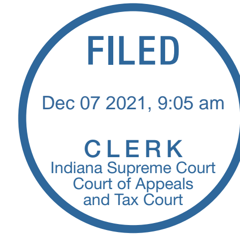
MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Bearcat Xpress, Inc., et al.,
Appellant-Defendants,

v.

William J. Coffman,
Appellee-Plaintiff.

December 7, 2021

Court of Appeals Case No. 21A-CT-1572

Appeal from the Gibson Superior Court

The Honorable Robert Krieg, Judge

Trial Court Cause No. 26D01-2012-CT-1701

Bailey, Judge.

Case Summary

[1] William J. Coffman ("Coffman") obtained default judgments against Kenneth L. Partlow ("Partlow") and Bearcat Xpress, Inc. ("Bearcat") (at times collectively referred to as "Bearcat"). Bearcat was denied Indiana Trial Rule 60(B) relief. On appeal, Bearcat presents a single issue: whether the default judgments are void because Coffman's attempts to serve Bearcat with process, at a time when the United States Post Office ("Post Office") certified mail procedures were modified to reduce Covid-19 exposure, were inadequate to effect service of process so as to permit the trial court to exercise personal jurisdiction over Bearcat. We reverse and remand.

Facts and Procedural History

[2] On June 4, 2019, Coffman was operating a tractor and towing a sprayer on U.S. 41 South in Patoka, Indiana, when the tractor and sprayer were struck from the rear by a semi-truck being operated by Partlow. Partlow was an owner-operator transporting freight for Bearcat. Partlow's semi was towing a 1987 chassis manufactured by Direct Chassilink, Inc. ("Direct Chassilink"). On the chassis was a container owned by Union Pacific Railroad Company ("Union Pacific").

[3] On December 30, 2020, Coffman filed suit in Gibson County Superior Court, alleging that he had sustained injuries in the June collision. The complaint named as defendants Partlow, Bearcat, Direct Chassilink, and Cargo Company

John Doe.[1] On January 11, 2021, and January 15, 2021, the Return of Summons was filed in the trial court as to Bearcat and Partlow, respectively. Although Coffman had purportedly served both Bearcat, through its registered agent, and Partlow, no signature and no initials for a recipient appeared on either certified mail green card.

[4] On February 22, 2021, the trial court granted Coffman's motion for default judgments against Bearcat and Partlow. On March 31, 2021, Coffman was granted a default judgment against Direct Chassilink; however, this order of default was subsequently set aside. Union Pacific filed its answer to Coffman's complaint in May of 2021.

[5] On May 28, 2021, counsel for Bearcat entered an appearance and subsequently participated in selection of a mediator. On June 14, 2021, Bearcat filed a motion to set aside the default judgments, which the trial court denied on June 28, 2021. Bearcat filed a motion to reconsider, which was summarily denied. Bearcat now appeals.

Discussion and Decision

[6] In general, the standard of review for the granting or denying of a Trial Rule 60(B) motion is limited to whether the trial court abused its discretion. *Anderson v. Wayne Post 64*, 4 N.E.3d 1200, 1205 (Ind. Ct. App. 2014). However, a

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[1] Union Pacific was substituted as a defendant on March 31, 2021.

motion under T.R. 60(B)(6) alleging the judgment is void requires no discretion on the part of the trial court because either the judgment is void or it is valid. *Id.* Void judgments can be attacked, directly or collaterally, at any time. *Id.* A trial court does not acquire personal jurisdiction over a party if service of process is inadequate. *Munster v. Groce*, 829 N.E.2d 52, 57 (Ind. Ct. App. 2005). Personal jurisdiction presents a question of law, which we review de novo. *Anderson*, 4 N.E.3d at 1205. To the extent that the issue of personal jurisdiction turns on disputed facts, we review for clear error. *Id.* at 1206. But here the trial court ruled upon a paper record; accordingly, we are in the same position as the trial court with respect to ability to determine jurisdictional facts. *See id.* at 1206.

[7] The question of sufficiency of process involves two aspects: whether there was compliance with the Indiana Trial Rules regarding service, and whether such attempts at service comported with the Due Process Clause of the Fourteenth Amendment. *Munster*, 829 N.E.2d at 58. As we have observed,

> the Due Process Clause requires at a minimum "that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S. Ct. 652, 656–57, 94 L.Ed. 865 (1950). "This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Id*. at 314, 70 S.Ct. at 657. "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." *Id.*

Munster, 829 N.E.2d at 58.

[8] With respect to Partlow, Coffman attempted to effectuate service of the summons and complaint according to Trial Rule 4.1(A)(1), which 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 acknowledgement of receipt may be requested and obtained to his residence, place of business or employment with the return receipt requested and returned showing receipt of the letter[.]

[9] With respect to Bearcat, Coffman attempted to effectuate service of the summons and complaint upon registered agent Ralph Winterhalter under Indiana Trial Rule 4.6, providing in part:

> (A) Persons to be served. Service upon an organization may be made as follows:
>
> (1) In the case of a domestic or foreign organization upon an executive officer thereof, or if there is an agent appointed or deemed by law to have been appointed to receive service, then upon such agent. …

(B) Manner of service. Service under subdivision (A) of this rule shall be made on the proper person in the manner provided by these rules for service upon individuals, but a person seeking service or his attorney shall not knowingly direct service to be made at the person's dwelling house or place of abode, unless such is an address furnished under the requirements of a statute or valid agreement, or unless an affidavit on or attached to the summons states that service in any other manner is impractical.

[10] The registered agent for Bearcat and Partlow each submitted affidavits, denying having received service of process. The certified mail green card addressed to Bearcat, c/o Ralph Winterhalter, in Glendale, Ohio, contains the following information in the signature block: TS C-19 044. The certified mail green card addressed to Partlow in Delphi, Indiana is signed by Amy Clawson. It is undisputed that Amy Clawson is the mail carrier for the Delphi area and that a mail carrier in Glendale, Ohio has the initials TS. It is also undisputed that, during the relevant time frame, the Post Office was not requiring carriers to obtain a personal signature upon delivery of certified mail. Rather, carriers were to maintain a safe distance and request the customer's first initial and last name.

[11] Bearcat argues that a postal carrier was required to write down the first initial and last name as a minimal verification of customer receipt of certified materials. Coffman responds that postal carriers were only required to verbally inquire as to the first initial and last name of a recipient, so as to satisfy the carrier that the correct person had been served and the carrier need not pursue a procedure for non-delivery. We are not in a position to evaluate the specific

expectations of the Post Office for its carriers in emergency situations. That said, we are mindful of our Indiana Supreme Court's guidance that "[a]ny doubt of the propriety of a default judgment should be resolved in favor of the defaulted party." *Coslett v. Weddle Bros. Const. Co., Inc.*, 798 N.E.2d 859, 861 (Ind. 2003). Here, there was no notation whatsoever relating that a specific individual or corporate agent received service. The targeted individual and agent executed affidavits denying having received service of process. Under these circumstances, we conclude that the trial court did not obtain personal jurisdiction over Bearcat prior to entering the default judgments.

Conclusion

[12] Bearcat is entitled to Trial Rule 60(B) relief from the default judgments. We reverse and remand for further proceedings.

[13] Reversed and remanded.

Mathias, J., and Altice, J., concur.