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ALERTS

Mistakes Don't Always Define You: Indiana Court Of Appeals Upholds Set-Aside Of Default Judgment

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What happens when a defendant simply drops the ball and fails to respond in a timely manner to a complaint and a default judgment is entered? Indiana courts have refused to hold such conduct as excusable neglect or a mistake allowing the set-aside of a default judgment under Ind. Trial Rule 60(B)(1). On Jan. 24, 2019, the Indiana Court of Appeals held that such defendants may be afforded relief under Ind. Trial Rule 60(B)(8) in *Fields v. Safway Group Holdings, LLC*, which was a split decision – the majority building on a 2015 Indiana Supreme Court decision.

In *Fields*, the appeals court affirmed a trial court's order setting aside a default judgment in favor of Fields, an injured worker, holding that a corporate defendant whose employees simply dropped the ball and negligently failed to secure counsel to respond in a timely manner to a complaint could be afforded relief under Ind. Trial Rule 60(B)(8).

The injured worker, Fields, fell 40 feet from a scaffold at a construction site on Notre Dame's campus. Safway provided the scaffolding. An investigation showed that the scaffolding may not have been erected properly. Fields suffered very serious injuries and filed suit about six weeks after the fall. Safway was served, but through a number of missteps failed to secure counsel and respond to the complaint. In the meantime, Fields secured a default judgment. The trial judge and the three-judge appeals panel all agreed that Safway's negligent conduct was not "mistake, surprise or excusable neglect" under Trial Rule 60(B)(1), the traditional route for securing the set-aside of a default judgment.

At the trial court, Safway maintained it was entitled to relief under Trial Rule 60(B)(8), which allows a judgement to be set aside for "any reason

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justifying relief from the operation of the judgment." The trial judge granted Safway's motion to set aside and a divided appeals panel affirmed.

The majority in *Fields* relied on a 2015 Indiana Supreme Court ruling in *Huntington Nat. Bank v. Car-X Assoc. Corp*, that addressed "reasons justifying relief" under Rule 60(B)(8). In *Car-X*, the defendant bank failed to respond because the employee who typically received service of process was on maternity leave, and the supervisor who received service in her stead alleged that he was unable to refer the service to counsel until after the deadline to respond "due to the volume of [his] regular duties." *Id*. at 654. The Indiana Supreme Court denied relief under T.R. 60(B)(1), reasoning that the failure of the "savvy, sophisticated bank" to respond "for no other reason other than an employee's *disregard* of the mail" did not establish excusable neglect under 60(B)(1). (emphasis added).

However, the Supreme Court remanded Car-X for the trial court to consider whether the bank had equitable grounds for relief under Rule 60(B)(8) based on three factors: (1) the existence of a meritorious defense to the underlying suit, (2) the substantial amount of money involved, and (3) the lack of prejudice to the plaintiff. The Supreme Court emphasized that a default judgment is an extreme remedy and its "strong preference to resolve cases on their merits."

Echoing that strong preference, the *Fields* court looked at the three *Car-X* factors and held the trial judge did not abuse his discretion in setting aside the default judgment. Safway had a meritorious defense because it arguably was not involved in setting up the scaffolding, the court said. The court further noted the company acted quickly to remedy the default once it was discovered and did not intentionally ignore the lawsuit. Though the amount of damages at issue was very substantial, Fields was not prejudiced because any delay due to discovery relating to the default judgment necessarily included merits discovery.

The split came when Judge Mathias dissented, reasoning that "if a party's neglect does not constitute excusable neglect under Rule 60(B)(1), it would make no sense to nevertheless afford that party relief under Rule 60(B)(8)." According to Judge Mathias, when the defendant is simply negligent, Rule 60(B)(1) should be the exclusive remedy.

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