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# IN THE COURT OF APPEALS OF INDIANA

Kim M. Lloyd,

*Appellant-Plaintiff/Counterclaim Defendant,*

v.

Lawrence Kuznar,

*Appellee-Defendant/Counterclaim Plaintiff*

December 28, 2021

Court of Appeals Case No. 21A-CT-1338

Appeal from the Allen Superior Court

The Honorable Craig J. Bobay, Special Judge

Trial Court Cause No. 02D03-1812-CT-000713

and

Trustees of Purdue University,
*Defendant*.

**May, Judge.**

[1] Kim M. Lloyd appeals the trial court's denial of her Trial Rule 60(B) motion to set aside the dismissal of her complaint against Purdue University and Lawrence Kuznar and the entry of default judgment against her on Kuznar's counterclaim. She presents five issues for our review, which we consolidate and restate as:

i. Whether the trial court abused its discretion in denying Lloyd's Trial Rule 60(B) motion to set aside the order dismissing her complaint against Purdue University;

ii. Whether the trial court erred in denying Lloyd's Trial Rule 60(B) motion to set aside its order dismissing Lloyd's complaint against Kuznar; and

iii. Whether the trial court erred in denying Lloyd's Trial Rule 60(B) motion to set aside its orders granting default judgment in favor of

Kuznar on his counterclaim and awarding Kuznar over $600,000 in damages.

We affirm the denial of Lloyd's Trial Rule 60(B) motion to the extent it sought to set aside the dismissal of her complaint. However, we reverse the portion of the trial court's order denying Lloyd's motion to set aside the default judgment on Kunzar's counterclaim and remand for further proceedings consistent with this opinion.

# Facts and Procedural History

[2] Lloyd, who was represented by the law firm of Christopher Myers and Associates, initiated suit against Purdue University on December 14, 2018. She then amended her complaint on September 4, 2019, adding Kuznar as a defendant. The amended complaint alleged Lloyd was an assistant professor at Purdue University-Fort Wayne ("PFW") from 2014 until May 2019 and her contract was terminated after she filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"). The charge of discrimination accused Kuznar, then-chair of PFW's sociology and anthropology department and Lloyd's supervisor, of making unwanted sexual advances toward her and inappropriately touching her. She also claimed that, after taking leave pursuant to the Family Medical Leave Act[1] ("FMLA") and

[1] 29 U.S.C. § 2601 *et. seq*.

rejecting Kuznar's advances, Kuznar retaliated against her by belittling her in front of their colleagues and sabotaging her three-year review meeting. Lloyd alleged Kuznar's actions violated her rights under Title VII of the Civil Rights Act of 1964[2] and the FMLA. Lloyd also asserted that she suffered "physical pain, emotional distress, mental anguish, lost income, lost job-related benefits, humiliation, embarrassment, inconvenience and other financial damages and injuries" as a result. (Appellant's App. Vol. II at 36.)

[3] On November 15, 2019, Kuznar filed a counterclaim against Lloyd for defamation in which he alleged Lloyd sent an email on October 26, 2018, to Eric Link, a Dean at PFW; Carl Drummond, Vice Chancellor for Economic Affairs at PFW; and all the professors in the university's anthropology and sociology department. He asserted Lloyd's email falsely accused him of abusing his position as department chair, harassing Lloyd, and requesting "highly inappropriate favors" from Lloyd. (Appellee's App. Vol. II at 8.) Kuznar claims the email damaged his professional reputation and caused him to take an unpaid leave of absence from his position at PFW.

[4] On December 23, 2019, Purdue filed a motion to compel asking the court to order Lloyd to provide long overdue responses to Purdue's discovery requests. Purdue alleged:

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[2] 42 U.S.C.§ 2000e *et seq*.

1) Purdue serviced Defendant's First Discovery Requests to Plaintiff on July 26, 2019 by email and by regular U.S. mail . . .

2) On August 22, 2019, the office of Plaintiff's counsel requested an initial 30-day extension of time to respond to Purdue's discovery requests, and defense counsel agreed to the requested extension.

