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IN THE
COURT OF APPEALS OF INDIANA

Dexter Eastridge,
Appellant-Defendant,

v.

Estate of Richard Rayles,
Appellee-Plaintiff.

October 13, 2021

Court of Appeals Case No.
21A-PL-673

Appeal from the Crawford Circuit
Court

The Honorable John T. Evans,
Special Judge

Trial Court Cause No.
13C01-1910-PL-13

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Defendant, Dexter Eastridge (Eastridge), appeals the trial court's denial of his motion to set aside a default judgment entered in favor of Appellee-Plaintiff, the Estate of Richard Rayles (Estate), after the Estate filed a petition to compel arbitration.
- [2] We affirm.

ISSUES

- [3] Eastridge presents this court with one issue on appeal, which we restate as the following two issues:
1. Whether Eastridge waived his right to arbitration after failing to respond to the Estate's motion to compel arbitration; and
 2. Whether the trial court abused its discretion when it entered a default judgment.

FACTS AND PROCEDURAL HISTORY

- [4] On December 5, 2017, Eastridge and the Estate, by its personal representative, entered into a contract for the sale of standing timber. The contract called for Eastridge to buy, cut, and remove standing timber located on property owned by the Estate. Pursuant to the contract, Eastridge would cut certain designated trees, and pay the Estate a guaranteed minimum income of \$250,000 for the sale of the timber. The agreement included an arbitration clause, requiring the parties to arbitrate any disputes that may arise:

In case of dispute over the terms of this contract, final decisions shall rest with a reputable person to be mutually agreed upon by _____ parties to this contract. In the case of further disagreement, an arbitration board of three persons will be selected, one by each party, and the third by those two selected and the decisions of the majority shall be final with respect either to acts to be done or compensation to be paid by either party to the other.

(Appellant’s App. Vol. II, p. 14) (underline in original).

[5] On September 16, 2019, the Estate mailed a letter to Eastridge, attaching a proposed complaint and nominating C. Gregory Fifer (Fifer) as the Estate’s elected arbitrator. The proposed complaint asserted that Eastridge had failed to complete the work contracted for under the agreement and to make the guaranteed payment. The Estate’s letter requested Eastridge to notify it and Fifer of Eastridge’s selection of an arbitrator within twenty days. Eastridge did not reply.

[6] On October 17, 2019, the Estate filed a petition to compel arbitration with the trial court, requesting the trial court to order Eastridge to submit the issue to final and binding arbitration and to select his arbitrator. Alternatively, the Estate requested the trial court to find Eastridge in default for failure to participate in arbitration and to enter a judgment against him for \$63,976.22, plus interest and costs. The following day, the trial court entered an order, requiring Eastridge to “submit this controversy to final and binding arbitration and to select his arbitrator in accordance with the [a]greement within ten (10) days of this [o]rder.” (Appellant’s App. Vol. II, p. 20). By October 28, 2019,

Eastridge had neither submitted the matter to arbitration nor selected his arbitrator.

[7] On November 9, 2019, the Estate submitted proof of service of the trial court's order on Eastridge. Sometime after being served, Eastridge sent a short, handwritten notice to the Estate, indicating that he elected Tim Richards (Richards) as his arbitrator. The note did not contain the contact information for Richards, and the Estate could not locate or identify an arbitrator by that name. The Estate contacted Eastridge on December 3, 2019, asking him for Richards' address and phone number. Eastridge never contacted the Estate nor filed a response to the trial court's October 18, 2019 order.

[8] On January 14, 2020, the Estate filed a motion for default judgment, describing Eastridge's failure to abide by the trial court's October 18, 2019 order compelling arbitration. On January 21, 2020, the trial court ordered Eastridge to provide the Estate with Richards' contact information within ten days or a default judgment would be entered. Eastridge failed to appear or reply. On February 5, 2020, the Estate filed an affidavit of damages in support of the order on default judgment. On February 14, 2020, the trial court entered an order of disqualification on its own motion and a new trial court judge was appointed on February 19, 2020. On February 27, 2020, the trial court denied the Estate's request for a default judgment because the Estate had failed to provide the trial court with Eastridge's military status. On March 5, 2020, the Estate renewed its motion for a default judgment, attaching the missing non-military affidavit.

