MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

U.S. Bank National Association Not In Its Individual Capacity But Solely As Indenture Trustee For The CIM Trust 2019-R2,

Appellant-Plaintiff,

v.

Unknown Heirs of Juanita A. O'Dell, Deceased, and BHOC,

Appellees-Defendants.

November 22, 2023

Court of Appeals Case No. 23A-MF-1672

Appeal from the Orange Circuit Court

The Honorable Steven L. Owen, Judge

Trial Court Cause No. 59C01-2209-MF-218

Memorandum Decision by Judge Riley
Judges Crone and Mathias concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Plaintiff, U.S. Bank National Association (U.S. Bank), appeals the trial court's denial of its motion to reinstate its default judgment and Complaint for Foreclosure of Note and Mortgage (Complaint) against Appellees-Defendants, the Unknown Heirs of Juanita A. O'Dell (Juanita) and BHOC (collectively, Defendants).

[2] We affirm.

ISSUE

[3] U.S. Bank presents this court with two issues, which we consolidate and restate as the following single issue: Whether the trial court abused its discretion in denying U.S. Bank's motion to reinstate its default judgment and Complaint against Defendants.

FACTS AND PROCEDURAL HISTORY

[4] On September 28, 2022, U.S. Bank filed its Complaint in which it alleged the following facts. In 2004, James V. O'Dell (James) and Juanita had executed a note (O'Dell Note) for $57,648.74 with interest, and they secured this note with a mortgage (O'Dell Mortgage) on real property located in Orange County, Indiana, that they owned together. In 2013, James died, leaving Juanita as the sole owner of the real property securing the O'Dell Note. On September 27, 2021, Juanita died. U.S. Bank was assigned the O'Dell Note and Mortgage by its predecessor in interest. James and Juanita failed to make their monthly payments as required by the terms of the O'Dell Note and Mortgage, and, as a

result of their default, U.S. Bank accelerated the balance owed. In its Complaint seeking an in rem judgment only, U.S. Bank named Juanita's unknown heirs and BHOC, the holder of a judgment against Juanita, as Defendants.

[5] Defendants did not appear or answer U.S. Bank's Complaint. On January 12, 2023, U.S. Bank obtained a default judgment in the amount of $45,885.91, plus pre- and post-judgment interest and costs. On March 3, 2023, U.S. Bank filed a motion seeking to set aside the default judgment and to dismiss the Complaint because it had settled the matter. That same day, the trial court granted U.S. Bank's motion and, as requested by U.S. Bank, dismissed the Complaint with prejudice.

[6] On June 21, 2023, U.S. Bank filed its Motion to Reinstate Cause of Action and Order Granting Default Judgment (motion to reinstate), in which it recited the details of the O'Dell Note and Mortgage, the default, the entry of the default judgment, and U.S. Bank's voluntary setting aside of the default judgment and dismissal of the Complaint. As to the reasons for seeking reinstatement, U.S. Bank averred the following:

> 10. On March 2, 2023, counsel for U.S. Bank was notified that U.S. Bank had received payment in full of the Note. As such, counsel filed a Motion to Set Aside Judgment and Dismiss Cause of Action With Prejudice, which Motion was granted by this [c]ourt on March 3, 2023.
>
> 11. On June 16, 2023, counsel for U.S. Bank was notified that the funds were inadvertently applied to the Note, should have

> been applied to an unrelated load with U.S. Bank, and the Note was in fact not paid off.
>
> 12. Accordingly, reinstatement of the above-captioned matter and Judgment is necessary so that U.S. Bank may pursue its claims against the Real Estate for recovery of the balance due and owing under the Note and Mortgage.

(Appellant's App. Vol. II, pp. 67-68). Although U.S. Bank attached copies of documents pertaining to the underlying O'Dell Note and Mortgage to this motion, it filed no other documents or affidavits. On June 21, 2023, the trial court summarily denied U.S. Bank's motion to reinstate without entering any findings of fact or conclusions thereon.