3) On September 27, 2019, the office of Plaintiff's counsel contacted defense counsel, Kathleen Anderson, and requested a three-week extension of time to respond to Defendant's discovery, advising that he was having trouble reaching Plaintiff. Defendant's counsel agreed to a three-week extension.

4) On October 18, 2019, the office of Plaintiff's counsel advised Attorney Anderson that Plaintiff was working on her discovery responses but required extra time. Attorney Anderson agreed to another one-week extension of time on October 19, 2019.

5) On October 25, 2019, the office of Plaintiff's counsel asked for a one-week extension and Attorney Anderson again agreed to the extension.

6) On November 4, 2019, the office of Plaintiff's counsel advised that Plaintiff had promised to get her responses to her counsel that afternoon and that the responses would be transmitted to defense counsel "ASAP."

7) On November 11, 2019, Attorney Anderson emailed the office of Plaintiff's counsel, inquiring about the discovery responses. At that time, the office of Plaintiff's counsel advised that the responses had not been received from Plaintiff and that Attorney Christopher Myers might have to withdraw from the case.

> 8) On December 10, 2019, the Court held a status conference. At this conference Attorney Myers advised that he has not been able to reach his client.
>
> 9) To date, Purdue has not received Plaintiff's discovery responses or received any information that they are imminent.

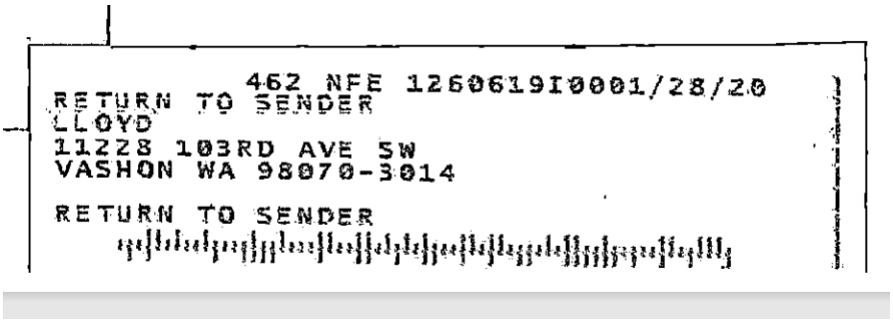
(Appellee's Supp. App. Vol. II at 2-3.) Purdue asked the trial court to order Lloyd to provide immediate responses to its written discovery requests, and if she still failed to respond, to dismiss her complaint as a sanction for discovery non-compliance.

[5] On January 13, 2020, Attorney Myers moved to withdraw as Lloyd's counsel. The motion listed Lloyd's last known address as: 11515 Sandy Creek Crossing, Fort Wayne, Indiana 46814 ("Fort Wayne Address"). It also listed a telephone number and e-mail address for Lloyd. Attorney Myers submitted with his motion to withdraw a letter dated December 30, 2019, addressed to Lloyd's Fort Wayne Address and her e-mail. The letter detailed Attorney Myers' efforts to contact Lloyd and her repeated failures to respond. The letter notified Lloyd that Myers intended to file a motion to withdraw, and it advised her as follows:

> a. Your case is scheduled for a status conference on February 11, 2020 at 9:30 a.m.
>
> b. Defendants filed a Motion to Compel your discovery responses on December 23, 2019, and your response to their motion is due on January 7, 2020. Attached is a copy of that Motion to Compel.

> c. I requested on your behalf, and was granted, an extension of time to answer the Counter-Claim filed against you—your answer is now due on January 6, 2020.
>
> d. Pursuant to the Allen County Local Rules, you have an ongoing duty as an unrepresented party to inform the Court of your change in address, telephone number, fax number and e-mail address.
>
> e. According to the Indiana common law, as an unrepresented party, you will be held to the same standard of conduct as an attorney licensed to practice in the State of Indiana.
>
> f. Prejudice may occur from your failure to act promptly or to secure new counsel.

