IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 23-599

Filed 19 March 2024

Cumberland County, No. 20 CVS 733

THE ESTATE OF TERUYO BARRY by and through its Public Administrator, BRADFORD SCOTT HANCOX, Plaintiff,

v.

JOAN BLUE and GEORGE BARRY, Defendants / Third-Party Plaintiffs,

and

RUTH GALLO and WILLIAM BARRY, Third-Party Defendants.

Appeal by Defendants / Third-Party Plaintiffs and cross appeal by Third-Party Defendants from an order entered 16 December 2022 by Judge Rebecca W. Holt in Cumberland County Superior Court. Heard in the Court of Appeals 28 November 2023.

Sisson Law Firm PLLC, by Kevin M. Sisson, for Third-Party Defendants-Appellants / Third-Party Defendants-Appellees.

Ginger Crosby Zuravel, for Defendants / Third-Party Plaintiffs-Appellants.

WOOD, Judge.

I. Factual and Procedural Background

Teruyo Barry ("Plaintiff"), is the mother of four adult children: Joan Blue, George Barry, Ruth Gallo, and William Barry. Joan Blue ("Joan") and George Barry ("George") are defendant-appellants and third-party plaintiffs to this action. Ruth Gallo ("Ruth") and William Barry ("William") are third-party defendants to this action.

Plaintiff lived in Cumberland County most of her life and owned two pieces of property in Cumberland County, the "Yadkin Road" house and the "Montclair" house. While living in North Carolina, Plaintiff's son, George, cared for her. In 2007, George informed his siblings, William and Ruth, that their mother was no longer able to care for herself. After Plaintiff suffered injuries from a fall, plans were made for Plaintiff to move to Texas to live with Ruth. In October 2009, while living in Texas, Plaintiff was diagnosed with dementia and subsequently declared incompetent. George continued to look after Plaintiff's properties in North Carolina after her move to Texas.

In 2017, William and Ruth hired a private investigator to examine the actions of their siblings, George and Joan, in caring for and maintaining their mother's property. During this investigation, William and Ruth discovered that, in February 2009, Plaintiff executed a Durable Power of Attorney appointing their siblings, George and Joan, as her power of attorneys and also conveyed the deeds to her two Cumberland County properties to George and Joan. The investigation further revealed that their siblings had sold their mother's home and executed a deed

conveying the property on 27 April 2017.

Plaintiff, through her Guardian *Ad Litem*, filed a Complaint on 31 January 2020 against two of her children, George and Joan, alleging conversion, fraud, breach of fiduciary duty, constructive fraud, negligence and gross negligence, negligent misrepresentation, civil conspiracy, unfair and deceptive trade practices, and unjust enrichment. In the Complaint, Plaintiff requested a declaratory judgment declaring Plaintiff the sole owner of the sold property and punitive damages in excess of $10,000.00. The complaint alleged George and Joan rented Plaintiff's remaining property and retained the funds for their own use and benefit; converted rent monies, bank account funds, and entitlement benefits (e.g., social security, Veteran Affairs benefits and Defense Finance and Accounting Services benefits) intended for Plaintiff for their own use; used Plaintiff's credit card for their personal benefit; and obtained a power of attorney and the deeds to Plaintiff's two properties through negligence and fraud while Plaintiff lacked the requisite mental competency to execute such documents.

On 8 May 2020, George and Joan answered the complaint and asserted claims of negligence, indemnification, and contribution against Ruth and William. Plaintiff died on 29 June 2020, and her estate, through its Public Administrator, Bradford Scott Hancox, was substituted as Plaintiff.

On 24 March 2021, Ruth and William answered and filed counterclaims against George and Joan, advancing claims of conversion, fraud, breach of fiduciary

duty, constructive fraud, negligence and gross negligence, negligent misrepresentation, civil conspiracy, unfair and deceptive trade practices, unjust enrichment, and tortious interference with expectancy. They requested a declaratory judgment declaring Plaintiff the sole owner of the sold property and punitive damages in excess of $10,000.00. Ruth and William's counterclaim further alleged their siblings "convert[ed] and/or redirect[ed] the assets of Plaintiff . . . so as to deprive [them] of any inheritance."

