MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jones Laboratory, LLC,
Appellant-Defendant,

v.

Marquita Ramsey, Courtney Jones and K.J.,
Appellee-Plaintiffs.

December 30, 2021

Court of Appeals Case No. 21A-CT-1625

Appeal from the Marion Superior Court

The Honorable Anne Flannelly, Magistrate Judge

Trial Court Cause No. 49D04-1812-CT-49410

Tavitas, Judge.

Case Summary

[1] Marquita Ramsey and Courtney Jones ("adoptive parents")[1] alleged that K.J., a minor child, was removed from their care on the basis of false positive drug tests of the adoptive parents. Specifically, adoptive parents alleged that Jones Laboratory, LLC ("Jones Lab"), the company that collected the drug test samples, acted negligently with respect to specimen collection. Jones Lab failed to respond to adoptive parents' complaint, and adoptive parents filed a motion for a default judgment, which the trial court granted. In January 2021, Tim Jones, owner of the laboratory, learned of the litigation. On May 4, 2021, Jones filed a motion to set aside the default judgment, which the trial court denied. Concluding that the gap between January and May, when Jones Lab finally filed its motion, was not "a reasonable time," justifying relief, as well as finding that Jones Lab fails to establish exceptional circumstances necessary to satisfy Trial Rule 60(B)(8), we affirm.

Issue

[2] Jones raises a single issue, which we restate as whether the trial court abused its discretion by denying Jones' motion to set aside the default judgment.

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[1] K.J. was placed as a foster child in the Ramsey-Jones home in 2013. In May 2017, adoptive parents filed a petition seeking to adopt K.J., and the trial court granted the petition and approved the adoption on October 6, 2017. Thus, during the timeframe relevant to this case, Ramsey and Jones were still foster parents. For simplicity's sake, however, we refer to Ramsey and Jones as the adoptive parents.

Facts

[3] On December 17, 2018, adoptive parents filed a complaint in the Marion Superior Court alleging that the Department of Child Services ("DCS") had removed K.J. from adoptive parents' care following a false positive drug test.[2] The complaint listed Jones Lab and Redwood Toxicology Laboratory, Inc. ("Redwood"), as defendants. Adoptive parents filed proof of service on Jones Lab on December 26, 2018, wherein they attached the certified mail green card indicating signature confirmation of the receipt of the complaint at 5508 East 16th Street in Indianapolis.[3] Redwood timely filed its response to the complaint; Jones Lab did not.

[4] On May 8, 2019, adoptive parents moved for a default judgment against Jones Lab in accordance with Indiana Trial Rule 55. The trial court granted the motion on May 20, 2019.

[5] On May 4, 2021, Jones Lab filed a motion to set aside a default judgment pursuant to Indiana Trial Rule 60(B)(8). In support of its motion, Jones Lab filed an affidavit by the owner of the laboratory, Tim Jones ("Tim"). Tim

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[2] After adoptive parents challenged the veracity of the drug test results during the removal proceedings and presented results of an alternative test, DCS elected to "unsubstantiate" the results of the false positive test, and the trial court returned K.J. to adoptive parents' care. Appellant's App. Vol. II p. 27.

[3] The record reflects that two summonses were issued, one addressed to "Jones Laboratory LLC, c/o Timothy Jones (Registered Agent), 9637 West Stargazer Drive, Pendleton, IN 46064," and the other addressed to "Jones Laboratory LLC, Highest Executive Officer, 5508 E 16th St, Suite C14, Indianapolis, IN 46218." Appellant's App. Vol. II pp. 43, 45. The record reflects proof of service at only the E. 16th Street address.

averred that he learned of adoptive parents' complaint "on or about January of 2021." Appellant's App. Vol. II p. 106. Tim further averred that Jones Lab moved its principal place of business away from the East 16th Street address prior to service of the adoptive parents' complaint and that Tim never received service, despite listing a different address as the registered agent in all of Jones Lab's public filings. Finally, Tim asserted that, upon realizing that the complaint existed in January 2021, he "immediately began the process of obtaining counsel." *Id*.

[6] The trial court held a hearing on Jones Lab's motion to set aside the default judgment on June 22, 2021. The trial court issued findings of fact and conclusions thereon on June 28, 2021, and denied the motion. The trial court found:

> [A]lthough Tim Jones, owner of Jones Laboratory LLC, stated in an Affidavit that he learned of this litigation in January 2021, the Defendant's Motion to Set Aside Default Judgment Against Defendant, Jones Laboratory LLC was not filed until May 4, 2021. The Court does not find that the Defendant's Motion to Set Aside Default Judgment was filed within a reasonable time after the Defendant purportedly first discovered the default judgment. The Court further notes that the Defendant Jones Laboratory LLC fails to allege a meritorious claim or defense as to the specific allegations against the Defendant regarding the test sample obtained of the Plaintiff Courtney Jones; that is, the Defendant fails to allege a meritorious claim or defense regarding the Defendant's protocols, procedures, and policies as applied to the sample taken of Courtney Jones at issue in this cause.

