

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

L.I.A. Enterprises, LLC,
Appellant-Petitioner,

v.

Michael L. Britton,
Appellee-Respondent.

December 12, 2023

Court of Appeals Case No.
23A-TP-716

Appeal from the
Lake Circuit Court

The Honorable
Marissa J. McDermott, Judge
The Honorable
Lisa A. Berdine, Magistrate

Trial Court Cause No.
45C01-1909-TP-1617

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

- [1] Michael L. Britton (“Owner”) owned a tax delinquent property in Gary, Indiana (“the Property”) that was sold through a tax sale. L.I.A. Enterprises, LLC (“the Company”) acquired the tax certificate and, after the redemption period expired, petitioned for a tax deed. The trial court granted the petition. More than one year later, Owner filed a Trial Rule 60(B) motion, arguing there were equitable grounds to set aside the judgment. The trial court granted the motion and extended Owner’s redemption period, concluding the Company committed fraud on the court by failing to disclose that a notary public had an interest in the tax sale and violated her oath by notarizing the assignment of the tax sale certificate to the Company.
- [2] The Company now appeals, challenging the decision to set aside the judgment; Owner does not participate on appeal. Among the Company’s contentions is that the trial court lacked an equitable basis to set aside the judgment because the nondisclosure did not meet Indiana’s high bar for fraud on the court. We agree with the Company, identifying prima facie error in the order granting relief to Owner. We therefore reverse and remand with instructions to reinstate the original judgment and restore the Company’s tax deed for the Property.

Facts and Procedural History

- [3] After Owner became delinquent on property taxes, the Lake County Treasurer sold the Property at a tax sale in September 2017, issuing a tax certificate to Deedgrabber Tax Lien Fund, LLC (“Deedgrabber”). Deedgrabber then assigned the tax certificate to Company through a document titled “Assignment of Tax Lien Certificate” (“the Assignment”). Richard Dawson (“Richard”)

executed the Assignment on behalf of Deedgrabber. Richard’s ex-wife, Lia Dawson (“Lia”), was a notary public who notarized Richard’s signature on the Assignment. Lia had an interest in the transaction because she was the sole member of the Company.

[4] In September 2019, the Company petitioned for a tax deed. The trial court held a hearing and granted the unchallenged petition on December 5, 2019. In its order, the trial court determined that (1) the Property had not been redeemed during the redemption period, which “expired on September 19, 2018”; (2) “[t]he notices required by law ha[d] been given”; and (3) the Company had “complied with all the provisions of law entitling [the Company] to a tax deed.”¹ The Company subsequently obtained a tax deed for the Property.

[5] In August 2021, Owner moved to correct error on the basis that—among other things—(a) the Owner obtained newly discovered evidence, and (b) the Company should have disclosed that Lia violated her oath as a notary public by notarizing a document that conferred a benefit to her. In December 2021, the trial court denied the motion, stating that Owner failed to produce any newly discovered evidence. The trial court did not address any other alleged error.

[6] In April 2022, Owner filed a Trial Rule 60(B) motion seeking to set aside the tax deed. Owner asked the trial court to address all grounds asserted in the

¹ This judgment was not transmitted on appeal, but we accessed the document through the Odyssey case management system. *See* Ind. Appellate Rule 27 (noting the appellate record consists of “the Clerk’s Record and all proceedings before the trial court[,] . . . whether or not . . . transmitted to the Court on Appeal.”).

motion to correct error—including the notarization issue—asserting that equitable relief was warranted under Trial Rule 60(B) due to fraud. Owner also asserted that the trial court improperly failed to issue special findings under Trial Rule 52(A). The Company objected to the motion. On April 28, 2022, the trial court denied the Trial Rule 60(B) motion without entering special findings. Owner then moved to correct error, alleging the court erred by failing to enter special findings. The court granted the motion to correct error, held a hearing on the Trial Rule 60(B) motion, and took the matter under advisement.

