

Daniel E. Wilkins (“Wilkins”) challenges the Allen Superior Court’s denial of his motion for the return of his property that was subject to a forfeiture action by the State. Wilkins presents several issues on appeal, which we restate as: (1) whether the trial court lacked personal jurisdiction over him at the time of the forfeiture; (2) whether his alleged lack of notice of the forfeiture action resulted in deprivation of due process; (3) whether the trial court erred in denying his 2009 motion for relief from judgment; and (4) whether the statute governing the return of property used as evidence requires the State to return the forfeited cash.

We affirm.

Facts and Procedural History

On June 1, 2007, Wilkins was arrested in Fort Wayne, Indiana and taken to jail. At the time of his arrest, he had \$548 in cash in his possession.¹ On August 28, 2007, the State filed a complaint for forfeiture of Wilkins’s cash and the cash of another individual, who was apparently arrested at the same time as Wilkins. On September 7, 2007, a summons was served to Wilkins at an address on South Anthony Boulevard in Fort Wayne.² Wilkins claims that, at this time, he was still held in jail and did not receive the summons. Wilkins made no appearance in the forfeiture action. The State then filed a motion for default judgment in the forfeiture action on October 9, 2007, which the trial court granted that same day.

¹ According to Wilkins, he was never charged as a result of this arrest.

² Wilkins claims that the summons was served at the home of the other individual named in the forfeiture complaint.

Almost two years later, on October 6, 2009, Wilkins filed a pro se motion for relief from judgment of the forfeiture order pursuant to Trial Rule 60(B)(4). In this motion, Wilkins claimed that he was without actual knowledge of the forfeiture action because he was not properly served with the summons. In an order dated November 18, 2009, the trial court denied Wilkins's motion, noting that Trial Rule 60(B) requires motions under Rule 60(B)(4) to be filed within one year after the challenged judgment, whereas Wilkins's motion was filed almost two years after the judgment.³ Although Wilkins now claims that he was unaware of the trial court's denial of his motion for relief from judgment, the trial court's order contains a certificate of service indicating that it was served on Wilkins at the Miami Correctional Facility on November 30, 2009. The chronological case summary ("CCS") also contains an entry indicating that this order was served on the parties on November 30, 2009. Wilkins did not appeal this order denying his Trial Rule 60(B) motion.

Instead, over a year later, on February 11, 2011, Wilkins filed a "Motion for Return of Property," claiming that he was the rightful owner of the cash subject to the forfeiture action and that he was not properly notified of the action. On February 16, 2011, the trial court denied this motion. Wilkins now appeals.

³ According to Wilkins, he also filed a "Motion for Return of Property" on November 7, 2009, citing to page 18 of his Appellant's Appendix. The document located at this page in his Appendix, however, has no file stamp to indicate when it was filed, no certificate of service, and contains a cause number different than that of the forfeiture action. The CCS also contains no indication that Wilkins filed a motion on this date. The CCS does indicate, however, that the State filed a response to Wilkins's motion for return of property. But the CCS indicates that this response was filed on October 7, 2009—before Wilkins claims to have filed his motion for return of property. Regardless, Wilkins makes no cogent argument regarding this particular motion.

Discussion and Decision

Wilkins brought his motion for return of property citing Indiana Code section 35-33-5-5. This section, however, deals with the return of property held as evidence and appears to have nothing to do with forfeiture proceedings, which are controlled instead by Indiana Code section 34-24-1-1. We therefore face a threshold question of how to procedurally treat Wilkins's motion.

Wilkins's motion attacks the forfeiture proceeding and subsequent forfeiture order, which was entered on October 9, 2007. Wilkins had thirty days from this date to challenge the trial court's order by way of a motion to correct error or a notice of appeal. He did neither. We therefore treat Wilkins's motion for return of property as a motion for relief from judgment. See MDM Invs. v. City of Carmel, 740 N.E.2d 929, 933 (Ind. Ct. App. 2000) (treating appellant's "motion to reopen proceedings," filed over one year after court's order transferring property to city in eminent domain action, as a motion for relief from judgment).

Motions for relief from judgment are governed by Indiana Trial Rule 60(B). As a general rule, the burden is on the movant to establish grounds for Trial Rule 60(B) relief, and a motion made under Trial Rule 60(B) is addressed to the equitable discretion of the trial court. Weinreb v. TR Developers, LLC, 943 N.E.2d 856, 862 (Ind. Ct. App. 2011), trans. denied. But here, Wilkins has previously filed a motion for relief from judgment; as noted above, Wilkins filed a motion for relief from judgment on October 6, 2009. The trial court denied this motion in an order dated November 18, 2009 and sent to the parties on November 30, 2009.

