MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Silvia Bravo and Rancho Bravo, Inc.,
Appellants-Defendants,

v.

Juan Murillo Bravo,
Appellee-Plaintiff.

September 30, 2021

Court of Appeals Case No. 20A-PL-2057

Appeal from the Montgomery Superior Court

The Honorable Heather L. Barajas, Judge

Trial Court Cause No. 54D01-0909-PL-380

Mathias, Judge.

[1] Juan Murillo Bravo, the part-owner of a restaurant in Crawfordsville, Indiana, sued the restaurant and its coowner, Silvia Bravo, alleging that Silvia mismanaged the restaurant's profits and refused to distribute Juan his share of the restaurant's earnings. After a bench trial, the Montgomery Superior Court

ordered the restaurant judicially dissolved and awarded Juan $463,484.85 in damages. Silvia now appeals.We find that, after this case pended for seven years, Silvia's trial in absentia on June 14, 2016, by a new judge was proper and Silvia cannot now complain about evidentiary rulings the new judge made while the case was in fieri. Therefore, we affirm.

Facts and Procedural History

[2] Rancho Bravo, Inc., began doing business as Rancho Bravo Restaurant (the "Restaurant") in 2002. At that time, Silvia, her nephew, Juan, and another man, Juan Peña ("J.P."), the Restaurant's three founders, each held an ownership interest in the Restaurant. Tr. pp. 10, 20, 28–31.

[3] In November 2002, J.P. conveyed his ownership interest to Juan, Tr. pp. 21–22, certifying on a "Consent to Transfer Stock" that he agreed to transfer "25 shares of Common Stock in Rancho Bravo, Inc.," Ex. Vol. III at 41. From that point on, Silvia and Juan remained the Restaurant's only two shareholders. Tr. p. 22; Ex. Vol. III at 40. Silvia believed that she owned one half of the Restaurant's stock and that Juan, having received the other man's shares, owned the other half. Juan, at that point in time, seemed to agree. Indeed, documents filed in connection with the Restaurant's alcohol permit suggested that Silvia and Juan each held "50 shares out of 100 total shares." Ex. Vol. III at 32, 35, 39.

[4] During the next several years, however, Juan began to feel differently about the proportion of his ownership interest as compared to Silvia's ownership interest. In September 2009, Juan filed a complaint alleging that he and Silvia "are the

sole 50/50 owners" and that he "own[s] one-half (1/2) of the shares," Appellant's App. p. 2–3, but Juan later amended his complaint to allege instead that he "is the owner of 2/3" of the Restaurant's stock, Appellee's App. p. 2–3. Juan further alleged that he never received any profit dividends or earnings distributions; that Silvia's husband, Martin, "converted and retained profits exceeding $120,000"; and that Silvia "diverted funds and property of [the Restaurant] for her personal use." *Id*.

[5] As the litigation proceeded, the parties mired themselves in discovery disputes.[1] For instance, in July 2011, after Juan belatedly disclosed his intent to call Certified Public Accountant Susan Dawson (the "Accountant") as a witness at trial, Silvia moved the trial court to prohibit the Accountant from testifying. Although the court found that Juan had "been dilatory in obtaining and disclosing this witness," it denied Silvia's motion and concluded that the Accountant would be permitted to testify. Appellant's App. p. 13.

[6] Several months later, Juan missed another discovery deadline. The trial court had amended its case management order, and the parties were given until January 2012 to file their expert reports. *Id*. at 32. Juan did not file the Accountant's report on that date. Rather, Juan listed the Accountant's expert report on his amended final witness and exhibit list, which he filed in June

[1] Two interlocutory appeals arose out of this prolonged discovery dispute: Case No. 54A01-1108-PL-00354 and Case No. 54A04-1207-PL-00385. In each instance, a panel of this court affirmed and remanded.

2013—one and a half years after the court's amended deadline for disclosing expert materials. *Id*. at 32.

[7] In response, Silvia again asked the court to prohibit the Accountant's testimony. This time, the court agreed with Silvia. On October 18, 2013, the court entered an order prohibiting both the Accountant's testimony and her expert report:

> Since Defendants reasonably concluded that [the Accountant] would not be able to testify due to [Juan's] failure to meet the expert report discovery deadline, Defendants did not hire their own expert witness nor did they conduct further discovery on [the Accountant] . . . . The Court will strike [the Accountant's] report . . . . The Court will also prohibit [the Accountant] from testifying . . . .