Under their claim of tortious interference with expectancy, Ruth and William allege that Plaintiff validly executed a will before becoming incompetent and that Ruth found and gave Plaintiff's will to Joan for safe keeping. After Plaintiff's death, George and Joan reportedly claimed no will could be located. Ruth and William claim Plaintiff's will exists and equally divided all of their mother's assets among her four children upon her death. Ruth and William further assert that their mother lacked the required testamentary capacity to revoke a will. Ruth and William claim that due to their mother's incapacity, "the undue influence or duress placed upon Plaintiff" by their siblings caused Plaintiff to transfer "title of two tracts of real property, which would have been included in her estate," and "[b]ecause the will created an expectancy for inheritance, and [George and Joan] officiously intermeddled through undue influence or fraud, [Ruth and William] are entitled to relief." Ruth and William further allege since no will was probated, Plaintiff died intestate, and they would "have been entitled to a share of Plaintiff's estate through intestate succession,

but for the wrongful interference" of their siblings.

A jury trial was held during the 23 August 2021 Civil Session of Cumberland County Superior Court. On 31 August 2021, the jury returned a verdict against George and Joan for negligence in handling Plaintiff's bank accounts; negligence in managing Plaintiff's real property and the rents therefrom; conversion of Plaintiff's monies, rents and entitlement payments; civil conspiracy; constructive fraud; undue influence; and interference with Ruth and William's right to inherit. The jury further found Ruth did not convert Plaintiff's monies and George and Joan were not entitled to recover damages for their claim of conversion against Plaintiff's property. The jury awarded Plaintiff's estate $50,000.00 to be paid by Joan and $50,000.00 to be paid by George. The jury also awarded Ruth $25,000.00 to be paid by each Defendant and awarded William $25,000.00 to be paid by each Defendant.

The trial court entered judgment on 14 September 2021 and ordered

> all remaining proceedings, except the amount previously received as disbursement by all parties, from Defendants' / Third-Party Plaintiffs' sale of the real property located at . . . Yadkin Road . . . shall be tendered to the Estate of Plaintiff within fifteen days of the date of this order" and within fifteen days, George and Joan shall execute and record a deed for the Montclair property to Plaintiff's estate, as well as tender all rents still retained from the rental of this property to Plaintiff's estate.

On 24 September 2021, George and Joan filed a motion to alter or amend judgment and a motion for new trial. The motion requested the modification of the 14 September 2021 judgment because they alleged their right to file an appeal within

thirty days is negated because it ordered George and Joan to take certain actions within fifteen days. Further, their motion alleged there was insufficient evidence to justify the verdict pursuant to Rule 59(a)(7), and instead, the judgment provided excessive damages under the influence of passion. George and Joan alleged that the judgment is

> vague and duplicitous in that it requires not only the payment of funds allegedly on the "interference with their right to inherit[,]" and at the same time requires the Defendants . . . in addition to paying monies received from the sale of the Yadkin Road property, and at the same time to pay the additional funds left over from the sale of that property, and in addition to deed the Montclair property and pay money over and above what the property is worth and what the evidence would show as damages suffered.

George and Joan further alleged the verdict is not supported by evidence, it is contrary to law, and they are unable to determine their rights under the current judgment. George and Joan also requested a new trial pursuant to Rule 59(a)(1), (2), (5), (6), (7), (8) and (9). Finally, they sought relief from judgment under Rule 60(b)(1) on the grounds of mistake and inadvertence and under Rule 60(b)(6) because "the Judgment is made duplicitous and excessive . . . for errors committed during the trial . . . and for the failure of the Court to give instructions requested by the Defendants."

