

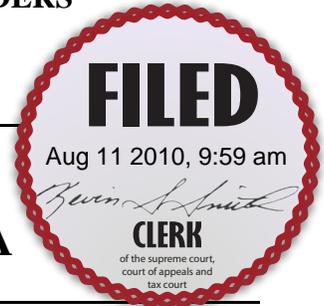
Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

DAVID W. STONE IV
Stone Law Office
Anderson, Indiana

ATTORNEY FOR APPELLEE:

ANTHONY J. SAUNDERS
New Castle, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE PATERNITY OF: C.T.,)

J.M.,)

Appellant-Plaintiff,)

vs.)

R.T.,)

Appellee-Defendant.)

No. 33A01-1003-JP-184

APPEAL FROM THE HENRY SUPERIOR COURT
The Honorable Michael D. Peyton, Judge
Cause No. 33D01-1090-JP-2

August 11, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-plaintiff J.M. (Mother) appeals from the trial court's order granting appellee-defendant R.T.'s (Father) motion for relief from judgment. Specifically, Mother argues that the trial court abused its discretion because Father failed to establish any proper basis for relief under Indiana Trial Rule 60(B). Finding that Father established excusable neglect, we affirm the judgment of the trial court.

FACTS

C.T. was born to Mother and Father on February 26, 2001. From 2000 until approximately July 2008, Mother and Father lived together.

On January 22, 2009, Father retained attorney David Scott to represent him in a protective order action involving Father and Mother. As a result of this action, Father was excluded from a residence in Shirley, Indiana.

Within the next week, Mother filed two cases, one to establish paternity of C.T. and one to partition real and personal property. On February 5, 2009, Scott appeared on behalf of Father in both cases. On February 9, 2009, the trial court issued an order consolidating the cases.

On May 6, 2009, the trial court scheduled a hearing for July 16, 2009. And although Scott had represented Father in the protective order action, which excluded him from the Shirley residence, Scott nevertheless sent notice of the July 16 hearing to the Shirley address.

On June 4, 2009, Scott filed a motion to withdraw his appearance, stating that there had been a complete breakdown in communication with Father. The trial court

granted this motion on June 8, 2009.

Father did not appear at the July 16, 2009, hearing. No transcript is available for this hearing inasmuch as it was not recorded.

On July 23, 2009, the trial court entered a decree of paternity and order on the pending issues, finding that Father is C.T.'s legal father, awarding sole custody of C.T. to Mother, and ordering Father to pay child support. The order also established supervised visitation for Father at Mother's discretion and changed C.T.'s last name from Father's to Mother's last name.

Father filed a motion for relief from judgment on November 16, 2009. The trial court held a hearing on this motion on January 29, 2010, and granted the motion on March 3, 2010. Mother now appeals.

DISCUSSION AND DECISION

Mother argues that the trial court abused its discretion by granting the motion for relief from judgment because Father failed to establish any appropriate grounds for relief. We review the grant or denial of a T.R. 60(B) motion under an abuse of discretion standard. Munster Cmty. Hosp. v. Bernacke, 874 N.E.2d 611, 613 (Ind. Ct. App. 2007). On appeal, we will not find an abuse of discretion unless the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. Id.

Rule 60(B) provides, among other things, that a judgment may be set aside

because of the complaining party's excusable neglect.¹ When ruling on a Rule 60(B) motion, "[t]he trial court must balance the need for an efficient judicial system with the judicial preference for deciding disputes on the merits." Munster Cmty. Hosp., 874 N.E.2d at 613.

Here, Scott sent notice of the July 16 hearing to the Shirley address even though a protective order prohibited Father from entering the property and Scott had represented Father in the protective order action. Father's failure to appear at the July 16 hearing was because he had not received notice of the hearing.

Moreover, we cannot say that Father's absence from the hearing was inconsequential. Indeed, after evidence was presented at the July 16 hearing,² the trial court issued an order on July 23, 2009, finding that Father is C.T.'s legal father, awarding sole custody of C.T. to Mother, and ordering Father to pay child support. The order also established supervised visitation for Father at Mother's discretion and changed C.T.'s last name from Father's to Mother's last name. Under these circumstances and in light of this court's preference that cases be decided on their merits, we cannot say that the trial court abused its discretion by granting Father's T. R. 60(B) motion.

¹ In addition to showing excusable neglect, "[o]ur case law makes clear the movant [for relief from judgment] must also show a meritorious defense to the judgment." State, Dept. of Natural Resources v. Van Keppel, 583 N.E.2d 161, 163 (Ind. Ct. App.1991). However, as Mother did not raise this issue, we will not address it.

² As stated earlier, it is not clear what evidence was presented at the July 16 hearing, inasmuch as there is no recording of the hearing.

The judgment of the trial court is affirmed.

RILEY, J., and BAILEY, J., concur.