> Further, the Court notes that counsel for the Plaintiffs argued at said hearing that there is prejudice to the Plaintiffs should this case against Jones Laboratory LLC be reinstated in that counsel for the Plaintiff "believes evidence is gone".
>
> The Court FINDS that the Defendant, Jones Laboratory LLC has failed to demonstrate that relief pursuant to Indiana Trial Rule 60(B)(8) is necessary and just. The Court DENIES Defendant's Verified Motion to Set Aside Default Judgment Against Defendant Jones Laboratory LLC.

Appellant's App. Vol. II pp. 18-19. Jones Lab now appeals.

Analysis

[7] Jones Lab argues that the trial court erred in denying its motion to set aside the default judgment. We review a trial court's denial of a motion for relief from judgment pursuant to Trial Rule 60(B) under an abuse of discretion standard. *Berg v. Berg*, 170 N.E.3d 224, 227 (Ind. 2021). Further, a "decision whether to set aside a default judgment is entitled to deference and is reviewed for abuse of discretion." *Fields v. Safway Grp. Holdings, LLC*, 118 N.E.3d 804, 809 (Ind. Ct. App. 2019), *trans. denied*. An abuse of discretion occurs where the trial court's judgment is clearly against the logic and effect of the facts and circumstances before it or where the trial court errs on a matter of law. *Berg*, 170 N.E.3d at 227. "Any doubt about the propriety of a default judgment should be resolved in favor of the defaulted party." *Fields*, 118 N.E.3d at 809. "Indiana law strongly prefers disposition of cases on their merits." *Id.*

> Where the trial court has entered findings of fact and conclusions of law, our standard of review is two-tiered: we determine whether the evidence supports the trial court's findings, and whether the findings support the judgment. *Indianapolis Ind. Aamco Dealers Adver. Pool v. Anderson*, 746 N.E.2d 383, 386 (Ind. Ct. App. 2001). We will not disturb the trial court's findings or judgment unless they are clearly erroneous. *Id*. Findings of fact are clearly erroneous when the record lacks any reasonable inference from the evidence to support them. *Culley v. McFadden Lake Corp.*, 674 N.E.2d 208, 211 (Ind. Ct. App. 1996). A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. *Carroll v. J.J.B. Hilliard, W.L. Lyons, Inc.*, 738 N.E.2d 1069, 1075 (Ind. Ct. App. 2000), *trans. denied*.

Id.

[8] Trial Rule 60(B) provides in relevant part:

> 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:
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> * * * * *
>
> (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).

[9] Trial Rule 60(B) also requires such a motion to 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)." Moreover, "[a] movant filing a motion for reasons (1), (2), (3), (4), and (8)

must allege a meritorious claim or defense." T.R. 60(B). The burden is on the movant to establish grounds for Trial Rule 60(B) relief. *In re Paternity of P.S.S.*, 934 N.E.2d 737, 740 (Ind. 2010).

[10] Jones Lab did not file the motion to set aside the default judgment for almost two years after the default judgment was entered, and, thus, Rule 60(B)(1) is not available. Rather, Jones Lab seeks relief pursuant to Rule 60(B)(8). In order to be granted relief pursuant to Indiana Trial Rule 60(B)(8), Jones Lab "must demonstrate some *extraordinary or exceptional circumstances* justifying equitable relief." *Ameristar Casino E. Chicago, LLC, v. Ferrantelli*, 120 N.E.3d 1021, 1026 (Ind. Ct. App. 2019) (emphasis added), *trans. denied*.

> Exceptional circumstances include "equitable considerations" such as (1) whether the movant has a substantial interest in the matter at issue; (2) whether the movant had an "excusable reason" for its untimely response; (3) whether the movant took "quick action to set aside the default judgment" once the complaint was discovered; (4) whether the movant will suffer significant loss if the default judgment is not set aside; and (5) whether the non-movant will suffer only minimal prejudice if the case is reinstated.

