

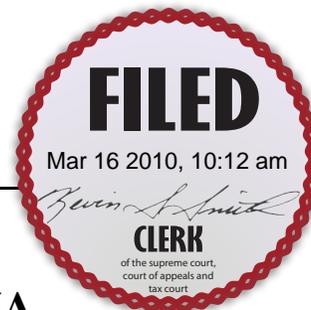
Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

STEPHEN P. ROTHBERG
Fort Wayne, Indiana

ATTORNEY FOR APPELLEE:

M. BRUCE SCOTT
Helmke Beams LLP
Fort Wayne, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

STACY CALDWELL,

Appellant-Respondent,

vs.

SHAWN CALDWELL,

Appellee-Petitioner.

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No. 02A03-0910-CV-452

APPEAL FROM THE ALLEN CIRCUIT COURT
The Honorable Thomas J. Felts, Judge
The Honorable Craig J. Bobay, Magistrate
Cause No. 02C01-0504-DR-325

March 16, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Stacy Caldwell (“Stacy”) appeals the trial court’s order denying her motion for relief from judgment in the dissolution of her marriage to Shawn Caldwell (“Shawn”). Stacy presents the following restated issue for our review: whether the trial court abused its discretion in interpreting the parties’ marital settlement agreement (“the Agreement”) when it denied her request for relief from judgment under Indiana Trial Rule 60(B).

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 20, 2005, Shawn filed a petition for dissolution of his marriage to Stacy. On September 7, 2007, the parties participated in a judicial settlement conference which resulted in the Agreement. On July 24, 2008, the Agreement was examined and approved by the trial court, the parties’ marriage was dissolved, and a decree of dissolution was entered. The decree provided that Stacy’s counsel would prepare and submit forms of Qualified Domestic Relations Orders (“QDROs”) for the trial court’s approval.

During their marriage, the Caldwells’ marital estate included real estate, cash, personal property, investment accounts, and individual retirement accounts. One of the terms of the Agreement provided in relevant part as follows:

D. PERSONAL PROPERTY SETTLEMENT FOR WIFE

1. As full and final settlement of the parties’ joint property and net worth, and to make settlement with Husband, Wife shall be given, granted and awarded as her sole property, free and clear of any and all claims which Husband may have therein or thereto, the following assets, to-wit:

* * *

- (g) \$19,136.00 from 403(b) Smith Barney account
- (h) \$19,434.00 from 401(a) AIG Valic account

- (i) \$33,989.00 from TERF annuity
- (j) \$1,187.00 from American Funds 403(b)

2. [Stacy's] counsel is ordered to prepare and submit forms of [QDROs] for the Court's approval. Both parties are enjoined from any act or omission as would frustrate the terms and conditions of this provision.

Appellant's App. at 45-46. The terms cited here were incorporated into the dissolution decree at paragraph 2. *Id.* at 55. The Agreement did not allocate the risk of any increase or decrease in the value of the accounts awarded to Stacy or Shawn.

On March 18, 2009, the parties appeared before the trial court and counsel for Shawn submitted proposed QDROs. *Id.* at 4. The trial court gave counsel for Stacy until March 30, 2009 to file an objection to the proposed QDROs. *Id.* No objection was filed, and the QDROs were entered on April 13, 2009. On June 22, 2009, Stacy filed a motion for relief from judgment seeking a clarification of the Agreement's provisions awarding the funds in those accounts to her. In particular, Stacy argued that the Agreement awarded a sum certain to her, while the QDROs erroneously provided the award to her of "the lessor of 100% of the account balance or sums certain . . . of the account balance credited to plan participant." *Id.* at 59.

The trial court held a hearing on Stacy's motion on August 31, 2009, during which the parties asked the trial court to interpret the decree. The trial court denied Stacy's motion, found the terms of the Agreement to be unambiguous, and found that the decree limited Stacy's award to the amounts contained in the accounts at the time the distribution was to be made. Stacy now appeals.

DISCUSSION AND DECISION

Stacy argues that she is entitled to relief under Indiana Trial Rule 60(B) because the decree “provided for receipt by [Stacy] of sums certain as describe [sic] herein.” *Appellant’s App.* at 58. She argues that the QDROs submitted and approved by the trial court erroneously stated an improper amount, namely “[t]he lessor of 100% of the account balance or sums certain . . . of the account balance credited to plan participant.” *Id.* at 59.

Trial Rule 60(B) provides, in pertinent part, as follows:

On motion and upon such terms as are just the court may relieve a party . . . from an entry of default, final order, or final judgment . . . for the following reasons:

(1) mistake, surprise, or excusable neglect; [or]

(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[.]