- [7] In March 2023, the trial court granted the Trial Rule 60(B) motion. In its accompanying findings and conclusions, the court stated that it lacked statutory authority “to invalidate the Assignment based on alleged notarial misconduct and/or violations of” Indiana law pertaining to notaries. Appellant’s App. Vol. 2 p. 9. The court nevertheless found that, by failing to disclose the potential notarial misconduct, the Company had committed fraud on the court, in that the omission “was misleading” and the court’s decision regarding the tax deed “was influenced by the validity of the Assignment.” *Id.* (emphasis removed). Stating that it was granting the Trial Rule 60(B) motion “[o]n the issue of fraud upon the [c]ourt,” the trial court vacated the tax deed and ordered that Owner had thirty days to redeem the Property. *Id.* at 21. The Company now appeals.

Discussion and Decision

- [8] The Company argues that the trial court erred in granting the motion to set aside the judgment. Owner has declined to file an Appellee’s Brief defending the appealed order. Under the circumstances, we “need not develop an

argument for [Owner] but instead will ‘reverse the trial court’s judgment if the appellant’s brief presents a case of prima facie error.’” *Salyer v. Washington Regular Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020) (quoting *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014)). “Prima facie error in this context means ‘at first sight, on first appearance, or on the face of it.’” *Id.*

[9] Trial Rule 60(B) provides certain grounds for setting aside a final judgment, including for fraud. See Trial Rule 60(B)(3), (B)(8); cf. *Stonger v. Sorrell*, 776 N.E.2d 353, 357 (Ind. 2002) (noting that Trial Rule 60(B)(8) “invokes the inherent power of a court to set aside its judgment if procured by fraud on the court”). Moreover, to obtain equitable relief for fraud, a party “must allege a meritorious claim or defense.” T.R. 60(B). “Additionally, [Indiana] precedent requires the moving party to ‘demonstrate some extraordinary or exceptional circumstances justifying relief.’” *T.D. v. State*, 219 N.E.3d 719, 728 (Ind. 2023) (quoting *State v. Collier*, 61 N.E.3d 265, 268 (Ind. 2016) (collecting cases)).

[10] “[T]he propriety of relief under Indiana Trial Rule 60(B) is a matter entrusted to the trial court’s equitable discretion.” *Citimortgage, Inc. v. Barabas*, 975 N.E.2d 805, 812 (Ind. 2012). We review for an abuse of that discretion, which occurs “if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court, or if the trial court has misinterpreted the law.” *Id.* (quoting *McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 180 (Ind. 1993)). Furthermore, where—as here—the trial court has “enter[ed] special findings and conclusions pursuant to Indiana Trial Rule 52(A), our standard of review is two-tiered.” *Stonger v. Sorrell*, 776 N.E.2d 353, 358 (Ind. 2002). That

is, we examine whether (1) the evidence supported the findings and (2) the findings supported the judgment. *Id.* Under Trial Rule 52(A), we “shall not set aside the findings or judgment unless clearly erroneous,” and we shall give “due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses.” However, to the extent the judgment turns on a question of law, we review the question of law de novo. *See, e.g., Ind. Dep’t of Ins. v. Everhart*, 960 N.E.2d 129, 133 (Ind. 2012).

[11] This case involves legislation that permits a tax sale “[w]hen a property owner fails to pay property taxes[.]” *In re 2020 Madison Cnty. Tax Sale*, 218 N.E.3d 1274, 1277 (Ind. 2023) (citing Ind. Code §§ 6-1.1-24-1 to -14). In setting aside the instant judgment and vacating the Company’s tax deed, the trial court did not identify any defect with the statutory tax sale process, which involves notice to the property owner and a statutory window to redeem the tax delinquent property. *See generally id.* (affirming the denial of equitable relief where the process comported with due process and complied with state law). Nor did the trial court identify any “material representation during the statutory tax sale process.” *See generally Marion Assets 2020, LLC v. Fiascone Fam. LP*, 211 N.E.3d 1, 12 (Ind. Ct. App. 2023) (collecting cases where a property owner was entitled to equitable relief based on a material misrepresentation in the process, such as where the owner “paid the amount the county auditor had represented to him to be the redemption amount, which turned out to be an incorrect amount”).

[12] Rather, here, the trial court focused on the fact that the Assignment was notarized by a person with an interest in the transaction. The trial court

determined that, because of the interest in the transaction, the notary violated the oath of a notary public and thereby committed notarial misconduct. The trial court concluded that the notarial misconduct did not provide a basis to set aside the Assignment and invalidate the tax sale. Indeed, the trial court expressly noted that it lacked the statutory authority “to invalidate the Assignment based on alleged notarial misconduct and/or violations of” Indiana law pertaining to notaries. Appellant’s App. Vol. 2 p. 9. Rather, the court determined that the Company’s failure to disclose the misconduct amounted to actionable fraud on the court, warranting setting aside the judgment and extending the redemption period.

