under Trial Rule 60(B) but made no ruling as to the Abbes' Trial Rule 60(B) motion. On June 18, 2007, Cadle filed its response to the Abbes' Trial Rule 60(B)

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litigants are held to the same standard as are licensed lawyers[,]" Carnes v. Estate of Carnes (In re Estate of Carnes), 866 N.E.2d 260, 265 (Ind. Ct. App. 2007).

motion. On June 21, the Abbes filed a motion to strike Cadle's response to the Abbes' Rule 60(B) motion, a motion to file supplemental pleadings (which the trial court granted), and the Abbes' supplemental pleadings filed under Trial Rule 15(D).[2] On the same date, Cadle filed its response to the Abbes' motion to strike. And on June 25, the Abbes filed their reply to Cadle's response to motion to strike. On June 26, 2007, the court appointed counsel to represent the Abbes.

On August 15 and 16, 2007, the court held a hearing on the Abbes' request for relief under Trial Rule 60(B)[3] and ordered the parties to file post-trial briefs. On August 27, Cadle filed its post-trial brief and motion to reconsider the ruling on Cadle's Rule 60(B) motion, and on August 28 the Abbes filed their post-trial brief.[4] The court then issued a written judgment, captioned under MI-82 and dated August 30, 2007, which provides in relevant part:

> 1. This case no. 32C01-0608-MI-82 is directly connected to a case 32C01-0607-CC-161 where [the Abbes], while being represented by counsel, properly filed a Notice to [Cadle] requesting a dismissal of the 32C01-0607-CC-161 case. [Cadle] complied with the law, finding it erroneously filed a foreign judgment and [Cadle] promptly released the judgment and case no. CC-161 was dismissed with prejudice pursuant to Trial Rule [41(E)].
>
> 2. This case, MI-82, involves the foreign judgment from the Court of Common Pleas, Portage County, Ohio, entered on 9 June, 2005, against [the Abbes], in the approximate amount of $150,000.
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> 3. The Ohio trial court judgment was affirmed by the Court of Appeals of Ohio under its case number.

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[2] The Abbes have not included these supplemental pleadings in the record on appeal.

[3] The Abbes have not provided a transcript of this hearing.

[4] The Abbes have not included a copy of their post-trial brief in their Appendix.

4. The post-trial brief and motion to reconsider ruling on the Cadle Company's trial rule [60(B)] motion filed 27 August, 2007, correctly sets out the pleading status of this case and correctly applies the law to the dispute under this case MI-82 and shows this Court that the [Abbes] are not entitled to any damages from the Plaintiff, Cadle Company, and;

5. [Cadle's] request that the Court reconsider its denial in the Motion On Trial Rule [60(B)] because while pleading pro se the [Abbes] claimed that the Ohio judgment was invalid leading this Court to appoint Dan Zielinski, Esq., to review the pro se pleading status of this case. Defendants Abbe confused these cases by their pro se pleadings.

6. After consideration of all the evidence and pleading[s] that [have] been presented in this case, it is absolutely clear to this court that [Cadle's] Motion to Reconsider the Denial of its Motion On Trial Rule [60(B)] should be granted because if [Cadle's] Motion to Reconsider would not be granted by the Court, based upon all the evidence now before this Court, it would allow the Defendants, Abbe, to perpetrate a fraud upon the Hendricks Circuit Court by their pro se pleadings and assertions.

7. Therefore,

> A. Defendants Abbe's [sic] request for damages in the amount of Two Million Three Hundred and Seventy-Seven Thousand, Two Hundred and Forty-Eight Dollars and fifty cents ($2,377,248.50) have not been proved by a preponderance of the evidence, nor is their request supported by any legal theories or case law on the facts of this case. The Defendants' request is DENIED. Judgment on behalf of [Cadle] and against the [Abbes]. The Defendant[s] take nothing.
>
> B. [Cadle] is entitled to a vacation of this Court's Order Denying Their Trial Rule [60(B)] Motion. The Order denying [Cadle's] Motion dated 30 March, 2007, is vacated.

