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**IN THE  
COURT OF APPEALS OF INDIANA**

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G&G INDUSTRIAL MACHINING, INC. )  
and CLIFFORD GARRETT, )

Appellants, )

vs. )

ESSEX MACHINE, INC. and ESSEX REALTY, )

Appellees. )

No. 79A02-0602-CV-134

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APPEAL FROM THE TIPPECANOE SUPERIOR COURT  
The Honorable Thomas H. Busch, Judge  
Cause No. 79D02-0412-CC-240

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**March 29, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

G&G Industrial Machining, Inc. (“G&G”) and Clifford Garrett (“Garrett”) appeal the trial court’s denial of their “Motion to Correct Error or in the alternative to Set Aside Judgment pursuant to Trial Rule 60(b),” challenging a judgment entered against them for breach of contract. We affirm.

## **Issue**

G&G and Garrett (collectively “Appellants”) raise one issue on appeal, which we restate as: whether the trial court deprived Appellants due process of law by conducting a trial in their absence where the Appellants’ attorney was notified of the trial date.

## **Facts and Procedural History**

In 2001, G&G entered a contract with Essex Machine, Inc. and Essex Realty (collectively “Essex”) for the purchase of land, equipment, and the goodwill associated with a business. Garrett signed as President of G&G, which was not incorporated until four months later. In 2004, Essex sued Appellants in Bartholomew County for failure to make payments required by the contract. Appellants answered, denying the allegations and counter-claiming for damages from conversion and unlawful entry. Upon Appellants’ motion, Bartholomew County Superior Court Two transferred the case to Tippecanoe County.

A bench trial began on May 2, 2005.<sup>1</sup> Unable to conclude the trial that day, the trial court scheduled the trial for additional time on July 13, 2005. Appellants sought and received a continuance. On June 27, 2005, with the parties appearing by counsel, the trial

court re-scheduled the remainder of the trial for September 13, 2005. The trial court sent written confirmation of the trial date to counsel. That same day, Appellants' counsel, David A. Rosenthal ("Rosenthal"), posted his Motion to Withdraw as Attorney, citing unpaid legal fees and the failure of Appellants to respond to his attempts at communication. The trial court granted the motion and sent a copy of its order to Appellants.

Appellants failed to appear or arrange for counsel to attend the September 13, 2005 trial. The trial court heard evidence and entered judgment for Essex, ordering Appellants to pay Essex \$475,825.04. A new attorney filed Appellants' "Motion to Correct Error or in the alternative to Set Aside Judgment Pursuant to Trial Rule 60(b)." That motion was denied. This appeal ensued.<sup>2</sup>

## **Discussion and Decision**

### **I. Standard of Review**

We review the denial of a motion to correct error for an abuse of discretion. Paragon Family Rest. v. Bartolini, 799 N.E.2d 1048, 1055 (Ind. 2003). "The trial court's decision on a motion to correct error comes to an appellate court cloaked in a presumption of correctness." Page v. Page, 849 N.E.2d 769, 771 (Ind. Ct. App. 2006) (citing Volunteers of Am. v. Premier Auto Acceptance Corp., 755 N.E.2d 656, 658 (Ind. Ct. App. 2001)). "We look at the record to determine if: '(a) the trial court abused its judicial discretion; (b) a flagrant injustice has been done to the appellant; or (c) a very strong case for relief from the

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<sup>1</sup> Essex answered the counter-claim on May 11, 2005.

<sup>2</sup> After filing Appellant's Brief, counsel for Appellants moved to withdraw and moved for extension of time in which to file a Reply Brief. This Court granted both motions and so notified Appellants. However, no Reply Brief was received.

trial court's [order] ... has been made by the appellant.” Id. (quoting Volunteers of Am.).

## II. Analysis

A trial court shall not “deprive any person of life, liberty, or property, without due process of law.” U.S. CONST. amend. XIV, §1. Each party shall be served with every written notice. Ind. Trial Rule 5(A)(6). “Whenever a party is represented by an attorney of record, service shall be made upon such attorney unless service upon the party himself is ordered by the court.” T.R. 5(B). “Courts have consistently held that notice or information given to an attorney constitutes notice to his client.” Reynolds v. State, 463 N.E.2d 1087, 1088 (Ind. 1984) (citations omitted).

Appellants contend that they were deprived due process of law because their attorney, Rosenthal, did not inform them of the September 13, 2005 trial date. However, it is undisputed that Rosenthal attended a conference with the trial court in which the trial date was selected, and that he received written notice of same. It is irrelevant that Rosenthal's Motion to Withdraw as Attorney was granted three days later. Notice to Appellants' attorney constituted notice upon the Appellants. We conclude that the Appellants were not deprived due process of law.

## **Conclusion**

The trial court did not abuse its discretion in denying Appellants' “Motion to Correct Error or in the alternative to Set Aside Judgment pursuant to Trial Rule 60(b).”

Affirmed.

SHARPNACK, J., and MAY, J., concur.