

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT
Kayla Davis
Burke Costanza & Carberry LLP
Merrillville, Indiana

ATTORNEY FOR APPELLEE
Scott A. Seville
Robbins and Seville, LLC
Crown Point, Indiana

IN THE COURT OF APPEALS OF INDIANA

Smart Buy Auto Finance, Inc.,
Appellant-Defendant,

v.

Dennis Mitchell,
Appellee-Plaintiff.

December 11, 2023
Court of Appeals Case No.
23A-CT-1146
Appeal from the Lake Superior
Court
The Honorable Calvin D.
Hawkins, Judge
Trial Court Cause No.
45D02-2102-CT-210

Memorandum Decision by Judge Tavitas
Judges Pyle and Foley concur.

Tavitas, Judge.

Case Summary

- [1] Smart Buy Auto Finance, Inc. (“Smart Buy”) appeals the trial court’s denial of its motion for relief from judgment. The trial court granted summary judgment to Dennis Mitchell on his claim against Smart Buy after Smart Buy did not respond to the motion for summary judgment or appear at the hearing on the matter. Smart Buy then filed a motion for relief from judgment pursuant to Indiana Trial Rule 60(B), which the trial court denied. On appeal, Smart Buy argues that the trial court should have granted its motion for relief from judgment because Smart Buy established excusable neglect, extraordinary circumstances, and a meritorious defense. We disagree and, accordingly, affirm.

Issue

- [2] Smart Buy raises one issue, which we restate as whether the trial court abused its discretion by denying Smart Buy’s motion for relief from judgment.

Facts

- [3] In February 2021, Mitchell filed a complaint against Safe Auto Insurance Company (“Safe Auto”) and Smart Buy.¹ Smart Buy concedes that it received the complaint via certified mail. In response, on March 19, 2021, Smart Buy filed an informal answer in the form of a letter to the trial court, but Smart Buy

¹ Mitchell purchased a vehicle from Smart Buy and obtained insurance from Safe Auto. He later totaled the vehicle, and Safe Auto denied coverage on the loss.

did not retain counsel or file an appearance. Safe Auto filed a motion for summary judgment regarding Mitchell's claim. Smart Buy, however, did not receive the summary judgment pleadings pertaining to Safe Auto and Mitchell.

[4] Mitchell then filed a motion for summary judgment in January 2023 regarding his claims against Smart Buy. Mitchell served this motion for summary judgment upon Smart Buy via certified mail. Smart Buy, however, did not respond to the motion for summary judgment nor did it appear at the summary judgment hearing. Smart Buy concedes that it received the motion for summary judgment; however, Smart Buy argues that it did not receive notice of the hearing on the motion.² On March 8, 2023, the trial court granted Mitchell's motion for summary judgment. Smart Buy did not appeal the judgment.

[5] On April 12, 2023, an attorney entered an appearance on behalf of Smart Buy and filed a motion to set aside and vacate the judgment. Smart Buy argued that the judgment should be vacated pursuant to Trial Rule 60(B)(1) and 60(B)(8) and that it had a meritorious defense to Mitchell's claims. After the hearing, the trial court denied Smart Buy's motion for relief from judgment in May 2023. The trial court found:

² The CCS indicates that an "Automated Paper Notice" was issued to Smart Buy regarding the hearing on February 7, 2023. Appellant's App. Vol. II p. 6. Further, an "Automated ENotice" was issued to attorneys for Mitchell and Safe Auto. *Id.*

[Smart Buy] was served with notice of the pending Motion for Summary Judgment over a month in advance of the Hearing, [] [Smart Buy] knew of same, and [Smart Buy] failed to obtain counsel despite a statutory duty to do so[.] [T]he Court finds that [Smart Buy's] conduct did not rise to excusable neglect pursuant to T.R.60(B)(1), nor was [Smart Buy] faced with extraordinary circumstances as required by T.R.60(B)(8). Therefore, the Court, having reviewed [Smart Buy's] Motion to Set Aside and Vacate Judgment, and being duly advised in the premises, now Denies said Motion.