(Appellant's App. Vol. II at 45-46.) On January 23, 2020, the trial court granted Attorney Myers' motion to withdraw his appearance. The copy of the order mailed from the court to Lloyd's Fort Wayne Address was returned with the notation:


462 NFE 1260619I0001/28/20
RETURN TO SENDER
LLOYD
11228 103RD AVE SW
VASHON WA 98070-3014
RETURN TO SENDER

(*Id*. at 48.) The chronological case summary reflects the letter was returned on February 4, 2020.

[6] On February 11, 2020, the trial court held a hearing on Purdue's motion to compel. Both Purdue and Kuznar appeared by counsel, but Lloyd failed to appear. The trial court granted Purdue's motion to compel, and it set a hearing for March 10, 2020, "regarding possible sanctions, Trial Rule 41(E), and Defendant Lawrence Kuznar's anticipated Motion for Default Judgment[.]" (*Id*. at 51.) The trial court sent a copy of the order granting Purdue's motion to compel and setting a hearing for March 10, 2020, to Lloyd's Fort Wayne Address. That letter was similarly returned to the court with the same "Return to Sender" notification that provided an address for Lloyd in the state of Washington. (*Id*. at 52.)

[7] On February 20, 2020, Kuznar filed a motion seeking entry of default judgment against Lloyd on his counterclaim and asking the trial court to set a hearing on damages. The motion alleged Lloyd was required to file an answer to Kuznar's counterclaim by February 5, 2020, and she had not done so. The certificate of service indicates Kuznar served Lloyd by mailing a copy of the motion to her Fort Wayne Address. Lloyd did not appear at the March 10, 2020, hearing. The trial court issued an order following the hearing in which it dismissed Lloyd's complaint against Purdue as a sanction for her failure to abide by the trial court's order granting Purdue's motion to compel, dismissed Lloyd's complaint against Kuznar pursuant to Trial Rule 41(E), and entered default

judgment against Lloyd with respect to Kuznar's counterclaim. The trial court took the issue of damages on the counterclaim under advisement.[3]

[8] On April 1, 2020, the trial court held a hearing on Kuznar's damages and issued an order in which it found the statements Lloyd made in the email she sent to select PFW faculty and administrators were false. The trial court ruled:

> The Court concludes that Lloyd is liable to Kuznar in the amount of $402,632.00 for presumed damages, as Lloyd's statement was defamation per se, imputing misconduct in Kuznar's profession. The Court further concludes that Kuznar is entitled to recover from Lloyd the amount of $180,000.00 in special damages. This damage amount is the financial loss Kuznar suffers in the form of lost 403(B) contributions. Additionally, the Court concludes Kuznar is entitled to recover his attorney fees from Lloyd in the amount of $21,181.00, because Lloyd acted in bad faith in litigating the case. See I.C. § 34-52-1-1(b)(3). Thus, the Court now enters Judgment in favor of Defendant/Counter-Claimant Lawrence Kuznar, and against Plaintiff/Counterclaim Defendant Kim M. Lloyd in the total amount of $603,813.00. Costs to Plaintiff Kim Lloyd.

(*Id*. at 69-70.) On June 4, 2020, Kuznar filed a verified motion for proceedings supplemental indicating the balance on the judgment was unsatisfied and asking that the court set a hearing. The court set the matter for hearing on August 11, 2020, and ordered Lloyd to appear by telephone. The trial court mailed an order to Lloyd's Fort Wayne Address notifying her of the hearing,

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[3] The chronological case summary does not reflect whether the copy of this order mailed by the trial court to Lloyd was returned to the trial court.

but the order was returned by the post office with a return to sender notification.