Innovative Therapy Sols. Inc. v. Greenhill Manor Mgmt., LLC, 135 N.E.3d 662, 668-69 (Ind. Ct. App. 2019) (citing *Huntington Nat. Bank v. Car-X Assoc. Corp.*, 39 N.E.3d 652, 655 (Ind. 2015)). "[T]he burden is on the movant to demonstrate that relief is both necessary and just." *Huntington Nat. Bank*, 39 N.E.3d at 658. "As with subsection (B)(1), the decision whether to grant or deny a party's

motion is left to the trial court's equitable discretion and [is] highly fact specific." *Id.*

[11] Thus, Jones carried the burden to establish: (1) exceptional circumstances warranting equitable relief (as defined by the *Huntington* factors); (2) that Jones Lab filed its motion to set aside within a reasonable time; and (3) evidence of a meritorious defense.

I. Exceptional Circumstances

[12] We turn first to Jones Lab's claim that relief from the default judgment is warranted by exceptional circumstances. Jones Lab claims that it had an excusable reason for its untimely response, namely, that it was not aware of the lawsuit. Even if we accept for the sake of argument that Jones Lab was unaware of the lawsuit prior to January 2021, we are unpersuaded that this fact tips the balance of equities in Jones Lab's favor.

[13] Jones Lab encourages us to take heed of our recent decision in *Fields v. Safway Grp. Holdings, LLC*, 118 N.E.3d 804, 809 (Ind. Ct. App. 2019), *trans. denied*. Jones suggests that evidence of excusable neglect that does not meet the standard for relief under Rule 60(B)(1) "can still be grounds for relief under 60(B)(8)." Appellant's Br. at 10. If true, then the holding in *Fields* could potentially conflict with cases such as *Brimhall v. Brewster*, 864 N.E.2d 1148, 1153 (Ind. Ct. App. 2007), *trans. denied*, which held that a trial court may grant relief under Rule 60(B)(8) "upon a showing of exceptional circumstances justifying extraordinary relief [so long as the] exceptional circumstances do not

include mistake, surprise, or excusable neglect[.]" This is in accordance with the plain text of Rule 60(B) itself. *See also Indiana Ins. Co. v. Ins. Co. of N. Am.*, 734 N.E.2d 276, 279-80 (Ind. Ct. App. 2000) (citing *Blichert v. Borosky*, 436 N.E.2d 1165, 1167 (Ind. Ct. App. 1982)) ("Nevertheless, under T.R. 60(B)(8), the party seeking relief from the judgment must show that its failure to act was not merely due to an omission involving the mistake, surprise or excusable neglect. Rather some extraordinary circumstances must be demonstrated affirmatively. This circumstance must be other than those circumstances enumerated in the preceding subsections of T.R. 60(B)."), *trans. denied*.

[14] In an attempt to respond to adoptive parents' argument that Rule 60(B)(8) is unavailable to Jones Lab if the only evidence Jones Lab has would fall under Rule 60(B)(1), Jones Lab overstates the import of *Fields*. The pertinent holding from that case is as follows:

> The rule and the caselaw do not require the movant to present evidence of exceptional circumstances independent of the equitable reasons for relief; rather, they require that the movant present proof of "exceptional circumstances justifying extraordinary relief[,]" *Brimhall*, 864 N.E.2d at 1153, and that the movant can demonstrate that by presenting sufficient evidence of equitable considerations, such as the five factors listed in *Huntington*, 39 N.E.3d at 659. *See Dalton* [*Corp. v. Myers*, 65 N.E.3d 1142, 1145 (Ind. Ct. App. 2016)] (trial courts can find required exceptional circumstances by considering equitable considerations presented by the parties). Therefore, as the trial court made findings of equitable reasons and concluded those reasons, together with our Indiana Supreme Court's preference to decide cases on their merits, "tip[ped] the balance in favor of vacating the entry of default and partial judgment[,]" (Appealed

> Order at 6), we cannot find the trial court abused its discretion. *See Wamsley v. Tree City Village*, 108 N.E.3d 334, 336 (Ind. 2018) (if even slight evidence exists, "[o]ur deferential standard of review compels us to affirm the trial court").

Fields, 118 N.E.3d at 810. A movant seeking relief from a judgment must establish exceptional circumstances warranting relief, and one way to do so is by establishing equitable considerations justifying said relief. While evidence of mistake, surprise, or excusable neglect alone is not permissible as a reason to justify a finding of exceptional circumstances, that evidence may be pertinent to one or more of the *Huntington* factors, or other considerations bearing on whether there are equitable reasons for setting a judgment aside.