Under normal circumstances, a party may not file repeated motions for relief from judgment. See Weinreb, 943 N.E.2d at 863 (noting that allowing a party to file repetitive Trial Rule 60(B) motions encourages “defaulted defendants to drag their feet and be dilatory in discovering grounds for setting aside a default judgment.” (quoting Keybank v. Davis, 785 N.E.2d 1146, 1151 (Ind. Ct. App. 2003)). Indeed, as we repeated in Weinreb, “[a] party may not file repeated [Trial Rule] 60 motions until he either offers a meritorious ground for relief or exhausts himself and the trial court in an effort to do so.” Id. at 863 (quoting Carvey v. Ind. Nat’l Bank, 176 Ind. App. 152, 159, 374 N.E.2d 1173, 1177 (1978)). A party attempting to bring a successive motion for relief from judgment under Trial Rule 60(B) faces the “extraordinary burden” of establishing that “the grounds for that additional error were unknown and unknowable to the movant at the time he made the first Rule 60(B) motion.” Id. 863 (citing Siebert Oxidermo, Inc. v. Shields, 446 N.E.2d 332, 338 (Ind. 1983)).

Wilkins makes no such showing. To the contrary, his current motion for return of property is based largely on the same grounds as his earlier motion for relief from judgment—that he did not receive proper notice of the forfeiture action. And to the extent that it presents new grounds for relief, Wilkins makes no showing as to how these grounds were unknown or unknowable to him. Instead, Wilkins’s current motion is little more than an attempt to belatedly attack the propriety of the trial court’s denial of his first Trial Rule 60(B) motion. However, Wilkins failed to timely file a motion to correct error or notice of appeal from the trial court’s denial of this motion. And “[i]t is well

established that a [Trial Rule] 60(B) motion may not serve as a substitute for direct appeal.” Weinreb, 943 N.E.2d at 863.

Wilkins claims, however, that he also received no notice that the trial court had denied his first Trial Rule 60(B) motion. Pursuant to Trial Rule 72(E):

Lack of notice, or the lack of the actual receipt of a copy of the entry from the Clerk shall not affect the time within which to contest the ruling, order or judgment, or authorize the Court to relieve a party of the failure to initiate proceedings to contest such ruling, order or judgment, except as provided in this section. When the mailing of a copy of the entry by the Clerk is not evidenced by a note made by the Clerk upon the Chronological Case Summary, the Court, upon application for good cause shown, may grant an extension of any time limitation within which to contest such ruling, order or judgment to any party who was without actual knowledge, or who relied upon incorrect representations by Court personnel. Such extension shall commence when the party first obtained actual knowledge and not exceed the original time limitation.

(emphases added).

Thus, Wilkins could have requested that the trial court grant an extension of time within which to contest the trial court’s ruling, but only on a showing of good cause and only if the CCS does not contain a note evidencing that a copy of the entry was mailed. Here, Wilkins did not make such a request under Trial Rule 72(E). Furthermore, the CCS contains a note indicating that a copy of the entry *was* sent to the parties on November 30, 2009. Thus, even if Wilkins had made such a request, it would have been denied.

Indeed, it was Wilkins’s duty, as a pro se party, to regularly check court records and monitor the progress of his case. See City of Indianapolis v. Hicks, 932 N.E.2d 227, 231 (Ind. Ct. App. 2010) (noting that attorneys have a “general duty to regularly check the court records and monitor the progress of pending cases.”), trans. denied; Goossens v.

Goossens, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005) (noting well-settled rule that pro se litigants are held to the same standard as are licensed lawyers). Had Wilkins done so, he could have discovered that the trial court denied his first Trial Rule 60(B) motion. But, having failed to discover this and timely challenge the denial of his first Trial Rule 60(B) motion, Wilkins cannot now attempt to appeal this denial by way of a subsequent Rule 60(B) motion. See Weinreb, 943 N.E.2d at 863.

Conclusion

Wilkins did not timely appeal the trial court's forfeiture order, and he did not timely appeal the trial court's denial of his first Trial Rule 60(B) motion for relief from judgment. Nor did he request an extension of time within which to challenge the denial of this motion. Wilkins's current motion for return of property is, in substance, a successive motion for relief from judgment, but he makes no showing as to how the issues presented in his second motion were either unknown or unknowable to him at the time of his first motion. We therefore conclude that the trial court properly dismissed Wilkins's motion for return of property.

Affirmed.

BAILEY, J., and CRONE, J., concur.