[9] On February 22, 2021, Kuznar filed a certified copy of the April 1, 2020, judgment in the King County Washington Superior Court to domesticate the judgment. He then initiated suit in Washington to collect on the judgment. On March 11, 2021, Lloyd filed a verified motion to set aside the default judgment in the Allen Superior Court. She then filed an amended motion under Trial Rule 60(B) on April 5, 2021, seeking to set aside the trial court's dismissal of her complaint and the default judgment entered against her on Kuznar's counterclaim. Lloyd argued the judgments should be set aside because she did not receive notice of the documents sent to her Fort Wayne Address. Kuznar argued that Lloyd received adequate notice because Kuznar served her at the last known address for her provided by her counsel before he withdrew. Purdue also filed a brief opposing Lloyd's motion in which Purdue argued the trial court appropriately dismissed Lloyd's complaint against it because Lloyd was properly served with discovery and never responded.

[10] The trial court held a hearing on Lloyd's motion on May 3, 2021. Lloyd asserted at the hearing that she never received actual notice of the trial court's orders granting Attorney Myers' motion to withdraw, dismissing her complaint, and entering default judgment against her. On June 1, 2021, the trial court issued an order denying Lloyd's motion. The trial court found Lloyd failed to abide by an Allen County Local Rule requiring attorneys and pro se parties to file appearances and keep apprised of chronological case summary entries. The

trial court also found Lloyd was properly served at her Fort Wayne Address and Lloyd failed to make a prima facie showing of a meritorious defense to the allegations contained in Kuznar's counterclaim.

# Discussion and Decision

## Standard of Review

[11] Lloyd argues the trial court erred in denying her motion, filed pursuant to Trial Rules 60(B)(1), 60(B)(6), and 60(B)(8), to set aside its order dismissing her complaint and entering default judgment against her. Indiana Trial Rule 60(B) provides:

> On motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons:
>
> (1) mistake, surprise, or excusable neglect;
>
> * * * * *
>
> (6) the judgment is void;
>
> * * * * *
>
> (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4).

We review the denial of a Trial Rule 60(B) motion for an abuse of discretion. *Allstate Ins. Co. v. Love*, 944 N.E.2d 47, 50 (Ind. Ct. App. 2011). An abuse of discretion occurs when "the trial court's decision is clearly against the logic and effect of the facts and circumstances before it or is contrary to law." *Munster Cmty. Hosp. v. Bernacke*, 874 N.E.2d 611, 613 (Ind. Ct. App. 2007).

## I. Dismissal of Lloyd's Complaint Against Purdue

[12] Lloyd's complaint against Purdue was dismissed as a sanction for her failure to participate in discovery. We review a trial court's entry of sanctions as the result of a party's failure to comply with discovery for an abuse of discretion. *White-Rodgers v. Kindle*, 925 N.E.2d 406, 412 (Ind. Ct. App. 2010). Indiana Trial Rule 37(B)(2) states:

> If a party . . . fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
>
> * * * * *
>
> (c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party[.]

[13] There is no dispute that Purdue properly served Lloyd with discovery in July 2019. Lloyd's former counsel represented to Purdue that Lloyd started to work on responding to Purdue's discovery requests. However, Lloyd never served

Purdue with responses to its discovery requests, and Attorney Myers withdrew after Purdue filed a motion to compel because Lloyd was not maintaining contact with counsel. Lloyd did not file a response to Purdue's motion to compel, and she did not abide by the trial court's order granting the motion and directing her to respond to Purdue's discovery requests. The trial court was thus within its discretion to dismiss Lloyd's complaint against Purdue as a sanction for her noncompliance. *See Doherty v. Purdue Props. I, LLC*, 153 N.E.3d 228, 241 (Ind. Ct. App. 2020) (holding dismissal was an appropriate sanction for failure to comply with trial court's discovery order), *trans. denied*.

[14] Trial Rule 60(B)(1) allows a party to move for relief from judgment because of excusable neglect. However, Lloyd does not put forth any reason to excuse her failure to respond to Purdue's properly served discovery for over seven months. Therefore, we affirm the trial court's denial of her Rule 60(B) motion with respect to the dismissal of Lloyd's complaint against Purdue. *See Ross v. Bachkurinskiy*, 770 N.E.2d 389, 392-93 (Ind. Ct. App. 2002) (holding denial of Rule 60(B) motion seeking relief from default judgment was proper when appellant failed to show that his failure to comply with trial court's discovery orders was the result of excusable neglect).

