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ATTORNEYS FOR APPELLANT:

CHRISTINE M. MARCUCCILLI
MARK W. BAEVERSTAD
Rothberg Logan & Warsco LLP
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

BRIAN P. CLIFFORD
MICHAEL L. JAMES
Baker & Daniels LLP
Fort Wayne, Indiana

IN THE
COURT OF APPEALS OF INDIANA

FIVALCO, INC.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A04-0902-CV-96
	)	
SHAMBAUGH & SON, L.P.,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Nancy Eshcoff Boyer, Judge
Cause No. 02D01-0708-PL-340

June 11, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Fivalco, Inc. ("Fivalco") appeals the denial of its Indiana Trial Rule 60(B)(6) motion to set aside a default judgment obtained by Shambaugh & Son, L.P. ("Shambaugh"). We affirm.

Issue

A single issue is presented for review: whether the default judgment is void for lack of personal jurisdiction over Fivalco.

Facts and Procedural History

On August 2, 2007, Shambaugh filed a Complaint against Fivalco, alleging breach of contract and breach of warranties for goods sold to Shambaugh. Shambaugh sent a summons and complaint via certified mail, addressed to Fivalco, Inc. c/o Chul Shin (California Registered Agent for Service of Process), 2221 East Winston Road, Suite J, Anaheim, California 92806. The United States Postal Service return of service indicated that the summons had been delivered to "2221 Winston" but the signature of the recipient was illegible. (App. 2.)

On February 19, 2008, Shambaugh was granted a default judgment against Fivalco in the amount of $98,605.33. On January 21, 2009, Fivalco filed a motion to set aside the default judgment, alleging that the default judgment was void for lack of personal jurisdiction due to the failure of service of process. After hearing arguments on the matter, the trial court denied Fivalco's motion to set aside the default judgment. Fivalco now appeals.

Discussion and Decision

Indiana Trial Rule 60(B) provides in pertinent part: "On motion and upon such terms as are just the court may relieve a party or his legal representative from an entry of default, final order, or final judgment, including a judgment by default, for the following reasons: . . . (6) The judgment is void[.]" Normally, this Court employs an abuse of discretion standard in reviewing a trial court's ruling on a motion to set aside a judgment. Rice v. Com'r, Indiana Dept. of Envtl. Mgmt., 782 N.E.2d 1000, 1003 (Ind. Ct. App. 2003). However, when a motion for relief from judgment is made pursuant to Trial Rule 60(B)(6), alleging that the judgment is void, discretion on the part of the trial court is not employed because either the judgment is void or it is valid. Id.

"The existence of personal jurisdiction over a defendant is a question of law and a constitutional requirement to rendering a valid judgment, . . . Thus, we review a trial court's determination regarding personal jurisdiction de novo." Munster v. Groce, 829 N.E.2d 52, 57 (Ind. Ct. App. 2005). A plaintiff is responsible for presenting evidence of a court's personal jurisdiction over the defendant, but the defendant must ultimately bear the burden of proving the lack of personal jurisdiction by a preponderance of the evidence, unless the lack is apparent on the face of the complaint. Id. A judgment entered where there has been no service of process is void for want of personal jurisdiction. Stidham v. Whelchel, 698 N.E.2d 1152, 1155 n.3 (Ind. 1998).[1] To determine whether the default judgment against Fivalco is

[1] Generally, with a Trial Rule 60(B) motion, the claimant must not only show mistake, surprise, or excusable neglect, but must also make a prima facie showing that a different result would be reached if the case were tried on the merits. T.R. 60(B). Nevertheless, if the judgment is void ab initio, a Trial Rule 60(B) claimant need not show a meritorious claim or defense. Moore v. Terre Haute First Nat'l Bank, 582 N.E.2d 474, 476-

void, we must determine whether Shambaugh's service of process upon Fivalco was effective.