On 4 October 2021, the trial court announced in open court its denial of the motions; however, the written order was not entered until 18 July 2022. On 16 December 2021, the trial court entered an Amended Judgment to allow thirty days for George and Joan to turn over assets to Plaintiff's Estate.

On 24 May 2022, through new counsel, George and Joan filed a motion to conform judgment to well-settled case law or, in the alternative, a motion to vacate judgment pursuant to Rule 60. This motion requested that the trial court (1) conform the Judgment and/or Amended Judgment to well-settled case law with respect to "civil conspiracy"; (2) mark the Amended Judgment satisfied because they had returned all assets to Plaintiff's estate; and/or (3) vacate said Judgment. On 8 June 2022, George and Joan filed a brief in support of their motion.

On 16 December 2022, the trial court ordered that the amounts George and Joan owed to Plaintiff were satisfied because they had returned "all estate assets (including all rents, entitlements, and real property" to the estate. Specifically, the trial court held that while the amounts awarded to Plaintiff have been satisfied, George and Joan are still required to pay the amounts awarded to William and Ruth. The trial court also determined it previously had heard George and Joan's Rule 60 motion through their former attorney, had denied their Rule 60 motion, and George and Joan had the opportunity to present their claim during the prior Rule 60 hearing. Further, the trial court found that the questions presented were questions of law, and that Rule 60 does not allow a court to modify a previous ruling to correct legal error. The trial court found "the proper way to address conforming the order was by appeal, and motions under Rule 60(b)(6) may not be used as a substitute for appeal or an end run around appeal." The trial court denied Defendants' motion to conform the judgment with well-settled case law. The trial court applied the same reasoning to

Defendants' arguments to vacate the judgment under Rules 60(b)(1), (3), and (4) and denied Defendants' motion to vacate the judgment under Rule 60.

On 17 January 2023, William filed notice of appeal, *pro se*, of the 16 December 2022 order. That same day, George and Joan filed notice of appeal of multiple orders including the 16 December 2022 order.

II. Analysis

Defendants and Third-party Defendants each appeal the trial court's 16 December 2022 order. We note George and Joan attempt to appeal several orders in their notice of appeal filed 17 January 2023. However, by the time George and Joan filed their notice of appeal, the time to appeal any order entered prior to the 16 December 2022 order had expired. *See* N.C. R. App. P. 3 (requiring appeals in civil actions be filed within 30 days of entry of judgment). Therefore, we review only the 16 December 2022 order denying Defendants' Rule 60(b)(1), (3), (4), and (6) motions and granting Defendants' Rule 60(b)(5) motion.

A. Defendants' claims.

1. Rule 60(b)(5)

First, George and Joan argue that the trial court abused its discretion by not ordering Ruth and William's judgments satisfied pursuant to Rule 60(b)(5) as their inheritance rights were made whole. George and Joan challenged finding of fact 4(e) which states: "the part of the Amended Judgment relating to the amounts awarded to Third-Party Defendants has not been satisfied, released or discharged and

therefore remains in effect and may be enforced against the Defendants." According to George and Joan, the actual damages for "Ruth and Bill[1] are exactly 50% of the 'actual damages' to [Plaintiff's] Estate." They contend the trial court's finding that "the Estate has been made whole necessarily means that Ruth and Bill's expectation of inheritance (each entitled to a one-quarter share) from said Estate has also been made whole, and it was an abuse of discretion to find otherwise." George and Joan further contend the jury understood that George and Joan "were jointly and severally liable to [Plaintiff's] Estate for $50,000 to flow to Ruth and Bill," so that the amount of damages awarded by the jury to Ruth and William would be fulfilled once the Estate was made whole. George and Joan argue that the "well-settled case law for 'civil conspiracy' and 'actual damages' requires that the tendering of assets of approximately $100,000.00 to [Plaintiff's] Estate satisfy the money award to both her Estate and her Heirs." In response, Ruth and William argue that at the heart of Defendants' motions is the principle that they "do not like the jury instructions and think they were incorrect and/or unclear" and because no objection was made to the jury instructions at the trial court level, such arguments should be dismissed.