## II. Dismissal of Lloyd's Complaint Against Kuznar

[15] Lloyd also contends her complaint against Kunzar should not have been dismissed because she did not receive notice of the Trial Rule 41(E) hearing. Trial Rule 41(E) provides:

> Whenever there has been a failure to comply with these rules or when no action has been taken in a civil case for a period of sixty (60) days, the court, on motion of a party or on its own motion shall order a hearing for the purpose of dismissing such case. The court shall enter an order of dismissal at plaintiff's costs if the plaintiff shall not show sufficient cause at or before such hearing. Dismissal may be withheld or reinstatement of dismissal may be made subject to the condition that the plaintiff comply with these rules and diligently prosecute the action and upon such terms that the court in its discretion determines to be necessary to assure such diligent prosecution.

[16] Lloyd notes that in *Moore v. Terre Haute First National Bank*, we reversed a trial court's order denying the plaintiff's motion for relief from the trial court's order dismissing his complaint pursuant to Trial Rule 41(E). 582 N.E.2d 474, 479 (Ind. Ct. App. 1991), *reh'g denied*. In *Moore*, the plaintiff's attorney resigned from the practice of law, and the attorney did not inform the plaintiff of his resignation from the bar. *Id*. at 476. The attorney also did not move to withdraw his appearance. *Id*. The defendant filed a motion to dismiss the plaintiff's complaint under Trial Rule 41(E) for failure to prosecute. *Id*. The defendant sent a copy of the motion to the plaintiff's former attorney, but the defendant did not serve the plaintiff. *Id*. The trial court granted the defendant's motion to dismiss when the plaintiff did not appear for a hearing on the motion, and the plaintiff filed a motion for relief from judgment pursuant to Trial Rule 60(B). *Id*. We held the plaintiff was entitled to relief under Trial Rule 60(B) because the defendant's attorneys knew about the plaintiff's former attorney's resignation from the bar but still chose to serve the attorney rather than the

plaintiff. *Id*. at 478. We explained that such action by the defendant's attorneys "cannot be condoned." *Id*. at 479.

[17] Nonetheless, a party must still bear the consequences of its own inaction. In *Baker & Daniels, LLP v. Coachmen Industries, Inc.*, Coachmen argued it did not receive notice of the trial court's sua sponte order directing the parties to show cause why the case should not be dismissed pursuant to Trial Rule 41(E). 924 N.E.2d 130, 134 (Ind. Ct. App. 2010), *trans. denied*. After the trial court dismissed the action, Coachmen argued the dismissal was void because its counsel did not receive notice of the rule to show cause. *Id*. at 137. Coachmen's counsel's firm changed addresses during pendency of the litigation, and while Coachmen's counsel generally informed court staff of his change of address, he did not update his appearance in each case pending before the court. *Id*. at 138. We explained:

> In light of Coachmen's counsel's failure to inform the court of his change of address in the manner contemplated by the trial rules, we are unpersuaded by Coachmen's claim that its lack of receipt of notice was instead attributable to another party's failure to follow the trial rules or make a genuine effort to apprise Coachmen of the proceedings at issue.

*Id*. at 139. Therefore, we rejected Coachmen's claim that it was denied due process because of inadequate notice. *Id*. Like in *Coachmen*, the trial court in the instant case set the Trial Rule 41(E) hearing. Neither Purdue nor Kunzar filed a motion seeking dismissal of Lloyd's complaint pursuant to Trial Rule

41(E). Unlike in *Moore*, Lloyd's failure to receive notice was not the result of actions by adverse parties.