Service of process upon an organization is controlled by Indiana Trial Rule 4.6. Section (A) of that Rule provides in relevant part: "Service upon an organization may be made as follows: (1) In the case of a domestic or foreign organization upon an executive officer thereof, or if there is an agent appointed or deemed by law to have been appointed to receive service, then upon such agent." According to Section (B), such service "shall be made on the proper person in the manner provided by these rules, for service upon individuals[.]" One method by which service may properly be made upon an individual acting in a representative capacity is by "sending a copy of the summons and complaint by registered or certified mail or other public means by which a written acknowledgment of receipt may be requested and obtained to his residence, place of business or employment with return receipt requested and returned showing receipt of the letter[.]" T.R. 4.1(A)(1). Service must be reasonably calculated to inform the entity to be served that the action has been instituted. T.R. 4.15(F).

Here, the address given for the registered agent, on file at the Indiana Secretary of State, was the same as the California corporate office address.[2] The United States Postal Service return of service indicated that service of the summons at issue was made to someone

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77 (Ind. Ct. App. 1991).

[2] Generally, a designated resident agent is served when service is made at the address provided by the corporation and on file at the offices of the Indiana Secretary of State. See e.g., American Family Ins. Co. v. Ford Motor Co., 857 N.E.2d 971, 972 n.2 (Ind. 2006).

at "2221 Winston." (App. 26.) No suite number is specified and the signature of the recipient is illegible. In support of its Motion to Set Aside Default Judgment, Fivalco attached the affidavit of Jason Seo, Fivalco's Assistant Manager. Therein, Seo averred that he was the only Fivalco employee located within the United States, that he had examined the signature for receipt of service of process obtained by the United States Postal Service, and that it was neither his signature nor that of Fivalco's registered agent, Chul Shin. He further averred that mail intended for Suite J at 2221 East Winston Road, Anaheim, California, was commonly delivered at two other suites in the building and would routinely be brought to Fivalco several weeks later.[3] Finally, Seo averred that he "only received notice of the lawsuit" when he received a copy of the court's order scheduling a hearing on motion for default [for February 19, 2008], which order was served on December 18, 2007. (App. 34.)

Thereafter, according to Seo's affidavit, Fivalco obtained a copy of the complaint and summons. As such, Fivalco has conceded that it "obtained" a copy of the complaint and summons in advance of the default judgment hearing; however, Fivalco denies that it was properly "served" with the complaint and summons. (App. 35.)

In Precision Erecting, Inc. v. Wokurka, 638 N.E.2d 472 (Ind. Ct. App. 1994), trans. denied, a panel of this Court considered the appellant's argument that Trial Rule 4.6(B), providing that service shall be made on the proper person, mandates that the agent sign the return receipt in order for service to be effective. Finding Precision's argument to be "without merit," the Court stated:

[3] Seo did not claim to have knowledge that a mis-delivery actually occurred in this instance. Rather, he averred that mis-delivery between suites commonly occurred, causing delays in mail reaching the intended recipient.

> We find nothing in the trial rules requiring that the individual to whom service of process is mailed be the one who signs the return receipts in order for service to be effective. Rather, the rule requires only that service be sent by certified mail to the proper person, a requirement with which Wokurka strictly complied.

Id. at 474. In reaching its conclusion, the Precision Court relied in part upon Buck v. P.J.T., 182 Ind. App. 71, 394 N.E.2d 935 (1979), trans. denied, in which a separate panel of this Court affirmed a default judgment where the defendant was served via certified mail and the return receipt was signed by someone else. The Buck Court reasoned in pertinent part: "Since actual delivery to the party is not jurisdictionally necessary, Buck's argument that the court failed to acquire personal jurisdiction fails." Id. at 182 Ind. App. 73, 394 N.E.2d at 937.

A copy of Shambaugh's summons and complaint was sent by certified mail to Fivalco; this constitutes effective service. See id. Therefore, the default judgment was not void for want of personal jurisdiction as alleged by Fivalco in its Trial Rule 60(B)(6) motion for relief from judgment. The trial court did not err in denying that motion.

Affirmed.

DARDEN, J., and ROBB, J., concur.