Rule 60 of the North Carolina Rules of Civil Procedure governs motions for relief from a judgment or order. Specifically, Rule 60(b) provides,

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final

[1] We note that William and Bill are the same individual.

judgment, order, or proceeding for the following reasons:

> (1) Mistake, inadvertence, surprise, or excusable neglect;
>
> (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
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> (4) The judgment is void;
>
> (5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
>
> (6) Any other reason justifying relief from the operation of the judgment.

N.C. R. Civ. P. 60(b). A motion for relief under Rule 60(b) of the North Carolina Rules of Civil Procedure is addressed to the sound discretion of the trial court and such a decision will be disturbed only for an abuse of discretion. *Burwell v. Wilkerson*, 30 N.C. App. 110, 112. 226 S.E.2d 220, 221 (1976); *Harrington v. Harrington*, 38 N.C. App. 610, 612, 248 S.E.2d 460, 461 (1978). "An abuse of discretion occurs only upon a showing that the judge's ruling was so arbitrary that it could not have been the result of a reasoned decision." *In re E.H.*, 227 N.C. App. 525, 530, 742 S.E.2d 844, 849 (2013).

In this case, the Record evidence shows that the jury determined and recorded

on its verdict sheet that Plaintiff is entitled to recover from each Defendant for damages in the amount of $50,000.00, for a total jury award of $100,000.00 to Plaintiff. In addition to this award to Plaintiff, the jury determined that William and Ruth both suffered injuries separate and apart from Plaintiff's estate because both Defendants wrongfully interfered with William and Ruth's expectations of a right to inherit. The jury found that William and Ruth were entitled to recover $25,000.00 from each Defendant for a total of $50,000.00 in damages to William and $50,000.00 in damages to Ruth. We conclude, therefore, that the trial court's denial of the motion to modify the amended judgment is supported by sufficient evidence. The trial court did not abuse its discretion in determining that Ruth and William were still owed damages by George and Joan. We agree that a part of the judgment remains unsatisfied and enforceable.

In lieu of providing the complete transcript, Defendants include only the jury instruction portion of the transcript from the original trial in support of their argument that the jury misunderstood the law when it rendered its verdict. Because Defendants' argument points to the jury's alleged misapprehension of applicable law, the "well settled law of civil conspiracy," we conclude that objections to how the trial court instructed the jury cannot now be challenged on appeal. N.C. R. App. P. 10(a)(2). Furthermore, such allegations pertaining to civil conspiracy may be interpreted as arguments alleging errors of law. It is well established that "Rule 60(b) provides no specific relief for errors of law." *Davis v. Davis*, 360 N.C. 518, 523,

631 S.E.2d 114, 118 (2006). Instead, "[t]he appropriate remedy for errors of law committed by the trial court is either appeal or a timely motion for relief under N.C.G.S. Sec. 1A-1, Rule 59(a)(8). Motions pursuant to Rule 60(b) may not be used as a substitute for appeal." *Id.* (citation, quotation marks, and brackets omitted). The proper course of action would have been for Defendants to have filed a timely notice of appeal of the jury verdict and resulting judgment or a timely motion for relief under Rule 59. They did not. Therefore, the trial court did not abuse its discretion by denying the motion to release Defendants from their obligation to pay the amounts of the jury award to William and Ruth.