Id. at 35–36.

[8] In the meantime, Silvia moved to California, and, in December 2015, Silvia's counsel ended their representation of her. The parties' bench trial was set to take place three months later, in March 2016. So, Silvia obtained new counsel for the limited purpose of requesting a continuance, and the trial court rescheduled the bench trial to June 14, 2016. Silvia's new counsel sent a letter to Silvia's California address to notify her of the new trial date and ended his representation of her immediately thereafter. Neither Silvia nor her counsel appeared at the June 14 trial, and the court held the trial in Silvia's absence.

[9] As a result, only Juan presented evidence at trial. Despite the court's October 2013 order prohibiting the Accountant's testimony, the Accountant took the

stand. She testified that her investigation of the Restaurant's finances included requesting "all of the information [she] could get [her] hands on," Tr. p. 33, and that she "reviewed the corporate documents" provided by Juan's counsel "as far as ownership," *id.* at 46. Yet, when the trial court asked Juan's counsel why the evidence included only one page of the Restaurant's articles of incorporation, he responded, "I'll check and see what there is to it." *Id.* at 31. The court also asked the Accountant for her opinion on how much money Juan might be owed in relation to his claims, and the Accountant responded: "[U]ntil I know if they are a third owner [or] a 25 percent owner . . . it's very difficult for me to try to put a handle on that number." *Id.* at 50. The court closed the trial by permitting Juan's counsel the rest of that afternoon "to submit any documentation from the Secretary of State regarding original ownership of [the Restaurant]." *Id.* at 57. Juan's counsel did not submit any additional documentation.

[10] Nonetheless, the court ultimately found that "there were 100 shares of stock issued for the corporation and, absent any information to the contrary, the three [original] shareholders held equal interests." Appellant's App. at 59. Notably, the evidence Juan presented to the court included the "Consent to Transfer Stock," which memorialized the transfer of "25 shares" of the Restaurant's total 100 shares—or, one fourth of the Restaurant's shares—from J.P. to Juan. Ex. Vol. III at 41. The court also found that when Juan acquired J.P.'s shares, Juan gained a two-thirds majority ownership interest; that Silvia converted the Restaurant's assets for her personal benefit; and that Silvia and her husband

"both drew regular salaries and other derivative benefits . . . while the other shareholders received nothing." Appellant's App. at 61. In turn, the trial court ordered that the Restaurant be dissolved. The court appointed a receiver to wind up the Restaurant's affairs and left its determination as to the extent of Juan's damages for a later date.

[11] One month later, Silvia filed a motion to correct error, which the trial court denied. Silvia's motion argued that the trial court erred by disregarding its previous grant of her request to prohibit the Accountant's testimony. The court disagreed and, in spite of its October 2013 order, declared that "the Order of July 22, 2011, clearly indicates that such a request was denied." *Id*. at 98. Silvia's motion also argued that the court erred in determining Juan held a two-thirds ownership interest. The trial court rejected that argument as well, concluding "the evidence at trial was clear . . . . There is no error based on the evidence at trial." *Id*.

[12] Another four years passed before the court held a hearing to determine Juan's damages September 8, 2020. None of the pages missing from the Restaurant's articles of incorporation were admitted into evidence at that hearing, and the Accountant was the only witness to testify. When asked who she thought were "the owners of the corporation," the Accountant stated, "[a]s far as the legal documents that I can read and understand, would be Silvia Bravo." Tr. p. 73. The Accountant continued: "[A]ll the records that I have, shows Silvia Bravo as the legal owner and [her husband, Martin,] as the shareholder for tax purposes." *Id*. But she maintained that Juan was "entitled to 66.67 percent" of

the "distributions" Silvia and her husband had received since since 2002. *Id*. at 66. At the conclusion of the Accountant's testimony, the court asked whether the Accountant had seen "any ongoing evidence of an actual corporation outside of . . . tax documents." The Accountant responded, "That, I do not know." *Id.* at 78–79.

[13] Two weeks later, the trial court awarded Juan $463,484.85 in damages, plus costs. Appellant's App. p. 105.

[14] Silvia now appeals.