Id. at 11. Smart Buy now appeals.

Discussion and Decision

[6] Smart Buy appeals the trial court's denial of its motion for relief from judgment pursuant to Indiana Trial Rule 60(B). Trial Rule 60(B) provides "a mechanism by which a party may obtain relief from the entry of a final judgment." *McGhee v. Lamping*, 198 N.E.3d 730, 736 (Ind. Ct. App. 2022). The propriety of relief under Trial Rule 60(B) is a matter entrusted to the trial court's equitable discretion. *Id.* "The trial court abuses its discretion when the judgment is clearly against the logic and effect of the facts and circumstances before the trial court." *Id.*

[7] Indiana 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:

(1) mistake, surprise, or excusable neglect;

* * * * *

(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).

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). A movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense.

The burden is on the movant to establish grounds for relief under Trial Rule 60(B). *McGhee*, 198 N.E.3d at 737.

[8] Smart Buy argues that it was entitled to relief under Rule 60(B)(1) and Rule 60(B)(8). We will address each argument separately.

A. Trial Rule 60(B)(1) – Excusable Neglect

[9] Trial Rule 60(B)(1) allows relief from a judgment for “mistake, surprise, or excusable neglect.” Here, Smart Buy argues that its neglect in responding to the summary judgment motion is excusable and justifies relief from the trial court’s judgment in favor of Mitchell’s claims. Our Supreme Court has held that “[t]here is no general rule as to what constitutes excusable neglect under Trial Rule 60(B)(1)” and “[e]ach case must be determined on its particular facts.” *Huntington Nat’l Bank v. Car-X Assoc. Corp.*, 39 N.E.3d 652, 655 (Ind. 2015).

[10] Smart Buy argues that it is “not a sophisticated entity familiar with the court process or necessity for counsel” and believed that its informal answer was

sufficient to respond to the motion for summary judgment. Appellant's Br. p.

12. Smart Buy also points out that it was not served with earlier pleadings regarding Safe Auto's motion for summary judgment.

[11] Smart Buy concedes that it received the complaint. Although corporations must be represented by counsel subject to certain exceptions not applicable here, *see* Ind. Code § 34-9-1-1, Smart Buy did not retain counsel or file an appearance.³ Instead, it responded to the complaint by filing an informal letter. Although Smart Buy received a copy of Mitchell's motion for summary judgment regarding his claims against Smart Buy, Smart Buy did not respond to the motion for summary judgment. Summary judgment was later entered against Smart Buy.

[12] The trial court found that Smart Buy's conduct did not constitute excusable neglect, and we agree. We acknowledge Smart Buy's claims that it did not receive the Safe Auto summary judgment filings, which did not relate to Smart Buy.⁴ It is undisputed, however, that Smart Buy was aware of the litigation,

³ Smart Buy also argues that the trial court improperly differentiated between individual pro se litigants and pro se corporations. A corporation, however, may not proceed "pro se," and we cannot say the trial court's statements amounted to an abuse of discretion.

⁴ As for Mitchell's failure to serve pleadings related to Safe Auto upon Smart Buy, we note that Indiana Trial Rule 5(A) provides:

Unless otherwise provided by these rules or an order of the court, each party and special judge, if any, shall be served with:

- (1) every order required by its terms to be served;
- (2) every pleading subsequent to the original complaint;

filed an informal answer, and received the motion for summary judgment. Smart Buy’s failure to act “is neglect, but not excusable neglect.” *Huntington Nat’l Bank*, 39 N.E.3d at 656. “The judicial system simply cannot allow its processes to be stymied by simple inattention.” *Id.* at 658 (quoting *Smith v. Johnston*, 711 N.E.2d 1259, 1262 (Ind. 1999)). The trial court did not abuse its discretion by finding that Smart Buy’s actions did not constitute excusable neglect. *See, e.g., Smith*, 711 N.E.2d at 1262 (finding no excusable neglect where a doctor ignored his mail left on his desk).

