

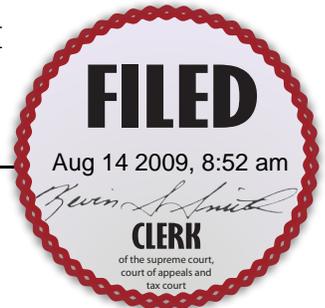
Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

APPELLANTS PRO SE:

**QUAN NING HUANG
LI SONG**
Fort Wayne, Indiana

ATTORNEY FOR APPELLEE:

MEGAN R. BURZYCH
Fort Wayne, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

QUAN NING HUANG and LI SONG,)

Appellants-Defendants,)

vs.)

No. 02A03-0902-CV-72

TANAS B. DONEV,)

Appellee-Plaintiff.)

APPEAL FROM THE ALLEN CIRCUIT COURT
The Honorable Thomas J. Felts, Judge
Cause No. 02C01-0601-CC-106

AUGUST 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Appellants-Defendants Quan Ning Huang and Li Song appeal the denial of their motion to set aside default judgment.

We affirm.

Huang and Song present one issue for our review, which we restate as: whether the trial court abused its discretion by denying their motion to set aside default judgment.

In addition, Donev presents two issues for our review, the first of which is the same issue presented by Huang and Song. The remaining issue presented by Donev is: whether Huang and Song timely filed their Notice of Appeal.

On January 31, 2006, Donev filed a complaint on account against Huang and Song. On January 19, 2007, the trial court ordered Donev to show cause why the case should not be dismissed for want of prosecution pursuant to Ind. Trial Rule 41(E). Thereafter, Donev filed a motion for default judgment on February 27, 2007, which the trial court granted on March 2, 2007. On December 18, 2008, Huang and Song filed an appeal of the trial court's entry of default, which the trial court treated as a motion to set aside the default judgment and set for hearing on January 13, 2009. Huang and Song failed to appear for the hearing, and the trial court denied their motion to set aside default judgment. On January 21, 2009, Huang and Song filed their Notice of Appeal.

We first note that Donev filed with this Court a Motion to Strike requesting the Court to strike portions of Huang and Song's brief based on the lack of supporting citations for factual statements as required by Ind. Appellate Rules 46(A)(5), 46(A)(6), 46(A)(8)(a) and 22(C). On July 23, 2009, we issued an order denying that motion.

However, we will not consider those portions of Huang and Song's brief addressed in Donev's Motion to Strike because the facts alleged therein are neither properly supported by nor included in the materials on appeal. *See* App. R. 46(A)(5), -(6), -(8)(a), and 22(C).

The timely filing of a Notice of Appeal is a jurisdictional prerequisite. *Trinity Baptist Church v. Howard*, 869 N.E.2d 1225, 1227 (Ind. Ct. App. 2007), *trans. denied*, 878 N.E.2d 218. Therefore, we address first the issue raised by Donev regarding the timeliness of Huang and Song's Notice of Appeal. Donev asserts that Huang and Song's Notice of Appeal filed on January 21, 2009 was untimely.

The default judgment in this action was entered on March 2, 2007. On December 18, 2008, Huang and Song filed with the trial court an appeal that the trial court treated as a motion to set aside default judgment and set it for hearing. The hearing was held on January 13, 2009, at which time the trial court denied the motion to set aside default judgment, and Huang and Song filed their Notice of Appeal on January 21, 2009. Thus, Huang and Song properly filed their Notice of Appeal by filing it within thirty days of the trial court's denial of their motion to set aside default judgment. *See* Ind. Appellate Rule 9(A).

For their argument on appeal, Huang and Song contend that the trial court abused its discretion by denying their motion for relief from judgment under Trial Rule 60(B). They assert that relief should have been granted under Trial Rule 60(B)(3) due to Donev's alleged misrepresentations.

On appellate review, a trial court's refusal to set aside a default judgment is entitled to deference and will be reviewed for an abuse of discretion. *Delphi Corp. v. Orlik*, 831 N.E.2d 265, 267 (Ind. Ct. App. 2005), *reh'g denied*. The trial court should exercise its discretion to do what is "just" in light of the unique facts of each case. *State Farm Mut. Auto. Ins. Co. v. Hughes*, 808 N.E.2d 112, 116 (Ind. Ct. App. 2004). With regard to a motion for relief from default judgment, the burden is on the movant to show sufficient grounds for relief under Trial Rule 60(B). *Mallard's Pointe Condominium Ass'n, Inc. v. L&L Investors Group, LLC*, 859 N.E.2d 360, 365 (Ind. Ct. App. 2006), *reh'g denied, trans. denied*.

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 a judgment, including a judgment by default, for the following reasons:

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

In the portions of their brief remaining after the granting of Donev's motion to strike, Huang and Song allege that the default judgment was procured by the fraud, misrepresentation and misconduct of Donev. However, no evidence was placed before the trial court to establish these allegations and to establish grounds for relief under Trial Rule 60(B)(3) because Huang and Song failed to appear for the hearing on their motion to set aside the default judgment. Therefore, on appeal, we are left to review only the

bald statement that the default judgment was procured by fraud. Thus, Huang and Song have failed to establish grounds for relief under Trial Rule 60(B)(3).

In addition to establishing grounds for relief under Trial Rule 60(B)(3), a party seeking to set aside a default judgment under Trial Rule 60(B)(3) must also allege a meritorious claim or defense. See T.R. 60(B); *State Farm Mut. Auto. Ins. Co.*, 808 N.E.2d at 117. Here, because we conclude that Huang and Song have failed to demonstrate a sufficient reason for setting aside the default judgment under Trial Rule 60(B)(3), we need not decide whether they have presented sufficient evidence of a meritorious defense. See T.R. 60(B); see also *Mallard's Pointe Condominium Ass'n, Inc.*, 859 N.E.2d at 367 (stating that where movant failed to show adequate reason for setting aside default judgment, court need not decide whether movant presented adequate evidence of meritorious defense). In light of Huang and Song's failure to appear and present any evidence on their behalf, we decline to set aside the default judgment entered against them.

Additionally, as we have noted many times before, litigants who choose to proceed pro se will be held to the same rules of procedure as trained legal counsel and must be prepared to accept the consequences of their action. *Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003). Therefore, “[p]arties would be well advised to seek the advice of trained counsel before wading into the complexities of civil litigation.” *Comer-Marquardt v. A-1 Glassworks, LLC*, 806 N.E.2d 883, 887 (Ind. Ct. App. 2004).

Based upon the foregoing discussion and authorities, we conclude that Huang and Song timely filed their Notice of Appeal, and the trial court did not abuse its discretion in denying their motion to set aside default judgment.

Affirmed.

BARNES, J., and BROWN, J., concur.