[18] Indiana Trial Rule 72(D) imposes a duty on attorneys and pro se parties "to have noted on the Chronological Case Summary and on the pleadings or papers so filed, their mailing address, and an electronic mail address." The chronological case summary reflects the Fort Wayne Address as Lloyd's address, and Lloyd never updated her address. *See* T.R. 3.1 (requiring attorney representing initiating party, or the initiating party if not represented by an attorney, to file an appearance form and advise the court of any change in information). The trial court sent a copy of the order setting the hearing to the address listed for Lloyd on the chronological case summary. Lloyd's subsequent failure to receive the notice was not the result of excusable neglect because it stemmed directly from her failure to keep the trial court appraised of her address after filing suit. Similarly, Lloyd's lack of notice does not render the dismissal of her complaint against Kunzar void or constitute such an exceptional circumstance that her claim should be reinstated. Therefore, we affirm the portion of the trial court's order denying her Rule 60(B) motion to the extent it sought to set aside the dismissal of Lloyd's complaint against Kuznar. *See Lee v. Pugh*, 811 N.E.2d 881, 888 (Ind. Ct. App. 2004) (holding trial court did not abuse its discretion in dismissing action for failure to prosecute and denying plaintiff's motion to reinstate action when plaintiffs provided no justification for their inaction and failure to comply with discovery and pretrial orders).

## III. Entry of Default Judgment Against Lloyd on Kuznar's Counterclaim

[19] However, moving to Kuznar's counterclaim against Lloyd, a plaintiff who voluntarily abandons her complaint is differently situated from a defendant who is not provided with sufficient notice of actions being taken against her. The Fourteenth Amendment to the United States Constitution provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law[.]" Central to this protection is the right to notice and an opportunity to be heard. *See Pugel v. Bd. of Tr. of Univ. of Ill.*, 378 F.3d 659, 662-63 (7th Cir. 2004) ("The hallmarks of procedural due process are notice and an opportunity to be heard."), *reh'g en banc denied*. We thus strongly prefer disposition of cases on their merits and resolve any doubt regarding the propriety of a default judgment in favor of the defaulted party. *Ferguson v. Stevens*, 851 N.E.2d 1028, 1030 (Ind. Ct. App. 2006). Nonetheless, we afford deference to a trial court's decision not to set aside a default judgment, and we review such a decision for an abuse of discretion. *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014).

[20] Default judgments serve several important policy objectives including "maintaining an orderly and efficient judicial system, facilitating the speedy determination of justice, and enforcing compliance with procedural rules[.]" *Huntington Nat. Bank v. Car-X Assoc. Corp.*, 39 N.E.3d 652, 659 (Ind. 2015). However, these objectives "should not come at the expense of professionalism, civility, and common courtesy." *Id.* As our Indiana Supreme Court has explained, "default judgment 'is not a trap to be set by counsel to catch

unsuspecting litigants' and should not be used as a 'gotcha' device[.]"[4] *Id.* (quoting *Smith v. Johnston*, 711 N.E.2d 1259, 1264 (Ind. 1999)).

[21] In *Front Row Motors*, Scott Jones, the plaintiff, sued Front Row Motors, LLC, a car dealership owned by Jeremy Johnson, alleging Front Row Motors sold him a defective automobile. 5 N.E.3d at 754-55. Johnson was subsequently arrested, and he did not appear for a deposition because he was incarcerated. *Id*. at 755. Front Row Motors' counsel withdrew and Jones moved for a default judgment. *Id*. Jones sent notice of the hearing on his motion for default judgment to Johnson's home address and Johnson's business address, but Jones did not send notice of the hearing to the facility where Johnson was incarcerated. *Id*. The trial court granted Jones' motion for default judgment and awarded damages. *Id*. Johnson later filed a Trial Rule 60(B) motion seeking to set aside the default judgment. *Id*. Our Indiana Supreme Court held that, even though Johnson's home address was listed as the address of the registered agent for Front Row Motors, LLC, Jones' service to the address was insufficient because Jones knew Johnson was incarcerated and failed to serve

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[4] Justice David went on to explain:

> By fostering a spirit of fair competition and collegiality, courteous attorneys better serve their clients and greatly improve the quality of our profession. After all the practice of law is a marathon, not a sprint, and attorneys would be well advised to remember that procedural rules are not intended to be used as swords to obtain judgments. Our profession deserves better.

