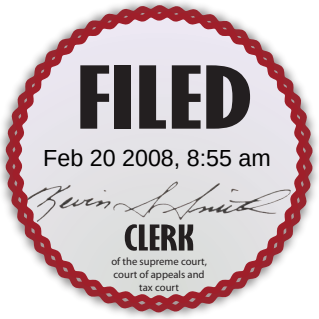

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IN THE
COURT OF APPEALS OF INDIANA

TIMOTHY E. WELLINGTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0706-CV-466
	)	
ASSET ACCEPTANCE, LLC,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Victoria M. Ransberger, Temporary Judge
Cause No. 49D07-0508-CC-34158

February 20, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Timothy E. Wellington ("Wellington") appeals the denial of his Indiana Trial Rule 59 motion to correct error, which challenged the denial of his Indiana Trial Rule 60(B)(6) motion to set aside a default judgment obtained by Appellee-Plaintiff Asset Acceptance, LLC ("Asset Acceptance"). We affirm.

Issue

Wellington presents two issues for review, which we consolidate and restate as a single issue: whether the trial court abused its discretion by refusing to set aside the default judgment against Wellington.

Facts and Procedural History

On August 31, 2005, Asset Acceptance filed a complaint against Wellington, seeking $1,022.55 representing principal and interest allegedly due on a revolving charge account. Certified mail notice was sent to Wellington at his post office box. On September 17, 2005, Wellington's mother, Edmona Wellington, accepted the notice and signed the certified mail receipt.

On January 6, 2006, Asset Acceptance filed a Motion for Default Judgment. On January 10, 2006, the trial court granted the motion and entered judgment against Wellington for $1,022.55 and prejudgment interest.

On January 9, 2007, Wellington filed his Trial Rule 60(B) motion to set aside the default judgment, alleging that the judgment was void for lack of personal jurisdiction. On March 30, 2007, the trial court conducted a hearing and denied Wellington relief from the judgment. On April 30, 2007, Wellington filed a motion to correct error. The trial court

denied the motion to correct error and this appeal ensued.

Discussion and Decision

Wellington contends that the trial court erroneously denied his motion to correct error, which challenged the denial of his motion to set aside a default judgment. More specifically, he argues that because Asset Acceptance sent notice of the complaint to his post office box and his mother retrieved the certified mail without informing him of the notice, the trial court did not acquire personal jurisdiction over him. Thus, he asserts that the default judgment against him is void.

The denial of a motion to correct error is reviewed for an abuse of discretion. Hlinko v. Marlow, 864 N.E.2d 351, 352 (Ind. Ct. App. 2007), trans. denied. In his motion to correct error, Welling sought relief pursuant to Trial Rule 60(B), which is the procedural mechanism for the setting aside of a default judgment. Whitt v. Farmer's Mut. Relief Ass'n, 815 N.E.2d 537, 539 (Ind. Ct. App. 2004). A motion made under Indiana Trial Rule 60(B) is addressed to the equitable discretion of the trial court, circumscribed by the eight categories listed therein. Ind. Ins. Co. v. Ins. Co. of N. Am., 734 N.E.2d 276, 278 (Ind. Ct. App. 2000), trans. denied.

Generally, in determining whether the trial court has abused its discretion, we must determine whether the trial court's judgment is clearly against the logic and effect of the facts and inferences supporting the judgment. Swiggett Lumber Constr. Co. v. Quandt, 806 N.E.2d 334, 336 (Ind. Ct. App. 2004). However, the existence of personal jurisdiction over a defendant is a question of law. Thomison v. IK Indy, Inc., 858 N.E.2d 1052, 1055 (Ind. Ct. App. 2006). Thus, we review a trial court's determination regarding personal jurisdiction de

novo. LePore v. Norwest Bank Indiana, N.A., 860 N.E.2d 632, 634 (Ind. Ct. App. 2007). A plaintiff is responsible for presenting evidence of a court's personal jurisdiction over the defendant, but the defendant ultimately bears the burden of proving the lack of personal jurisdiction by a preponderance of the evidence, unless that lack is apparent on the face of the complaint. Id.

Wellington's argument focuses on the ineffectiveness of service. Ineffective service of process prohibits a trial court from having personal jurisdiction over the defendant. See id. A judgment entered against a defendant over whom the trial court did not have personal jurisdiction is void. Id. The appropriate method for serving process on an individual is set forth in Indiana Trial Rule 4.1(A) which provides:

> Service may be made upon an individual, or an individual acting in a representative capacity, by:
>
> (1) sending a copy of the summons and complaint by registered or certified mail or other public means by which a written acknowledgment of receipt may be requested and obtained to his residence, place of business or employment with return receipt requested and returned showing receipt of the letter; or
>
> (2) delivering a copy of the summons and complaint to him personally; or
>
> (3) leaving a copy of the summons and complaint at his dwelling house or usual place of abode; or
>
> (4) serving his agent as provided by rule, statute or valid agreement.

Wellington observes that the foregoing Rule does not explicitly provide for post office box service and argues that personal jurisdiction over him could not be obtained by that means of service. On the other hand, Asset Acceptance argues that the delivery at Wellington's actual mailing address was reasonably calculated to inform him of the pending action against him and thus satisfies the requirements of Indiana's trial rules.

We find these circumstances akin to those of Benjamin v. Benjamin, 798 N.E.2d 881 (Ind. Ct. App. 2003). There, a husband provided his estranged wife with a post office box address "[to] be used for corresponding relating to the divorce proceedings." Id. at 883. The wife's counsel sent notice of the final hearing to the post office box. The husband did not appear at the final hearing, and judgment was entered disposing of the marital assets. The husband subsequently filed a Trial Rule 60(B) motion for relief from the judgment, which the trial court denied. Id. at 889. On appeal, the husband claimed that the dissolution decree should be set aside as it was void due to lack of notice. Id. This Court observed that there was evidence presented "which tended to show that Husband was notified of the final hearing." Id. We then concluded that the trial court did not abuse its discretion in denying the husband Trial Rule 60(B) relief. Id. See also Bonaventura v. Leach, 670 N.E.2d 123, 127 (Ind. Ct. App. 1996) (holding that the trial court had discretion to find service of process sufficient where appellant had acquiesced in the mail system that allowed a hospital employee to sign for certified mail), disapproved of on other grounds by Smith v. Johnson, 711 N.E.2d 1259 (Ind. 1999).

Here, Wellington provided his creditor with a post office box address as his residential address. This was his customary and practical method of collecting his mail because he frequently traveled between Indiana and Florida. Apparently with Wellington's permission, his mother retrieved mail from the post office box. She signed the certified mail receipt at issue. Wellington has never contended that the post office box was an incorrect address, that he did not routinely receive his mail there, or that his mother lacked permission to accept mail and deliver it to him. In light of the evidence tending to show that Wellington received

actual notice, the trial court did not abuse its discretion by denying Wellington relief from the judgment.[1]

Affirmed.

NAJAM, J., and CRONE, J., concur.

[1] We do not reach Wellington's argument concerning his alleged meritorious defense, as he did not demonstrate that the judgment is void for lack of notice. Trial Rule 60(B) does not require a trial court to set aside a judgment merely because a meritorious defense exists. Rather, one of the enumerated grounds for relief must also be alleged and established. Smith v. Johnson, 711 N.E.2d at 1265.