2. Rule 60(b)(1)

Next, George and Joan contend the trial court abused its discretion in finding that no relief may be granted for Rule 60(b)(1) motions based upon errors of law. Specifically, Defendants highlight the recent holding in *Kemp v. U.S.*, in which the U.S. Supreme Court "granted certiorari to resolve the Court of Appeals' longstanding disagreement whether 'mistake' in Rule 60(b)(1) includes a judge's errors of law." 596 U.S. 528, 532, 142 S.Ct. 1856, 1861 (2022). Under the Federal Rules of Civil Procedure, the Supreme Court held, "We conclude, based on the text, structure, and history of Rule 60(b), that a judge's errors of law are indeed 'mistakes' under Rule 60(b)(1)." *Id.* at 530, 142 S.Ct. at 1860 (brackets omitted). Pursuant to *Kemp*, Defendants request that we reverse and remand this matter to the trial court for a determination not inconsistent with the U.S. Supreme Court's holding. Pursuant to

Rule 60(b)(1), Defendants challenge the trial court's findings of facts 2(b) and 2(d)–(f):

> 2(b): Defendants . . . had the opportunity to present this claim in the prior Rule 60 hearing;
>
> . . .
>
> 2(d): This court should not act under Rule 60(b)(6) except in extraordinary circumstances and upon a showing that justice requires that relief be granted, which shall be determined by the sound discretion of the Court;
>
> 2(e): The proper way to address conforming the order was by appeal, and motions under Rule 60(b)(6) may not be used as a substitute for appeal or an end run around appeal; and
>
> 2(f): The questions presented by Defendants are questions of law, and Rule 60 does not authorize a court to modify a previous ruling when the reason for doing so is legal error.

As discussed *supra*, "[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect." N.C. R. Civ. P. 60(b)(1). A party moving to set aside a judgment under Rule 60(b)(1) must show one of these grounds as well as the existence of a meritorious defense "because it would be a waste of judicial resources to vacate a judgment or order when the movant could not prevail on the merits of the civil action." *Baker v. Baker*, 115 N.C. App. 337, 340, 444 S.E.2d 478, 480 (1994).

North Carolina courts have long held "Rule 60 is an improper mechanism for obtaining review of alleged legal error." *Catawba Valley Bank v. Porter*, 188 N.C.

App. 326, 330, 655 S.E.2d 473, 475 (2008). "The appropriate remedy for errors of law committed by the trial court is either appeal or a timely motion for relief under N.C.G.S. Sec. 1A-1, Rule 59(a)(8). Motions pursuant to Rule 60(b) may not be used as a substitute for appeal." *Davis*, 360 N.C. at 523, 631 S.E.2d at 118 (citation, quotation marks, and brackets omitted). "Rule 60(b) provides no specific relief for 'errors of law' and our courts have long held that even the broad general language of Rule 60(b)(6) does not include relief for 'errors of law.' " *Hagwood v. Odom*, 88 N.C. App. 513, 519, 364 S.E.2d 190, 193 (1988).

Although similar to their Federal counterparts, our Rules of Civil Procedure are not identical, nor must they be. Federal case law does not bind this Court or any North Carolina court when considering purely a question of state law. *See Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 465, 515 S.E.2d 675, 686 (1999). That Rule 60 is an improper mechanism for obtaining review of alleged legal error is well settled. We are bound by our courts' longstanding interpretation of what Rule 60(b)(1) encompasses.

Thus, the trial court properly exercised its discretion to deny relief from the judgment under Rule 60(b)(1). *LouEve, LLC v. Ramey*, 286 N.C. App. 263, 270–71, 880 S.E.2d 431, 436–37 (2022).

3. Rule 60(b)(3)

Defendants challenge findings of fact 2(b) and 2(d)–(f) based upon Rule 60(b)(3). Defendants contend they "clearly argued that the Judgment and Amended

Judgment, as written in noncompliance with well-settled case law on 'civil conspiracy,' along with Ruth and Bill's exploitation of the mistakes contained therein, amounted to fraud upon Joan, George, and the Court."

Defendants argue:

> Ruth and Bill's attorney knew or should have known the implications of "civil conspiracy" as it was their claim and a significant part of their case. Accordingly, he knew or should have known that the Judgment *that he drafted* was not in conformity with well-settled case law. Indeed, he acknowledged the mistake's existence to the Trial Court (*see* T1 p 25 ("*Well, I think it's probably supposed to be joint and several liability*")), and said knowledge is imputed to Ruth and Bill.