[9] In response to various emergency orders relating to the COVID-19 pandemic, the trial court issued several orders that stayed the Estate's renewed motion for default judgment through August 14, 2020. On September 9, 2020, approximately six months after the renewed petition was filed and ten months after service of the original petition, with no response by Eastridge, the trial court granted default judgment against Eastridge in the amount of \$172,979.22, plus attorney's fees.

[10] On October 12, 2020, the Estate filed its motion for proceedings supplemental. Following a hearing on December 16, 2020, the trial court entered an order setting the matter for a show cause hearing on February 3, 2021. Two days prior to the hearing, Eastridge appeared and moved to reset the show cause hearing. On March 12, 2021, Eastridge filed a motion to set aside the default judgment, claiming that (1) the judgment was void because the Estate had failed to comply with the Indiana Uniform Arbitration Act; (2) the facts of the case were extraordinary and justified relief; and (3) he had failed to participate on the basis of mistake, surprise, or excusable neglect. On March 25, 2021, the Estate filed an objection and memorandum in support of the objection to Eastridge's motion to set aside the default judgment, asserting that Eastridge had waived arbitration. On March 31, 2021, the trial court denied Eastridge's motion to set aside.

[11] Eastridge now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Waiver of Arbitration*

- [12] Prior to turning to the merits of this appeal, we need to analyze the threshold issue as to whether Eastridge waived the application of the contractual arbitration clause. Determination of this issue will decide whether this court proceeds under the Uniform Arbitration Act or applies the trial rules.
- [13] “Although a written agreement to submit a dispute to arbitration is valid and enforceable, the right to require such arbitration may be waived by the parties.” *Safety Nat. Cas. Co. v. Cinergy Corp.*, 829 N.E.2d 986, 1004 (Ind. Ct. App. 2005) (quoting *Shahan v. Brinegar*, 390 N.E.2d 1036, 1041 (Ind. 1979)). Such a waiver need not be in express terms and may be implied by the acts, omissions, or conduct of the parties. *Safety Nat. Cas. Co.*, 829 N.E.2d at 1004. Whether a party has waived the right to arbitration depends primarily upon whether that party has acted inconsistently with its right to arbitrate. *Id.* Waiver is a question of fact under the circumstances of each case. *Id.* “In determining if waiver has occurred, courts look at a variety of factors, including the timing of the arbitration request, if dispositive motions have been filed, and/or if a litigant is unfairly manipulating the judicial system by attempting to obtain a second bite at the apple due to an unfavorable ruling in another forum.” *Id.* (quoting *Finlay Properties, Inc. v. Hoosier Contracting, LLC*, 802 N.E.2d 453, 455 (Ind. Ct. App. 2003)).

[14] Here, Eastridge ignored the current proceedings until five months after the entry of the default judgment and proceedings supplemental had begun. The Estate initially attempted to informally commence arbitration proceedings by letter to Eastridge on September 16, 2019. Because Eastridge ignored this attempt, the Estate filed a motion to compel, forcing Eastridge to submit to arbitration, through the trial court. After Eastridge sent a handwritten note to the Estate with the name of his elected arbitrator but no contact information, the Estate exhausted its efforts trying to locate the arbitrator. Having done its due diligence without any success, the Estate requested the contact information of his arbitrator from Eastridge so that arbitration could move forward. When Eastridge failed to respond, the Estate filed for default judgment on January 14, 2020, abandoning its efforts to pursue arbitration. From September 16, 2019 until February 1, 2021, Eastridge's only effort to arbitrate the issue was one handwritten letter.

[15] After the Estate's petition for default judgment on January 14, 2020, the initiation of proceedings supplemental, and the setting of the show cause hearing on February 3, 2021, Eastridge still did not participate in the proceedings nor did he allege that he had failed to receive notice of any of the filings. Almost one year and a half after the Estate requested to commence arbitration and a default judgment was entered, Eastridge now requests this court to reject the default judgment and proceed by arbitration. Granting his request would create a precedent which would prevent a trial court from dealing with a situation where a party fails to participate in the arbitration process.