Expert Testimony

[15] Silvia first argues that the trial court erred by permitting the Accountant's testimony and by admitting the accountant's expert report into evidence. Decisions regarding the admission or exclusion of evidence lie within the sound discretion of the trial court. *Dow v. Hurst*, 146 N.E.3d 990, 1001 (Ind. Ct. App. 2020), *trans. denied*. On appeal, we will not disturb the trial court's decision absent a showing of an abuse of that discretion. *Kimbrough v. Anderson*, 55 N.E.3d 325, 333–34 (Ind. Ct. App. 2016), *trans. denied*. A trial court abuses its discretion only if its decision is clearly against the logic and effect of the facts and circumstances before it. *Arlton v. Schraut*, 936 N.E.2d 831, 836 (Ind. Ct. App. 2010), *trans. denied*.

[16] Silvia claims that the trial court abused its discretion because the court's October 2013 order—which had prohibited the Accountant's testimony—"became the law of the case." Appellant's Br. at 11. However, under the law of

the case doctrine, a trial court is not bound by its own earlier ruling unless that ruling has been adopted by an appellate court. *Stewart v. Kingsley Terrace Church of Christ, Inc.*, 767 N.E.2d 542, 545 (Ind. Ct. App. 2002). "The doctrine of the law of the case is a discretionary tool by which appellate courts decline to revisit legal issues already determined on appeal in the same case and on substantially the same facts" *Wells Fargo Bank N.A. v. Summers*, 974 N.E.2d 488, 502 (Ind. Ct. App. 2012) (quoting *Cutter v. State*, 725 N.E.2d 401, 405 (Ind. 2000)). Silvia acknowledges here, as do we, that "the issue of [the Accountant's] testimony has not yet been ruled upon" by a panel of this court. Appellant's Br. at 11. The law of the case doctrine is therefore inapplicable.

[17] Moreover, it is well-established that a trial court has inherent power to amend or change any of its previous decisions as long as the action remains "in fieri." *Yeager v. McManama*, 874 N.E.2d 629, 640 (Ind. Ct. App. 2007). An action remains "in fieri" until it is no longer pending resolution. *Brenton v. Lutz*, 993 N.E.2d 235, 239) (Ind. Ct. App. 2013). Consequently, until a final judgment has been entered, a trial court may reconsider, vacate, or modify any previous order. *Mitchell v. 10th & The Bypass, LLC*, 3 N.E.3d 967, 971 (Ind. 2014).

[18] Here, the trial court did not enter a final judgment until July 2016, following the parties' bench trial. Thus, even if the court's October 2013 order originally prohibited the Accountant's testimony, the court was free to reconsider, vacate, or modify that order any time before final judgment. And the court did just that when it permitted the Accountant to testify at trial. If Silvia wished to prohibit that testimony from being admitted, she could have raised an objection at trial.

However, because neither Silva nor her counsel chose to attend the trial, she did not do so. Under these facts and circumstances, we cannot say the trial court abused its discretion when it reconsidered its October 2013 order and permitted the Accountant to testify.

Default Judgment

[19] Silvia next argues that the trial court erred "by failing to set aside the default judgment against [her]" and the Restaurant. Appellant's Br. at 9. A court's decision whether to set aside a default judgment is given substantial deference on appeal, and we review the decision for an abuse of discretion. *Huntington Nat'l Bank v. Car–X Assoc. Corp.*, 39 N.E.3d 652, 655 (Ind. 2015). As we have mentioned, a trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before it, or if the court misinterpreted the law. *Id.*

[20] Silvia claims her absence from the bench trial "resulted in the entry of a default" against her and the Restaurant. Appellant's Br. at 9. Again, Silvia is incorrect. Where a defendant fails to appear at trial, "the trial court may hear evidence, and, if the plaintiff establishes a prima facie case, enter judgment for the plaintiff." *Id.* at 1177. And "[s]uch a judgment is on the merits." *Id.*

[21] At the beginning of the trial, the court explained that because Silvia and the Restaurant "have already entered an appearance and filed their answers and participated in proceedings in this matter," Juan needed to "establish a prima facie case." Tr. p. 8. And Juan proceeded to do so. The court heard testimony

and evidence and, in turn, entered a judgment on the merits. The court later emphasized that "default is inappropriate and was not entered." Appellant's App. p. 97. Simply said, the trial court did not abuse its discretion in declining to set aside the "default judgment" against Silvia and the Restaurant because the court did not enter a default judgment. Rather, it held a trial and entered a judgment on the merits.

Conclusion

[22] For all of these reasons, the trial court did not abuse its discretion in admitting the Accountant's testimony or in refusing to set aside the judgment entered against Silvia and the Restaurant.

[23] Affirmed.

Tavitas, J., and Weissmann, J., concur.