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APPELLANT PRO SE:

WILLIAM A. PENNINGTON III
Louisville, Kentucky

**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM A. PENNINGTON III,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 10A05-1007-CC-447
)	
CONVERGENCE RECEIVABLES, LC,)	
as Assignee of Maryland National Bank,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE CLARK SUPERIOR COURT
The Honorable Joseph P. Weber, Judge
The Honorable Kenneth R. Abbott, Magistrate
Cause No. 10D03-0705-CC-710

April 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

William A. Pennington III (“Pennington”) appeals from the trial court’s order denying his motion for relief from judgment in a debt collection action commenced by Convergence Receivables, LC (“Convergence”), as assignee of Maryland National Bank. We state the dispositive issue in this case as follows: Whether the trial court erred in denying Pennington’s motion for relief from judgment.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 16, 2007, Convergence filed a complaint seeking to collect a debt owed to it by Pennington in the principal amount of \$4,073.66. Pennington filed an answer to the complaint alleging that he was not the person who had conducted business with Convergence, was unaware of any debt, and had not received a demand for payment from Convergence.

Convergence filed an application for default judgment on July 13, 2007, in which it alleged that the principal and interest on Pennington’s debt totaled \$9,357.01, and that Pennington had not responded to its complaint. Pennington filed a motion to set aside the default judgment, and the trial court granted his motion on February 6, 2008. Convergence filed its first set of interrogatories, which Pennington ultimately answered. Pennington’s social security number and date of birth were included in the answers to the interrogatories; however, Pennington continued to claim that he was not the person who had incurred the debt at issue.

On December 16, 2008, Convergence filed a motion for summary judgment. Pennington defended the motion for summary judgment by claiming that the statute of limitations for collections of credit card debt had expired and reiterating that the debt was not his. The trial court held a hearing, but Pennington failed to appear. Convergence argued that the social security number and date of birth supplied by Pennington matched the social security number and date of birth of the person who had incurred the debt. Summary judgment was granted in favor of Convergence on August 26, 2009, in the amount of \$12,898.43 plus costs and post-judgment interest, and Convergence pursued proceedings supplemental.

On December 10, 2009, Pennington filed a motion to set aside summary judgment. After hearing argument, the trial court denied Pennington's motion on March 2, 2010. Convergence again pursued proceedings supplemental. On May 14, 2010, Pennington filed a motion to stay the proceedings supplemental and a motion for relief from judgment. On June 22, 2010, the trial court denied Pennington's motion. Pennington now appeals.

DISCUSSION AND DECISION

We note at the outset that Convergence has not filed an appellate brief. When an appellee fails to submit a brief, we apply a less stringent standard of review with respect to the showing necessary to establish reversible error. *Wolverine Mut. Ins. Co. v. Oliver*, 933 N.E.2d 568, 570 (Ind. Ct. App. 2010). In that situation, we may reverse if the appellant establishes prima facie error, which is an error at first sight, on first appearance, or on the

face of it. *Id.* We will not undertake the burden of developing legal arguments on behalf of the appellee. *Id.*

Here, Pennington argues that the trial court erred in denying his motion for relief from judgment. A motion made under Indiana Trial Rule 60(B) is addressed to the equitable discretion of the court. *V.C. Tank Lines, Inc. v. Faison*, 754 N.E.2d 1061, 1064 (Ind. Ct. App. 2001). We review the denial of a motion for relief from judgment under Trial Rule 60(B) only for an abuse of discretion. *In re Adoption of T.L.W.*, 835 N.E.2d 598, 600 (Ind. Ct. App. 2005). An abuse of discretion will be found only when the trial court's judgment is clearly against the logic and effect of the facts before it and the inferences to be drawn therefrom. *Id.* In reviewing the evidence, we will not reweigh the evidence or substitute our judgment for that of the trial court. *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).

Pennington argued in his motion for relief from judgment that he did not receive notice of the re-scheduled July 14, 2009 summary judgment hearing and that summary judgment was erroneously entered against him when he was not the individual who had incurred the debt at issue. However, Pennington received notice of the August 26, 2009 order granting summary judgment in favor of Convergence, but did nothing until December 10, 2009, when he filed his motion to set aside summary judgment.

"A motion for relief from judgment pursuant to Trial Rule 60(B) may not be used as a substitute for a direct appeal." *Dillard v. Dillard*, 889 N.E.2d 28, 34 (Ind. Ct. App. 2008).

Trial Rule 60(B) “affords relief in extraordinary circumstances which are not the result of any fault or negligence on the part of the movant.” *Goldsmith v. Jones*, 761 N.E.2d 471, 474 (Ind. Ct. App. 2002). Here, when Pennington filed his motion under Trial Rule 60(B), the time for filing a motion to correct error or notice of appeal had lapsed. Therefore, the trial court did not abuse its discretion in denying Pennington’s motion for relief from judgment.

Affirmed.

CRONE, J., and BRADFORD, J., concur.