[13] On appeal, the Company argues that the trial court lacked equitable authority to set aside the judgment because the conduct at issue did not satisfy the “high bar for fraud on the court when based on another party’s nondisclosure.” Br. of Appellant p. 15. The Company directs us to *Jahangirizadeh v. Pazouki*, where we explained that, for fraudulent conduct to be actionable, the conduct at issue must have been “directed to the judicial machinery itself . . . not fraud between the parties or fraudulent documents[.]” 27 N.E.3d 1178, 1183 (Ind. Ct. App. 2015). We also noted that “[f]raud on the court . . . requires a showing of intentional misconduct or intent to deceive or defraud the court.” *Id.* Further, a litigant must establish that the fraudulent conduct “prevented the losing party from fully and fairly presenting [his] case or defense.” *Stronger*, 776 N.E.2d at 357 (citing *Glover v. Torrence*, 723 N.E.2d 924, 933 (Ind. Ct. App. 2000)).

[14] In *Glover*, we evaluated whether conduct amounted to actionable fraud on the court where the “motion for relief from judgment was premised on [a party’s] falsification of his . . . income figure” on a worksheet related to child support. *Glover*, 723 N.E.2d at 933. Despite the falsification, we determined there was no actionable fraud because the opposing party “could have easily verified [the] income . . . by obtaining income tax returns and employment records.” *Id.* We ultimately reversed the order granting equitable relief noting that, in general, “relief on the ground of fraud cannot be predicated on matters or issues which . . . with due diligence . . . could have been presented and adjudicated in the original proceedings[.]” *Id.* (citing 49 C.J.S. Judgments § 468 at 633–34).

[15] In arguing the notarial misconduct did not amount to actionable fraud on the court, the Company points out that the Assignment was “attached to its verified petition for [a] tax deed,” and the notarization was “display[ed] for all to see.” Appellant’s Br. p. 15. The Company also asserts that the “subsequent issuance of the tax deed impacted only Owner”—not the court—and the Assignment “played no role in [Owner’s] failure to redeem his property over the multi-year redemption period.” *Id.* at 15–16. We agree with the Company that, under the circumstances, the alleged nondisclosure does not amount to actionable fraud.

[16] First, there is no indication that the Company intended to mislead the trial court. *Cf. Jahangirizadeh*, 27 N.E.3d at 1183 (noting fraud on the court does not exist “in cases in which the wrong . . . involved no direct assault on the integrity of the judicial process”). Indeed, the evidence indicates that the Assignment was within a stack of documents containing “dozens” of assignments for Lia to

notarize, and the documents in the stack involved “various parties.” Tr. Vol. 2 p. 140. Richard testified that he printed all the assignments for Lia to notarize, and he “certainly didn’t . . . intentionally” have Lia notarize a document that conferred a benefit to her. *Id.* at 141. Richard also testified that he “saw no evidence” Lia notarized the Assignment while knowing she benefited from the transaction. *Id.* at 141. Second, just as Owner discovered the notarization issue after the Company obtained the tax deed, Owner could have discovered and presented the issue prior to the issuance of the tax deed. *Cf. Glover*, 723 N.E.2d at 933 (noting that, with due diligence, the opposing party could have discovered and presented the misconduct before the trial court issued its judgment). Third, we discern no way in which the notarial misconduct affected Owner’s ability to redeem the Property during the statutory redemption period. *See Stronger*, 776 N.E.2d at 357 (noting fraud is actionable only if it “prevented the losing party from fully and fairly presenting [his] case or defense”).

[17] For these three reasons, we conclude the Company demonstrated prima facie error in the order setting aside the judgment under Trial Rule 60(B) on the basis of fraud on the court. We therefore reverse the order granting Owner’s motion for equitable relief, and remand with instructions to the trial court to reinstate the original judgment and restore the Company’s tax deed for the Property.

[18] Reversed and remanded with instructions.

Altice, C.J., and May, J., concur.