B. Trial Rule 60(B)(8) – Any Other Reason Justifying Relief

[13] Smart Buy also argues that it was entitled to relief pursuant to Trial Rule 60(B)(8), which allows a judgment to be set aside for “any reason justifying

-
- (3) every written motion except one which may be heard ex parte;
 - (4) every brief submitted to the trial court;
 - (5) every paper relating to discovery required to be served upon a party; and
 - (6) every written notice, appearance, demand, offer of judgment, designation of record on appeal, or similar paper.

No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided by service of summons in Rule 4.

(emphasis added). In interpreting the emphasized language, *Cordill v. City of Indianapolis Through Dep’t of Parks & Recreation*, 168 Ind. App. 685, 692, 345 N.E.2d 274, 278 (1976), held: “As used in TR. 5(A) and TR. 72(D), the expression ‘in default for failure to appear’ does not mean that the party has been ‘defaulted’ (i.e., has been judicially declared to be in default), but merely that he has not yet made an appearance in the prescribed manner.” Under *Cordill*, Smart Buy never entered an appearance and, thus, was not entitled to service of further pleadings under Trial Rule 5(A). This interpretation of Trial Rule 5(A), however, may result in a disadvantage to self-represented litigants who have unknowingly failed to file an appearance but have filed pleadings with the court that have not been rejected for failure to file an appearance. A better way may be to require the clerk or court to notify parties who have failed to file an appearance. Regardless, however, here, even though Smart Buy did not receive copies of the Safe Auto summary judgment pleadings against Mitchell, it is undisputed that Smart Buy received pleadings related to the summary judgment proceedings against Smart Buy and failed to respond. Any error in the failure to serve Smart Buy with the Safe Auto pleadings was, accordingly, harmless.

relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4).” Under T.R. 60(B)(8), Smart Buy must affirmatively demonstrate “extraordinary circumstances.” *McGhee*, 198 N.E.3d at 738. “Stated differently, ‘these residual powers under subsection (8) may only be invoked upon a showing of exceptional circumstances justifying extraordinary relief[.]’” *Id.* (quoting *Indiana Ins. Co. v. Ins. Co. of N. Am.*, 734 N.E.2d 276, 279 (Ind. Ct. App. 2000), *trans. denied*). “Subdivision (8) is not available if the grounds for relief properly belong in another of the enumerated subdivision[s] of T.R. 60(B).” *Id.* (quoting *Fish v. 2444 Acquisitions, LLC*, 46 N.E.3d 1261, 1267 (Ind. Ct. App. 2015), *trans. denied*).

[14] Smart Buy argues that exceptional circumstances exist because it was not served with pleadings regarding the litigation for nearly two years and because it should have been provided with the opportunity to retain counsel. Ideally, Mitchell would have filed a motion to strike the informal answer, which would have resulted in Smart Buy being warned early in the proceedings that it needed to obtain counsel. *See, e.g., Christian Bus. Phone Book, Inc. v. Indianapolis Jewish Cmty. Rels. Council*, 576 N.E.2d 1276, 1277 (Ind. Ct. App. 1991) (holding “the corporate litigant must be given a fair opportunity to correct its error and retain competent counsel before dismissal would be appropriate”); *People for Cmty., Inc. v. City of Fort Wayne Neighborhood Code Compliance*, 198 N.E.3d 19, 24 (Ind. Ct. App. 2022) (noting that “the trial court dismissed PFC’s complaint only after giving PFC multiple warnings that it needed to be represented by counsel and giving PFC ample time in which to secure such representation”).

[15] Smart Buy, however, was well aware of the litigation and, other than filing an informal answer, simply ignored the litigation. The trial court found no exceptional circumstances, and under these circumstances, we cannot say the trial court abused its discretion.

[16] Because the trial court did not abuse its discretion by finding no excusable neglect or exceptional circumstances, we need not address whether Smart Buy established a meritorious defense. Accordingly, we cannot say the trial court abused its discretion by denying Smart Buy's motion for relief from judgment.

Conclusion

[17] The trial court did not abuse its discretion by denying Smart Buy's motion for relief from judgment. Accordingly, we affirm.

[18] Affirmed.

Pyle, J., and Foley, J., concur.