Without a waiver rule, the trial court would be unable to dispose of a non-participatory party, leaving the other party captive for the non-participatory party to finally engage. This would foster a system that wastes valuable judicial time and resources and encourages parties to attempt a second bite at the apple. *See, e.g., St. Mary's Med. Ctr. of Evansville, Inc. v. Disco Aluminum Prods. Co.*, 969 F.2d 585, 588 (7th Cir. 1992) (finding waiver where party requesting arbitration waited ten months after commencement of lawsuit to request arbitration and did not do so until after filing motion to dismiss or for summary judgment and losing); *Tamko Roofing Prods., Inc. v. Dilloway*, 865 N.E.2d 1074, 1079-80 (Ind. Ct. App. 2007) (finding waiver where party waited until after plaintiff presented evidence during trial to seek arbitration); *JK Harris & Co., LLC v. Sandlin*, 942 N.E.2d 875, 884-85 (Ind. Ct. App. 2011) (finding waiver where party requesting arbitration never participated in litigation and waited until after default judgment was entered against it to claim arbitration right), *trans. denied*.

[16] However, Eastridge attempts to avoid the waiver of his right to arbitrate under the contract by invoking the statutory framework of Indiana's Uniform Arbitration Act. Referencing Indiana Code section 34-57-2-4, Eastridge contends that "the trial court is responsible for appointing an arbitrator if there is a failure in the appointment of an arbitrator" by the parties. (Appellant's Br. p. 17). Indiana Code section 34-57-2-4 provides that:

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence of such an agreement, any method of appointment of arbitrators agreed upon by the parties to the contract shall be followed. When an

arbitrator appointed fails or is unable to act, a successor shall be appointed in the same manner as the original appointment. If the method of appointment of arbitrators is not specified in the agreement and can not be agreed upon by the parties, or if the agreed method fails or for any reason cannot be followed, or if an arbitrator appointed fails or is unable to act and a successor has not been appointed within a reasonable time, the court on application of a party shall appoint one (1) or more arbitrators, who have all the powers of an arbitrator appointed according to the agreement.

Arguing—incorrectly—that the contract fails to specify the method of appointment of an arbitrator Eastridge relies on the second part of the statute and contends that the trial court became responsible for appointing the arbitrator. We find Eastridge’s argument to be without merit. The plain meaning of Section 4 gives the trial court the power to appoint an arbitrator *only on the application of a party*. We cannot find any evidence—nor does Eastridge provide us with any—that one of the parties requested the application of section 4 and allowed the trial court to appoint an arbitrator. Accordingly, we find that Eastridge waived his right to arbitration and we turn to the trial rules for further determination of this cause.

II. *Default Judgment*

[17] Eastridge appealed the trial court’s denial of his motion to set aside the default judgment entered in favor of the Estate. A decision whether to set aside a default judgment is entitled to deference and is reviewed for an abuse of discretion. *Coslett v. Weddle Bros. Const. Co., Inc.*, 798 N.E.2d 859, 861 (Ind.

2003), *reh'g denied*. Any doubt about the propriety of a default judgment should be resolved in favor of the defaulted party. *Id.* Indiana law strongly prefers disposition of cases on their merits. *Id.* Our standard of review is limited to determining whether the trial court abused its discretion. *Fields v. Safway Group Holdings, LLC*, 118 N.E.3d 804, 809 (Ind. Ct. App. 2019), *trans. denied*. An abuse of discretion may occur if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Id.* “Upon a motion for relief from a default judgment, the burden is on the movant to show sufficient grounds for relief under Indiana Trial Rule 60(B).” *Dalton Corp. v. Myers*, 65 N.E.3d 1142, 1144 (Ind. Ct. App. 2016) (quoting *Huntington Nat. Bank v. Car-X Assoc. Corp.*, 39 N.E.3d 652, 655 (Ind. 2015)), *trans. denied*. If even slight evidence exists, “[o]ur deferential standard of review compels us to affirm the trial court.” *Wamsley v. Tree City Village*, 108 N.E.3d 334, 336 (Ind. 2018).

[18] While having presented a challenge to the default judgment based on Indiana Trial Rule 60(B) grounds before the trial court, Eastridge abandoned the argument on appeal and solely focused on the invocation of the Uniform Arbitration Act. Because we concluded that Eastridge waived his right to arbitration and in the absence of any argument by Eastridge to set aside the default judgment based on any of the grounds enumerated in Indiana Trial Rule 60(B), we affirm the trial court’s denial of Eastridge’s motion to set aside the default judgment.

CONCLUSION

- [19] Based on the foregoing, we affirm the trial court's entry of default judgment in favor of the Estate.
- [20] Affirmed.
- [21] Najam, J. and Brown, J. concur