(Emphasis in original). Therefore, "Ruth and Bill's exploitation of the mistakes within the Court's final order to benefit themselves with a windfall recovery, to which they are not entitled, establish clear and convincing evidence of their fraud on Joan, George, and the Court." We are unpersuaded.

Rule 60(b)(3) enables a trial court to set aside a final judgment or order due to fraud, misrepresentation, or other misconduct of an adverse party. N.C. R. Civ. P. 60(b)(3). "To obtain relief under Rule 60(b)(3), the moving party must 1) have a meritorious defense, 2) that he was prevented from presenting prior to judgment, 3) because of fraud, misrepresentation or misconduct by the adverse party." *Milton M. Croom Charitable Remainder Unitrust v. Hedrick*, 188 N.C. App. 262, 268, 654 S.E.2d 716, 721 (2008).

In the present case, the Record evidence reflects Defendants were able to

present their arguments, claims, and defenses prior to judgment in full over the course of a lengthy jury trial. Notwithstanding the absence of the complete trial transcript, the jury verdict sheet indicates twenty-two issues were presented to the jury, including the issues of whether George and Joan conspired with one another to deprive Plaintiff of her real property, rents, and entitlement payments. The Record evidence clearly demonstrates Defendants were allowed to present their claims, arguments, and defenses fully and fairly prior to judgment. The trial court did not abuse its discretion in denying Defendants' Rule 60(b)(3) motion.

4. Rule 60(b)(4).

Defendants challenge Finding 3(a), which incorporates by reference Findings 2(a)–(e) on the grounds that Rule 60(b)(4) is a proper remedy for judgments containing legal errors that the trial court is unable to correct. Again, referencing the law of civil conspiracy, Defendants argue if there is "any question about the jury's intent and its conformity with 'civil conspiracy' or 'actual damages' case law, then the Trial Court would have no choice but to vacate the judgment and send it back to the jury for clarification." Defendants contend it is an abuse of discretion for the trial court to act otherwise.

Under Rule 60(b)(4), a court may relieve a party or his legal representative from a final judgment, order, or proceeding when the judgment is void. The burden of proof is on the moving party to demonstrate that the judgment was void for want of jurisdiction or authority. *Howell v. Tunstall*, 64 N.C. App 703, 705, 308 S.E.2d 454,

456 (1983). In this case, Defendants did not present any evidence to demonstrate that the judgment was void. The Record evidence simply shows Defendants' trial counsel made a proposal:

> Your Honor, if you feel that you don't have authority for any reason or you may question what was the intent of this jury, and you wanted to go back and ask them to clarify the amount of damages as opposed to asking what each party's liability was, if there were any questions about that, that is where I say that the only other option is to vacate this order and send it back to a jury.

Defendants did not carry the burden of demonstrating that the judgment was void. Thus, the trial court did not abuse its discretion in denying Defendants' Rule 60(b)(4) motion.

5. Multiple Rule 60(b) motions.

Finally, Defendants argue the trial court abused its discretion in holding that relief under Rules 60(b)(1), (3), (4) and (6) could not be granted if a prior Rule 60(b) motion previously had been heard. Defendants contend, "Rule 60(b) provides no limitation on the number of Rule 60 motions that may be properly brought before the Trial Court." Defendants acknowledge that their prior attorney had filed a Rule 59 and Rule 60 motion which was argued on 15 November 2021, but contend:

> their prior attorney's failure to adequately prepare to represent them zealously during the post-trial motions, admitting that he was unaware of the controlling case law at the heart of this case, and not seeking to draft the Judgment and Amended Judgment in conformity with controlling case law amounts to gross negligence that prevented a full and fair hearing on the merits of George

and Joan's claim.

We disagree.