[7] On July 14, 2023, U.S. Bank filed a motion to reconsider the trial court's denial of its motion to reinstate. In its motion to reconsider, U.S. Bank invoked Indiana Trial Rules 41(F) and 60(B), reiterated its averments regarding the merits of its claims regarding the O'Dell Note and Mortgage, and attached the same documentation related to those claims. Regarding the reasons for seeking reinstatement of the default judgment and the Complaint, U.S. Bank explained that counsel for U.S. Bank (Counsel) represented its interests in several matters, including a foreclosure on real property in Marion County (Green foreclosure). On February 21, 2023, Counsel had received two checks from a sheriff's sale related to the Green foreclosure. Unbeknownst to Counsel, an employee of Counsel's had mistakenly handprinted the loan number associated with the O'Dell Note and Mortgage on the two Green foreclosure checks. Counsel had sent the two checks along with other documentation pertaining to the Green

foreclosure to U.S. Bank's loan servicer, Rushmore Loan Management Services, LLC (Rushmore), which also serviced the O'Dell Note and Mortgage. Rushmore then applied the two checks from the Green foreclosure to the O'Dell Note. On March 2, 2023, Rushmore informed Counsel that the O'Dell Note was paid in full, prompting Counsel to successfully set aside the default judgment and to dismiss the Complaint. On June 16, 2023, Rushmore alerted Counsel that the Green foreclosure checks had been wrongfully applied to the O'Dell Note. In support of its motion to reconsider, U.S. Bank filed the verified affidavits of a Rushmore employee and Counsel. On July 18, 2023, the trial court summarily denied U.S. Bank's motion to reconsider without entering findings of fact or conclusions thereon.

[8] U.S. Bank now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standards of Review*

[9] U.S. Bank appeals the denial of its motions for reinstatement and to reconsider. We review a trial court's ruling on a motion to reinstate for an abuse of its discretion, which only occurs "when the decision misinterprets the law or clearly contravenes the logic and effect of the facts and circumstances before the court." *Smith v. Franklin Twp. Comty. Sch. Corp.*, 151 N.E.3d 271, 273 (Ind. 2020).

[10] Defendants have not filed an appellee's brief. When an appellee fails to file a brief, we do not undertake the burden of developing an argument on appellee's

behalf. *McElvain v. Hite*, 800 N.E.2d 947, 949 (Ind. Ct. App. 2013). Instead, we will reverse the trial court's determination if the appellant demonstrates a case of prima facie error. *Id*. "Prima facie error in this context is defined as, at first sight, on first appearance, or on the face of it." *C.H. v. A.R.*, 72 N.E.3d 996, 1001 (Ind. Ct. App. 2017). Under a prima facie error standard of review, we are relieved of the burden on controverting arguments advanced in favor of reversal, as that burden properly rests with the appellee. *M.R. v. B.C.*, 120 N.E.3d 220, 223 (Ind. Ct. App. 2019). However, even under this relaxed standard of review, we are obligated to correctly apply the law to the facts in the record in order to determine whether reversal is required. *Id*.

II. *Reinstatement of Default Judgment and Complaint*

[11] U.S. Bank contends that it was entitled to reinstatement of its default judgment and Complaint on the grounds that a mistake occurred when the Green foreclosure checks were applied to the O'Dell Note. "Reinstatement is extraordinary relief." *Smith*, 151 N.E.3d at 273. Indiana Trial Rule 41(F) controls the reinstatement of causes of action and provides that "[a] dismissal with prejudice may be set aside by the court for the grounds and in accordance with the provisions of Rule 60(B)." Trial Rule 60(B) in turn provides in relevant part that a trial court may relieve a party or its legal representative from a judgment on the basis of "mistake" if the motion is filed within one year of the judgment and the moving party alleges a "meritorious claim or defense." Ind. Trial Rule 60(B)(1). "A grant of equitable relief under Indiana Trial Rule 60 is within the discretion of the trial court." *Outback Steakhouse of Florida, Inc.*

v. Markley, 856 N.E.2d 65, 72 (Ind. 2006). Such a motion addresses only the procedural or equitable grounds justifying relief and may not be used to attack the substantive or legal merits of the judgment. *Logansport/Cass Cnty. Airport Auth. v. Kochenower*, 169 N.E.3d 1143, 1146 (Ind. Ct. App. 2021). Rule 60(B) "affords relief only in 'extraordinary circumstances' that are not the result of the moving party's fault or negligence." *State v. Moody*, 51 N.E.3d 281, 283 (Ind. Ct. App. 2016) (quoting *Z.S. v. J.F.*, 918 N.E.2d 636, 640 (Ind. Ct. App. 2009)). The burden of proof is on the movant to establish 'mistake' sufficient to merit Rule 60(B) relief. *Logansport*, 169 N.E.3d at 1149.