[15] Regardless of whether and how evidence of excusable neglect and its 60(B)(1) bedfellows is available for our consideration, the fact remains that the burden is on Jones Lab to make the showing. The balance of the equities must indicate *exceptional* circumstances, and not merely excusable conduct. The record does not demonstrate that Jones Lab will suffer significant damages if the default judgment is not set aside.[4] Moreover, both the record and common sense suggest that, in the more than two years since the adoptive parents filed their lawsuit, evidence vital to adoptive parents' case may have disappeared or

[4] Jones Lab itself concedes that the matter is speculation at this point and attempted to introduce no evidence below quantifying that speculation in more concrete terms. "As a single member LLC of which Timothy Jones is the sole member, having a *potentially substantial* monetary judgment entered against it would be catastrophic to Jones Lab and would financially ruin it." Appellant's Br. p. 23 (emphasis added).

weakened.[5] Even notwithstanding those two realities, one of the *Huntington* factors is whether the movant took quick action to set aside the default judgment *once it became aware of said judgment*. This factor overlaps significantly with the question of whether Jones Lab filed its response within a reasonable time, which it did not, as we will explain in the next section.

[16] We find the record bereft of any plausible explanation—let alone one rising to the level of exceptional circumstances when considered in the balance of the *Huntington* factors—which would merit the setting aside the default judgment. Accordingly, we find that Jones Lab has not met its burden to demonstrate the existence of exceptional circumstances warranting relief under Rule 60(B)(8).

II. Reasonable Time

[17] The next question is whether Jones Lab filed the motion to set aside within a reasonable time after entry of the default judgment. Jones Lab argues that for the first two years in which it failed to respond it was because Jones Lab was unaware of the lawsuit. Jones Lab offers no plausible explanation of the four-month gap between when Jones Lab admits to learning of the default judgment and the eventual filing of the motion to set aside the default judgment.

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[5] Jones Lab contends that "[Adoptive parents] ha[ve] not provided a single shred of evidence as to why they have been prejudiced by the delay from January to May 2021." Appellant's Br. p. 21. This is beside the point for two reasons. First, Jones Lab, and not the adoptive parents, carries the burden here. Jones Lab must show that the adoptive parents will suffer no prejudice. And second, the relevant inquiry is not whether the adoptive parents will be prejudiced by Jones Lab's failure to promptly act once it admits to having become aware of the complaint, but rather whether the adoptive parents will be prejudiced *by the setting aside of the default judgment*.

[18] We do note that the evidence below showed that Tim accepted service in an unrelated action at the East 16th address at a date later than the service of adoptive parents' complaint. Jones Lab contends that the service was actually accepted elsewhere as a result of a mail forwarding request but fails to explain why adoptive parents' complaint would not have similarly been forwarded to the new address. *See* Appellant's Br. at 18 (indicating that the mail forwarding request was set up in July 2018 and that adoptive parents' complaint was served in December 2018). Jones Lab further points out that the address of its registered agent was 9637 Stargazer Drive in Pendleton and that address had not changed. Appellant's Br. p. 6. The import of this is not clear, as the summons for the complaint reflects the Stargazer Drive address in addition to the East 16th Street address, suggesting that the complaint was indeed sent to the Stargazer Drive address.[6] Appellant's App. Vol. II p. 43.

[19] Even if we accept that Jones Lab was unaware of the complaint for two years, the time period between Jones Lab's admitted discovery of the default judgment and Jones' filing of the motion to set aside is not reasonable. Jones Lab suggests that the lab is not a sophisticated business entity and is a single-member LLC. Jones Lab, however, does not explain why that justifies a four-month delay. Jones Lab fails to develop its arguments on this point, and we are, therefore, compelled to conclude that Jones Lab's argument regarding its alleged lack of sophistication is waived for failure to make a cogent argument.

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[6] Again, adoptive parents only filed proof of service with respect to the East 16th Street address.

See Ind. Appellate Rule 46(A)(8); *Loomis v. Ameritech Corp.*, 764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (holding that the failure to present a cogent argument waives the issue for appellate review), *trans. denied*.

[20] Jones Lab further references the Covid-19 pandemic as an excuse. No mention of the pandemic was made in any of Jones Lab's filings below, and we, therefore, do not address these arguments. A trial court cannot err by failing to consider arguments that a party does not raise before the court, and those arguments are, accordingly, not properly before this Court on review. *See, e.g.*, *Evergreen Shipping Agency Corp. v. Djuric Trucking, Inc.,* 996 N.E.2d 337, 340 (Ind. Ct. App. 2013).

[21] Jones Lab fails to establish exceptional circumstances justifying relief under Rule 60(B)(8); Jones Lab further fails to persuade us that its four-month delay between discovering the default judgment and filing a motion to set aside that default judgment was reasonable. Accordingly, we need not address whether Jones Lab presented evidence of a meritorious defense. We conclude that the trial court did not abuse its discretion in denying Jones Lab's motion to set aside the default judgment.

Conclusion

[22] The trial court did not abuse its discretion by denying Jones Lab's motion to set aside the default judgment. We affirm.

[23] Affirmed.

Bradford, C.J., and Crone, J., concur.