* * *

10. The appearance of Dan Zielinski is ordered vacated, costs to be taxed to the Defendants Abbe.

Appellants' Brief, Judgment, at 15-16.[5]

On September 6, 2007, Cadle filed a motion to clarify and/or correct the judgment under Trial Rule 60(A). In response, the trial court made the following docket entry on September 7, 2007: "order denying [Cadle's] motion on Trial Rule 60(A) has been vacated and [Cadle] is free to proceed under complaint originally filed in this case." Appellants' App., Chronological Case Summary, at *4.[6] The Abbes now appeal.

DISCUSSION AND DECISION

The Abbes contend that the trial court should not have revisited its decision to deny Cadle's request for relief under Trial Rule 60(B) because the denial of Cadle's motion for relief from judgment had been made on the merits, after full briefing and oral argument. In support, the Abbes rely on the law of the case doctrine. In turn, Cadle argues that the trial court had authority to reconsider its decision on Cadle's motion for relief from judgment.[7] We agree with Cadle.

Indiana Trial Rule 53.4 authorizes a court to reconsider its previous rulings.[8] In construing Rule 53.4, this court has held that "a trial court has the inherent power to

[5] The Abbes should have included the order appealed from in the Appellants' Appendix, bound and paginated with the other documents in that appendix and not loose-leaf in a pocket at the end of the appendix. See Ind. Appellate R. 50(A)(2)(b).

[6] Again, the Abbes should have included the Chronological Case Summary ("CCS") bound and paginated in the Appendix, not unstapled in a folder pocket at the end of their appendix. See Ind. App. R. 50(A)(2)(a).

[7] Cadle also contends that the Abbes waived the argument that the trial court lacked the power to revisit its earlier decision. Regardless of whether the Abbes waived their argument, we address the issue on the merits.

[8] Trial Rule 53.4(A) provides, in part:

> (A) Repetitive motions and motions to reconsider ruling on a motion. No hearing shall be required upon . . . motions to reconsider orders or rulings upon a motion. Such a

reconsider any of its previous rulings so long as the action remains in fieri." Stephens v. Irvin, 734 N.E.2d 1133, 1135 (Ind. Ct. App. 2000). An action is "in fieri" if it is "pending resolution" and remains on the court's docket. See Pond v. Pond, 700 N.E.2d 1130, 1135 (Ind. 1998).

Here, the trial court initially denied Cadle's request for relief from judgment on May 30, 2007. Thereafter, the case remained open on the court's docket for a hearing on the Abbes' request for relief under Trial Rule 60(B).[9] The parties continued to litigate and the court continued to address matters in MI-82. Therefore, the case was "in fieri" on August 30, 2007, when the court reconsidered its earlier denial of Cadle's motion for relief from judgment and, reversing its earlier decision, granted relief to Cadle by vacating its dismissal of the case for failure to prosecute. The September 7, 2007, docket entry then clarified, through revised wording, that the August 30 order disposed of Cadle's Rule 60(B) motion and left Cadle "free to proceed" under its complaint to domesticate the foreign judgment. Appellant's App., Chronological Case Summary, at *4.

The Abbes contend that the law of the case doctrine prohibited the trial court from reconsidering its earlier decision on Cadle's motion for relief from judgment. But the law of the case doctrine provides that "an appellate court's determination of a legal issue

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> motion by any party or the court or such action to reconsider by the court shall not delay the trial or any proceedings in the case, or extend the time for any further required or permitted action, motion, or proceedings under these rules.

[9] Although the Abbes' request for damages actually referred to CC-161, they filed that request in a motion for relief under Trial Rule 60(B) in MI-82. The trial court, likely confused by the Abbes' unclear pro se pleadings, proceeded on the Abbes' claim as if it referred to matters in MI-82.

is binding in subsequent appeals given the same case and substantially the same facts." Perry v. Gulf Stream Coach, Inc., 871 N.E.2d 1038, 1048-49 (Ind. Ct. App. 2007). In other words, the doctrine bars subsequent litigation of a fact or issue decided by an appellate court. The doctrine does not apply to rulings made by a trial court, which, again, may reconsider its rulings at any time so long as the action is pending resolution. See Ind. Trial R. 53.4; Stephens, 734 N.E.2d at 1135. Thus, the Abbes' contention that the trial court lacked the power to review its earlier decision in this case would render Trial Rule 53.4 meaningless and is without merit.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.