A motion for relief from judgment pursuant to Trial Rule 60(B) may not be used as a substitute for a direct appeal. *Dillard v. Dillard*, 889 N.E.2d 28, 34 (Ind. Ct. App. 2008). Instead, Trial Rule 60(B) provides relief in extraordinary circumstances which are not the result of any fault or negligence on the part of the movant. *Id.*

We review the grant or denial of a Trial Rule 60(B) motion for relief from judgment under an abuse of discretion standard. *Parham v. Parham*, 855 N.E.2d 722, 727 (Ind. Ct. App. 2006), *trans. denied*. 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

or is contrary to law. *Id.* at 727-28. On a motion for relief from judgment, the burden is on the movant to demonstrate that relief is both necessary and just. *Dillard*, 889 N.E.2d at 33.

Here, our review of the record reveals that the parties attempted to divide the marital estate equally. The parties signed a proposal for judicial settlement conference which included notations indicating what was needed to accomplish a 50/50 split of various assets. *See Appellant's App.* at 30-33. The proposal divided the non-invested assets, with Shawn receiving a net award of those assets of \$149,460.00. *Id.* at 30. Stacy's net award of non-invested assets was valued at \$116,138.00. *Id.* The proposal noted that to accomplish a "50/50 division, [Shawn] owes [Stacy] \$16,661.00." *Id.* As for the invested assets, the proposal stated as follows:

C. Other Assets (Invested):	
Tax Refund	\$12,887.00
403(b) American Funds	\$18,614.00
401(a) AIG Valic	\$19,484.00
HRA Acct# 1200	\$10,949.00
Smith Barney 403(b)	\$19,136.00
TERF Annuity	<u>\$33,989.00</u>
TOTAL VALUE	\$115,059.00

Note: Equal (50/50) from benefit plans equals \$57,529.00

PROPOSAL

Stacy receives \$6,444.00 from tax return

Stacy receives from deferred benefit plans by qualified Order(s) the sum of \$73,746.00, justified by the following:

- A. Fifty Percent of \$102,172.00 (invested assets less tax refund) equals \$51,086.00.
- B. \$16,661.00 is owed her to equalize settlement from non-invested assets (see above).

- C. An additional 7,500.00 (approximating one-half of [Stacy's] attorney fees)

Id. at 31.

When the proposal was reduced to the Agreement, Shawn was awarded from the invested assets “(y) American Funds 403(b) account.” *Id.* at 47. That award actually was for the balance of the American Funds 403(b) account after satisfaction of the award from that account to Stacy. Additionally, Shawn was awarded from the invested assets “any and all interest, benefit or balance in deferred employment plan or plans accumulated in [Shawn's] name . . . not specifically set off to [Stacy] herein.” *Id.* at 47-48. It appears that the HRA Account #1200 valued at \$10,949.00 as of the date of the judicial settlement conference was awarded to Shawn under that provision. Stacy's award from the invested assets was as follows:

- (g) \$19,136.00 from 403(b) Smith Barney account
- (h) \$19,434.00 from 401(a) AIG Valic account
- (i) \$33,989.00 from TERF annuity
- (j) \$1,187.00 from American Funds 403(b)

Id. at 45-46.

From this evidence, we conclude that the intent of the parties was to achieve a 50/50 split of the entire marital estate, and to effect that split they agreed to an unequal division of the investment accounts. In their attempt to accomplish this intent, the parties entered into an ambiguous agreement which failed to address the contingency that the fixed sums allocated to Stacy from the investment accounts may be more than the accounts contained at the time the division was to occur. When the trial court ruled that the Agreement was unambiguous

and awarded Stacy the balance contained in the accounts on the date of transfer, the effect of the ruling was to give Stacy more than half of the marital estate. Although Stacy received less than the fixed amounts set out in the Agreement, and did not receive the \$16,661.00 equalization amount, Shawn received nothing from the investment accounts from which he was to receive a substantial sum.

Although we find that the trial court erred in finding that the Agreement was unambiguous, we find that the trial court correctly denied Stacy relief under Trial Rule 60(B). Giving effect to the parties' intent of a 50/50 split of the overall marital estate would involve a division of the investment accounts at the time of transfer, with 50% plus \$8,000.00 going to Stacy, and 50% less \$8,000.00 going to Shawn. This division would reduce what Stacy receives and increase Shawn's share. Since neither party argues for such a division, we conclude that Stacy has failed to show that she was prejudiced as a result of the trial court's ruling. As a result, any error in the trial court's ruling was harmless.

Affirmed.

DARDEN, J., and MAY, J., concur.