[12] We conclude that U.S. Bank failed to establish a ground for procedural or equitable relief in the instant matter. In its motion to reinstate, U.S. Bank provided the trial court with only a bareboned recitation of what mistake it alleged had occurred—merely stating that "the funds were inadvertently applied to the Note, should have been applied to an unrelated loan with U.S. Bank, and the Note was in fact not paid off." (Appellant's App. Vol. II, p. 67). We have observed that there are no fixed standards of what constitutes 'mistake, surprise, or excusable neglect' for purposes of a Rule 60(B) motion. *Menard, Inc. v. Lane*, 68 N.E.3d 1106, 1113 (Ind. Ct. App. 2017), *trans. denied*. Nevertheless, a movant must go beyond a mere recitation of the words 'mistake, surprise, or excusable neglect' and describe the actual error that occurred. *Moody*, 51 N.E.3d at 284. "A trial court's discretion in this area is necessarily broad because any determination of mistake, surprise, or excusable neglect turns upon

the particular facts and circumstances of each case." *Z.S.*, 918 N.E.2d at 640 (quoting *Fitzgerald v. Cummings*, 792 N.E.2d 611, 614 (Ind. Ct. App. 2003)).

[13] While U.S. Bank's motion to reinstate contained more than a mere recitation of the word 'mistake', its motion was bereft of any details from which the trial court could have discerned how the error relied upon had actually occurred, and, therefore, who was at fault for the claimed error. U.S. Bank did not identify who had misapplied the funds, when that occurred, or any other circumstances tending to show that it was not at fault for the misapplication of the Green checks to the O'Dell Note. It was U.S. Bank's burden to show that the claimed error was not due to its own fault or negligence. *Moody*, 51 N.E.3d at 283. Therefore, U.S. Bank failed to meet its burden of proof on the claimed mistake, and the trial court acted within its discretion in denying the motion to reinstate. *See id*. at 284-85 (affirming the trial court's denial of the State's motion for relief from judgment without addressing whether the State had presented a meritorious claim or defense or balancing the parties' interests, where the State did not establish that it was without fault).

[14] In its motion to reconsider, U.S. Bank provided more detail regarding its claimed error, additionally asserting that Counsel's employee had mistakenly placed the O'Dell loan number on the Green foreclosure checks and that Rushmore had "inadvertently and by mistake" applied the Green foreclosure checks to the O'Dell loan. (Appellant's App. Vol. II, p. 72). U.S. Bank also filed affidavits in support of these statements. However, these matters were all apparently known and available to U.S. Bank at the time it filed its motion to

reinstate, yet it failed to present them in its motion to reinstate and failed to provide any explanation in its motion to reconsider for its failure to do so. A motion to reconsider filed after entry of final judgment is treated as a motion to correct error. *Hubbard v. Hubbard*, 690 N.E.2d 1219, 1222 (Ind. Ct. App. 1998). As a general rule, parties are not permitted to raise new matters in the motion to correct error. *See, e.g., O'Bryant v. Adams*, 123 N.E.3d 689, 694 (Ind. 2019) (finding waiver of an argument presented for the first time in a motion to correct error where O'Bryant failed to establish the argument had not been available during the original proceedings). In addition, Indiana Trial Rule 59(H) provides for attaching affidavits to a motion to correct error to present evidence outside the record, but such affidavits are not to be used to present evidence that the moving party simply neglected to present during the prior relevant proceeding. *Mid-States Aircraft Engines, Inc. v. Mize Co., Inc.*, 467 N.E.2d 1242, 1245 (Ind. Ct. App. 1984).

[15] However, even if U.S. Bank had properly presented these additional matters in its motion to reconsider, it did not present the trial court or this court on appeal with any legal authority supporting its proposition that a trial court must grant relief under similar or analogous factual circumstances, and our own research uncovered none. Accordingly, U.S. Bank has failed to demonstrate prima facie error, and we cannot conclude that the trial court abused its discretion in denying U.S. Bank's motion to reinstate or its motion to reconsider. *See Smith*, 151 N.E.3d at 273; *McElvain*, 800 N.E.2d at 949.

CONCLUSION

[16] Based on the foregoing, we hold that the trial court acted within its discretion in denying U.S. Bank's motions to reinstate and to reconsider, where U.S. Bank failed to establish that a mistake had occurred that entitled it to reinstatement of its default judgment and Complaint.

[17] Affirmed.

[18] Crone, J. and Mathias, J. concur