



## STATEMENT OF THE CASE

Respondent-Appellant David G. Carmichael (“Husband”) appeals the trial court’s denial of his motion for relief from judgment. We affirm.

### ISSUE

Husband raises one issue, which we restate as: whether the trial court abused its discretion by denying his motion for relief from judgment.

### FACTS AND PROCEDURAL HISTORY

In 2007, Petitioner-Appellee Candace (Carmichael) Ballard (“Wife”) filed a Petition for Dissolution of Marriage. On January 16, 2008, the trial court issued a Decree of Dissolution of Marriage (“Decree”). In the Decree, the trial court concluded, “In order to equalize the division of assets and liabilities, Wife is awarded a judgment in the sum of Seventy-Eight Thousand Dollars (\$78,000.00), which shall be paid from Husband’s 401(K) through a Qualified Domestic Relations Order.” Appellant’s App. p. 4. On April 10, 2008, the trial court approved a Qualified Domestic Relations Order (“QDRO”), which informed Husband’s employer that Wife was “entitled to receive the sum of Seventy-Eight Thousand Dollars (\$78,000.00), from [Husband’s Retirement] Plan, as of 1/16/08.” *Id.* at 19.

On June 23, 2008, Husband’s employer sent Husband and Wife a letter acknowledging receipt of the QDRO. The employer further stated that \$78,000 would be segregated from Husband’s retirement account and transferred to an account in Wife’s name.

On October 21, 2009, Wife filed a Motion to Enforce Settlement Agreement, asserting that she received from Husband's employer an amount less than the \$78,000 to which she is entitled pursuant to the QDRO.<sup>1</sup> On April 19, 2010, the trial court granted Wife's Motion and held that Wife is entitled to the full amount of the \$78,000 judgment against Husband.

Next, on May 28, 2010, Husband filed a Verified Motion for Relief from Judgment. After a hearing, the trial court denied Husband's motion. This appeal followed.

### DISCUSSION

Indiana Trial Rule 60(B) authorizes a trial court to grant a party relief from a judgment for a number of reasons, including:

- (1) mistake, surprise, or excusable neglect;
- (2) any ground for a motion to correct error, including without limitation newly discovered evidence, which by due diligence could not have been discovered in time to move for a motion to correct errors under Rule 59;
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) entry of default or judgment by default was entered against such party who was served only by publication and who was without actual knowledge of the action and judgment, order or proceedings;
- (5) except in the case of a divorce decree, the record fails to show that such party was represented by a guardian or other representative, and if the motion asserts and such party proves that
  - (a) at the time of the action he was an infant or incompetent person, and
  - (b) he was not in fact represented by a guardian or other representative, and

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<sup>1</sup> Husband has not included Wife's Motion to Enforce Settlement Agreement in his Appellant's Appendix. We remind Husband that the Appendix shall include "pleadings and other documents from the Clerk's Record that are necessary for resolution of the issues raised on appeal . . . ." Indiana Appellate Rule 50(A)(2)(f).

- (c) the person against whom the judgment, order or proceeding is being avoided procured the judgment with notice of such infancy or incompetency, and, as against a successor of such person, that such successor acquired his rights therein with notice that the judgment was procured against an infant or incompetent, and
  - (d) no appeal or other remedies allowed under this subdivision have been taken or made by or on behalf of the infant or incompetent person, and
  - (e) the motion was made within ninety [90] days after the disability was removed or a guardian was appointed over his estate, and
  - (f) the motion alleges a valid defense or claim;
- (6) the judgment is void;
  - (7) 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
  - (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4).

A motion made under subdivision (B) of Trial Rule 60 is addressed to the equitable discretion of the trial court. *In re Paternity of P.S.S.*, 934 N.E.2d 737, 740-41 (Ind. 2010). The grant or denial of a Trial Rule 60(B) motion will be disturbed only when that discretion has been abused. *Id.* at 741. An abuse of discretion will be found when the trial court's ruling is against the logic and effects of the facts before it and the inferences that may be drawn therefrom. *Id.*

Trial Rule 60(B) affords relief in extraordinary circumstances that are not the result of any fault or negligence on the part of the movant. *Gertz v. Estes*, 922 N.E.2d 135, 138 (Ind. Ct. App. 2010). It is well-established that a motion for relief from judgment under Trial Rule 60(B) is not a substitute for a direct appeal. *See P.S.S.*, 934 N.E.2d at 740. A motion for relief from judgment addresses only the procedural,

equitable grounds justifying relief from the legal finality of a final judgment, not the merits of the judgment. *Id.*

In this case, Husband does not specify which subsection of Trial Rule 60(B) is the basis for his motion. For example, he does not assert that the judgment should be set aside due to mistake, surprise, or excusable neglect. Furthermore, Husband does not contend that the judgment has been satisfied or released. Finally, he does not cite to newly discovered evidence that renders the judgment inequitable. Instead, Husband claims that the trial court improperly divided his retirement account, asserting that Wife is not entitled to the full \$78,000 award because she shared the risk that the value of Husband's retirement account would fluctuate as the economy strengthens and weakens.

The substance of Husband's appeal is a challenge to the merits of the trial court's grant of Wife's Motion to Enforce Settlement Agreement. The record fails to reveal why Husband could not have raised this claim in a motion to correct error or in an appeal. A motion for relief from judgment is not a substitute for a timely appeal, and the trial court did not abuse its discretion by denying Husband's motion. *See id.* at 741 (determining that the trial court did not abuse its discretion by denying a motion for relief from judgment where the party was attempting to argue the merits of the case rather than state equitable grounds to set aside the judgment).

#### CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

NAJAM, J., and VAIDIK, J., concur.