"Rule 60(b)(6) is equitable in nature . . . . The rule empowers the court to set aside or modify a final judgment, order or proceeding whenever such action is necessary to do justice under the circumstances." *Howell v. Howell*, 321 N.C. 87, 91, 361 S.E.2d 585, 587–88 (1987) (citation omitted). In order for a judgment to be set aside, a party must show (1) extraordinary circumstances exist and (2) justice demands it. *Baylor v. Brown*, 46 N.C. App. 664, 670, 266 S.E.2d 9, 13 (1980).

In this case, Defendants are unable to show that extraordinary circumstances exist to set aside or modify the trial court's final judgment. Defendants' prior trial attorney filed a Rule 60(b)(1) and Rule 60(b)(6) motion on 24 September 2021 specifically alleging the judgment was duplicitous, excessive, and erroneous for failure to give Defendants' requested instructions. Many of the arguments presented by Defendants' trial attorney at the hearing for the Rule 60 motion on 30 August 2022 were substantially similar to the arguments made at the prior Rule 60 motion hearing on 15 November 2021.

Furthermore, the Record evidence tends to show Defendants' trial counsel never argued that their Rule 60(b)(6) motion should be granted due to the gross negligence of their previous trial attorney. "[I]ssues and theories of a case not raised below will not be considered on appeal." *Westminster Homes, Inc. v. Town of Cary Zoning Bd. of Adjustment*, 354 N.C. 298, 309, 554 S.E.2d 634, 641 (2001); *see also*

N.C. R. App. P. 10(a)(1). Defendants bring forth this argument for the first time on appeal. Therefore, this argument is not properly preserved on appeal and is dismissed.

B. Third-Party Defendants' claim.

Ruth and William argue the trial court abused its discretion by ordering that the part of the judgment pertaining to Plaintiff's estate be marked satisfied pursuant to Rule 60(b)(5) because both the jury verdict and amended judgment reflect that Defendants were found liable for torts not related to Plaintiff's real estate assets.

Rule 60(b) of the North Carolina Rules of Civil Procedure provides in relevant part:

> the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: . . . (5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

N.C. R. Civ. P. 60(b)(5). The standard of review of a trial court's ruling on a Rule 60(b) motion is well settled. "[A] motion for relief under Rule 60(b) is addressed to the sound discretion of the trial court and appellate review is limited to determining whether the court abused its discretion." *Sink v. Easter*, 288 N.C. 183, 198, 217 S.E.2d 532, 541 (1975). "A judge is subject to reversal for abuse of discretion only upon a showing by a litigant that the challenged actions are manifestly unsupported by reason." *Clark v. Clark*, 301 N.C. 123, 129, 271 S.E.2d 58, 63 (1980). "Findings of

fact made by the trial court upon a motion to set aside a judgment by default are binding on appeal if supported by any competent evidence." *Kirby v. Asheville Contracting Co.,* 11 N.C. App. 128, 132, 180 S.E.2d 407, 410 (1971).

The Record contains ample competent evidence to show that the jury accounted for Defendants' conversion, negligence, and other actions in the mismanagement of Plaintiff's bank accounts, monies, rents, entitlements, and real property in their award to Plaintiff's estate. Similarly, the jury considered Defendants' wrongful interference with Ruth's and William's expectation of a right to inheritance. Although the jury verdict does not provide a clear breakdown of what amounts are allotted to each of Plaintiff's assets in making the $100,000.00 award determination, the trial court did not abuse its discretion in determining that Defendants satisfied their obligation to Plaintiff by giving the real estate assets to Plaintiff's Estate's Public Administrator. The trial court's determination does not affect Ruth and William's entitlement to recover damages from their siblings for tortious interference and damages for torts relating to monies which were improperly withheld or spent from Plaintiff's estate.

III. Conclusion

For the foregoing reasons, we affirm the trial court's order denying Defendants' Rule 60(b)(1), (3), (4) and (6) motion and affirming in part Defendants' Rule 60(b)(5) motion. We hold the trial court did not abuse its discretion.

AFFIRMED.

Judges COLLINS and CARPENTER concur.

Report per Rule 30(e).