*Huntington Nat. Bank*, 39 N.E.3d at 659.

him at his place of incarceration. *Id*. at 759. The Court explained, "Jones' service of process was a mere gesture not calculated to inform [Front Row Motors] of the default damages hearing." *Id*. Thus, the judgment entered by the trial court against Front Row Motors was void. *Id*.

[22] Just as the plaintiff in *Front Row Motors* was aware Johnson was not at his home address, Kuznar knew Lloyd was not receiving mail at her Fort Wayne Address. Kuznar filed his motion for default judgment after Lloyd's counsel withdrew because of a breakdown in communication with Lloyd and after Lloyd failed to respond to the discovery requests Purdue served on her. The copy of the order granting Attorney Myers' motion to withdraw mailed to Lloyd's Fort Wayne Address was returned to the trial court with a forwarding address listed in Washington State. The order setting a sanctions hearing on Purdue's motion to compel was similarly returned. Yet, Kuznar served Lloyd only at her Fort Wayne Address when he filed his motion for default judgment. Even though Attorney Myers relayed an email address for Lloyd, the certificate of service on Kuznar's motion for default judgment does not indicate that he emailed Lloyd a copy. (Appellant's App. Vol. II at 61.) "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657 (1950). Here, Kuznar's notice to Lloyd of his intention to seek a default judgment was a mere gesture and not

reasonably calculated to inform Lloyd of his action. Like in *Moore*, we cannot condone such an activity.

[23] Equity considerations also support setting aside the default judgment entered against Lloyd. Courts should consider the degree of financial harm to the defaulted party when deciding whether to set aside a default judgment. *Fields v. Safaway Group Holdings, LLC*, 118 N.E.3d 804, 810-11 (Ind. Ct. App. 2019), *trans. denied*. Here, the trial court awarded Kuznar over $600,000 in damages because Lloyd sent one allegedly defamatory email to a subset of university employees. That a judgment of this magnitude was rendered against Lloyd without her appearing to contest it supports setting the judgment aside. *See Coachmen*, 924 N.E.2d at 141 (holding equitable considerations supported the trial court's decision to grant plaintiff's motion to set aside order dismissing its claim).

[24] To succeed on a motion under Trial Rule 60(B)(8), a party must assert a meritorious defense, and Kuznar notes that the trial court found Lloyd did not assert such a defense. In its order denying Lloyd's Rule 60(B) motion, the trial court stressed its findings from the March 10, 2020, hearing, and Lloyd's failure to present evidence to rebut its findings from that hearing. For example, the trial court stated:

> In support of her position, Lloyd directs the Court to Exhibit "A" of her Complaint, asserting that the same establishes the affirmative defense of truth. Lloyd provides no other admissible evidence, nor did she take any opportunity to provide testimony at the hearing on this matter, to provide additional information . .

> . Because no evidence was presented aside from a self-serving statement made to prosecute this very matter through an administrative agency, and because Lloyd failed to address the previous finding by this Court that undermines her credibility, this Court cannot say that a prima facie showing of a meritorious defense has been presented so as to illustrate that a different outcome would result if the case were tried on the merits.

(Appellant's App. Vol. II at 31-32.)

[25] However, this finding by the trial court was clearly erroneous. The trial court held Lloyd to a higher bar than she was required to clear. A Trial Rule 60(B)(8) movant "need not prove absolutely the existence of a meritorious defense. Rather, the party must make a *prima facie* showing of a meritorious defense." *Kretschmer v. Bank of Am., N.A.*, 15 N.E.3d 595, 601 (Ind. Ct. App. 2014) (internal citation and quotation marks omitted), *trans. denied*. "[T]o successfully allege a meritorious claim or defense pursuant to Rule 60(B), a party seeking relief from a default judgment must state a factual basis for his purported meritorious claim or defense, but at this initial stage such a showing is not governed by the rules of evidence." *Logansport/Cass Cnty. Airport Auth. v. Kochenower*, 169 N.E.3d 1143, 1149 (Ind. Ct. App. 2021).

