ATTORNEY FOR APPELLANT:

LEANNA WEISSMANN
Lawrenceburg, Indiana

ATTORNEY FOR APPELLEE:

DOUGLAS R. DENMURE
Aurora, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MARRIAGE OF	)	
	)	
GLEN STROHMIER,	)	
	)	
Appellant,	)	
	)	
and	)	No. 24A01-0606-CV-245
	)	
VIVIAN STROHMIER,	)	
	)	
Appellee.	)	

APPEAL FROM THE FRANKLIN CIRCUIT COURT
The Honorable John A. Westhafer, Special Judge
Cause No. 24C01-8801-DR-300

October 31, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant Glen Strohmier ("Glen") appeals the Franklin Circuit Court's order granting the Motion for Relief from Judgment of his ex-wife, Vivian Strohmier ("Vivian"), the Appellee in this case. We reverse and remand.

Issue

Glen raises one issue, which we restate as whether the trial court abused its discretion in granting Vivian's Motion for Relief from Judgment under Trial Rule 60.

Facts and Procedural History

This is the second time this case has been before a panel of the Indiana Court of Appeals. We recite the relevant preliminary facts as provided in Strohmier v. Strohmier, 839 N.E.2d 234, 235-36 (Ind. Ct. App. 2005):

> On January 27, 1988, Wife filed for divorce from Husband. A dissolution decree was entered three years later, on January 31, 1991. Appellant's App. p. 5. There were no marital debts and the sole asset to be divided was the marital residence. In its order of dissolution, the trial court ordered the "residence real estate should be the separate property of ... Glen Strohmier[.]" Id. Additionally, the court awarded Wife a judgment against Husband in the amount of $30,000. The conveyance of title to the residence was not conditioned on payment of Wife's judgment….
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> Husband had filed a Chapter 7 bankruptcy petition on July 31, 1991, with the Federal Bankruptcy Court in the U.S. District Court, Southern District of Indiana, New Albany Division. In an order dated November 25, 1991, the bankruptcy court ordered Wife's judgment lien against Husband's residence avoided. Appellant's App. p. 20. Upon learning of the bankruptcy, Wife filed a Motion for Relief from Judgment under Trial Rule 60, claiming "mistake, surprise, fraud, misrepresentation, and misconduct" as a result of Husband's bankruptcy filing, contending she was entitled to modification or correction of the divorce decree. Appellant's App. pp. 14-16. On February 6, 1992, the trial court scheduled a hearing on Wife's motion to be held on April 1. However, the court, on its own motion of March 19, continued the hearing without re-scheduling it for a later date. Appellant's App. p. 2.
>
> One year later, on November 24, 1992, Husband received a bankruptcy discharge of

> Wife's $30,000 judgment lien dated November 25, 1991. Husband filed his first of two Motions to Appoint Commissioner to transfer Wife's interest in the real estate to Husband. Appellant's App. pp. 18-22. Wife filed her Response on December 7, objecting to the appointment of a commissioner to make a unilateral transfer of her real estate interest to Husband in order to "prevent a gross miscarriage of justice." Appellant's App. pp. 23-24. Further, Wife renewed her request for a hearing on her Motion for Relief from Judgment filed on January 29, 1992. Id. Additionally, Wife recommended to the court that she and Husband continue owning the real estate as tenants in common until it could be sold, at which time each would receive cash for their equitable interests. Id. The trial court failed to reschedule a hearing on Wife's pending Motion for Relief from Judgment.
>
> Nearly eleven months later, on January 6, 1993, the trial court scheduled a hearing on Husband's Motion to Appoint a Commissioner to be held on January 20, 1993. One week before the scheduled hearings, on January 13, Husband requested and received a continuance of the January 20 hearing. Appellant's App. p. 2. On March 4, 1993, with no hearing pending, Wife made yet another request to the trial court, filing a Petition to Modify….
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> More than eleven years later, and almost thirteen years after entry of the decree of dissolution, on December 9, 2004, Wife filed a motion to schedule a hearing on all pending motions. This consolidated hearing took place on February 2, 2005. That same day, Husband filed his second Motion to Appoint Commissioner to Transfer Real Estate. Appellant's App. pp. 33-39. Ultimately, on April 7, 2005, the trial court granted Wife's 1993 Petition to Modify and ordered the real estate awarded to Husband and Wife as tenants in common. Appellant's App. p. 4.

Glen appealed the trial court's grant of Vivian's Petition to Modify. In Strohmier, a separate panel of this Court held that the trial court abused its discretion in modifying the original divorce decree, because Glen's decision to bankrupt his dissolution obligation to Vivian did not constitute fraud. Strohmier, 839 N.E.2d at 237. The case was then remanded to the trial court. Id.

Because her Motion for Relief from Judgment was still pending, Vivian filed a Request for Ruling on Petitioner's Motion for Relief from Judgment. In her original 1992 Motion for Relief from Judgment, Vivian claimed "mistake, surprise, fraud,

misrepresentation, and misconduct on the part of the respondent [Glen] because of his subsequent filing of Chapter 7 bankruptcy petition," which was not known or anticipated at the time the divorce decree was entered. Appellant's App. at 14. On May 24, 2006, the trial court granted Vivian's motion awarding the real estate to the parties equally to be held as tenants in common. Glen now appeals.

Discussion

On appeal, Glen argues that the trial court erred in granting Vivian's Motion for Relief from Judgment, because the $30,000 divorce judgment awarded to Vivian was subject to the bankruptcy discharge and the fact Glen filed for bankruptcy after the divorce does not qualify as mistake, surprise, fraud, misrepresentation, or misconduct by an adverse party under Trial Rule 60(B). We review the grant or denial of a Trial Rule 60(B) motion for relief from judgment under an abuse of discretion standard. Wheatcraft v. Wheatcraft, 825 N.E.2d 23, 30 (Ind. Ct. App. 2005). On appeal, we will not find an abuse of discretion unless the decision of the trial court is clearly against the logic and effect of the facts and circumstances before it or is contrary to law. Id. "On a motion for relief from judgment, the burden is on the movant to demonstrate that relief is both necessary and just." G.B. v. State, 715 N.E.2d 951, 953 (Ind. Ct. App. 1999).

Trial Rule 60(B) provides in relevant part:

> [T]he court may relieve a party … from an entry of … [a] final order … for the following reasons:
>
> (1) mistake, surprise, or excusable neglect; …
> (3) fraud … , misrepresentation, or other misconduct of an adverse party[.]

The only fact that Vivian proffers in support of her motion for relief from judgment is

that Glen filed bankruptcy after the trial court entered the divorce decree dividing the marital property. Without more, Glen filing for bankruptcy six months after the divorce does not constitute mistake, surprise, fraud, misrepresentation, or misconduct by Glen. He legally received a discharge of his dissolution obligation to Vivian. Although the result may seem harsh, such a discharge is not a basis for granting a T.R. 60(B) motion to modify the original division of marital property in order to negate the effect of the bankruptcy. Based on these facts and circumstances, the trial court abused its discretion in granting Vivian's Motion for Relief from Judgment. Accordingly, we reverse and remand for proceedings consistent with this opinion.

Reversed and remanded.

RILEY, J., and MAY, J., concur.