

**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.**

APPELLANT PRO SE:

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COUNTRYWIDE HOME  
LOANS, INC.:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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COUNTRYWIDE HOME LOANS, INC., )

Plaintiff, )

vs. )

DANITA BRADLEY and )  
ROBERT HOLLAND, )

Defendants, )

ROBERT HOLLAND, )

Cross-Plaintiff, )

vs. )

DANITA BRADLEY, ALL PARTIES OF )  
AND AGAINST THE WORLD, )

Cross-Defendants, )

ROBERT HOLLAND, )

Plaintiff-Appellant, )

vs. )

No. 45A03-1008-MF-487



defendant. Nor did he check beforehand for any active bankruptcies. A default judgment was entered on Holland's complaint. Holland sought a subsequent lien foreclosure for costs of abating the nuisance.

The property was sold to Countrywide in a sheriff's sale in August 2009, though an order of foreclosure judgment was issued to Holland two weeks later.

In October 2009, Countrywide sought declaration that its interest in the property was superior to Holland's. Holland moved for summary judgment. The trial court entered partial summary judgment in favor of Countrywide. The court concluded that "Countrywide's claim to title to the real estate is superior to the claim of Robert Holland. Once Countrywide filed its action to foreclose its mortgage on the real estate, and obtained judgment, the subsequent actions filed by Holland cannot be held to interfere with the original court's jurisdiction and rulings in the case." Appellant's App. p. 18.

Holland moved pursuant to Indiana Trial Rule 60(B) to set aside the partial summary judgment order. The trial court denied the motion finding insufficient grounds to justify relief. Holland appeals.

### **Discussion and Decision**

Holland claims that he is entitled to relief from the trial court's judgment pursuant to Indiana Trial Rules 60(B)(1), (2), (3), or (4).

Indiana Trial Rule 60(B) provides that on motion, the trial court may relieve a party from a judgment for various enumerated 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[.]

“Trial Rule 60(B) motions address only the procedural, equitable grounds justifying relief from the legal finality of a final judgment, not the legal merits of the judgment.” *In re Paternity of P.S.S.*, 934 N.E.2d 737, 740 (Ind. 2010) (quoting *Mid-West Fed. Sav. Bank v. Epperson*, 579 N.E.2d 124, 129 (Ind. Ct. App. 1991)). In addition, Rule 60(B) authorizes a motion for relief only from final orders. *Allstate Ins. Co. v. Fields*, 842 N.E.2d 804, 806 (Ind. 2006). A party filing a Rule 60(B) motion for reasons (1), (2), (3), or (4) must allege a meritorious claim or defense. Ind. Trial Rule 60(B); *Ferguson v. Stevens*, 851 N.E.2d 1028, 1031 (Ind. Ct. App. 2006). The decision of whether to grant or deny a motion for relief from judgment is generally left to the sound, equitable discretion of the trial court. *Wolvos v. Meyer*, 668 N.E.2d 671 (Ind. 1996).

Here we find no error in the trial court’s denial of Holland’s 60(B) motion. Holland sets forth no allegations of mistake, surprise, or excusable neglect justifying relief under 60(B)(1). He offers no newly-discovered and previously-unavailable evidence justifying relief pursuant to 60(B)(2). He presents no evidence of fraud, misrepresentation, or other misconduct by an adverse party under 60(B)(3). There is no basis for relief under 60(B)(4), as the trial court’s summary judgment order was entered after all parties appeared and had a full and fair opportunity to be heard. For these reasons we conclude the trial court properly denied Holland’s 60(B) motion.

To the extent Holland raises any other issues or claims on appeal, we find these contentions waived for failure to present any cogent argument in support thereof. *See* Ind. Appellate Rules 46(A)(8) (appellate arguments must be supported by cogent reasoning and citation to authorities, statutes, and appendix or record).

Countrywide argues that this appeal was frivolous and now requests an award of attorney's fees.

The Indiana Appellate Rules authorize this Court to “assess damages if an appeal, petition, or motion, or response, is frivolous or in bad faith. Damages shall be in the Court's discretion and may include attorneys' fees.” Ind. Appellate Rule 66(E). We will assess appellate damages only against an appellant who in bad faith maintains a wholly frivolous appeal. *Harness v. Schmitt*, 924 N.E.2d 162, 168 (Ind. Ct. App. 2010).

Although we have found Holland's claims non-meritorious, we cannot say that the appeal is frivolous or that Holland has pursued it in bad faith. We therefore deny Countrywide's request for appellate attorneys' fees.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.