[26] Truth is an absolute defense to a claim of defamation. *See Benson v. News-Sentinel*, 106 N.E.3d 544, 545 ("Truth is a complete defense to defamation."). The trial court only entertained argument at the hearing on Lloyd's Rule 60(B) motion, and Lloyd contended at the hearing that the statements she made in the October 26, 2018, email were true. She also attached to her complaint the

charge of discrimination she submitted to the EEOC under the penalties for perjury. The allegations Lloyd raised in the charge of discrimination are like the comments she made in the October 26, 2018 email, and we recognize a party's sworn, self-serving affidavit as evidence. *See Hughley v. State*, 15 N.E.3d 1000, 1004 (Ind. 2014) (holding civil forfeiture defendant's "perfunctory and self-serving" affidavit, which averred seized currency was not used in connection with criminal activity, raised a genuine issue of material fact precluding summary judgment). Thus, Lloyd made a prima facie showing of a meritorious defense. *See Logansport/Cass Cnty. Airport Auth.*, 169 N.E.3d at 1149-50 (holding letter from defendant asserting he was victim of identity theft along with argument presented at hearing on the defendant's Rule 60(B) motion were sufficient to establish prima facie meritorious defense to fraud allegation). We hold the trial court erred in denying Lloyd's Trial Rule 60(B) motion to set aside the default judgment entered against her on Kuznar's counterclaim because she was entitled to relief under both Trial Rule 60(B)(6) and Trial Rule 60(B)(8).[5] *See Anderson v. Wayne Post 64, Am. Legion Corp.*, 4 N.E.3d 1200, 1210 (Ind. Ct. App. 2014) (holding property owner was entitled to have default

[5] Kuznar also argues Lloyd's Rule 60(B) motion was untimely. Rule 60(B) provides: "The motion shall be filed within a reasonable time for reasons (5), (6), (7), and (8), and not more than one year after the judgment, order or proceeding was entered or taken for reasons (1), (2), (3), and (4)." Lloyd asserts she first learned of the substantial judgment entered against her after Kuznar domesticated the default judgment in Washington state court on February 22, 2021. Lloyd filed her Rule 60(B) motion on March 11, 2021. Therefore, we hold Lloyd filed her Rule 60(B) motion within a reasonable time. *See Williams v. Tharp*, 934 N.E.2d 1203, 1216 (Ind. Ct. App. 2010) (holding customers' motion for relief from judgment was timely when it was filed after customers learned restaurant employee pled guilty to criminal act that formed basis of their complaint), *trans. denied*.

judgment entered against it set aside pursuant to Trial Rule 60(B)(6) when plaintiff attempted to effectuate service by leaving a copy of her complaint at an outbuilding behind the property owner's primary place of business), *trans. denied*; *see also*, *First Chicago Ins. Co. v. Collins*, 141 N.E.3d 54, 63 (Ind. Ct. App. 2020) (holding equitable considerations supported setting aside default judgment entered against motorist because motorist had substantial interest in the matter and would suffer significant loss if the default judgment was not set aside).

# Conclusion

[27] After initiating suit against both Purdue and Kuznar, Lloyd stopped participating in the litigation and failed to keep the trial court apprised of her address. As a result, the trial court dismissed her claims against both Purdue and Kuznar, and she cannot now revive them. Therefore, the trial court did not err in denying Lloyd's Trial Rule 60(B) motion to the extent it sought to set aside the dismissal of her claims against Purdue and Kuznar. However, the trial court did err in denying Lloyd's Trial Rule 60(B) motion with respect to the default judgment entered against her on Kuznar's counterclaim. Kuznar's method of serving Lloyd was nothing more than a mere gesture, and we reverse the trial court's order denying Lloyd's motion to set aside the default judgment on Kuznar's counterclaim.

[28] We affirm in part, reverse in part, and remand.

Brown, J., and Pyle, J., concur.