

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-789

Filed 6 August 2024

Iredell County, No. 21 CVS 2216

J.Z., Plaintiff,

v.

CCR MOORESVILLE WELLNESS, LLC d/b/a MASSAGE ENVY MOORESVILLE,
CHRISTIAN J. ROEDLICH, CHRISTINA ROEDLICH, ALEX MCCORKLE, PGD
INVESTMENTS, INC., Defendants.

Appeal by defendants from order entered 31 January 2023 by Judge Joseph N.
Crosswhite in Superior Court, Iredell County. Heard in the Court of Appeals
7 February 2024.

*Edwards Beightol, LLC, by Catharine E. Edwards and Kristen L. Beightol, for
plaintiff-appellee.*

*John Cole Law PLLC, by John D. Cole, for defendant-appellant CCR
Mooreville Wellness, LLC.*

*Hull & Chandler, PA, by Elizabeth Vennum, for defendant-appellant Alex
McCorkle.*

*Van Hoy, Reutlinger, Adams & Pierce, PLLC, by C. Grainger Pierce, Jr., for
defendant-appellant PDG Investments, Inc.*

PER CURIAM.

CCR Mooresville Wellness, LLC, Christian Roedlich, Christina Roedlich, Alex McCorkle, and PGD Investments, Inc. (“defendants”) appeal from the trial court’s order granting J.Z.’s (“plaintiff”) Rule 60 motion for relief from judgment. Defendants contend the trial court erred in granting the motion and changing plaintiff’s dismissal with prejudice to a dismissal without prejudice, specifically challenging several findings of fact and conclusions of law. Defendants also contend the trial court applied the incorrect standard under Rule 60(b)(6) rather than the correct standard under Rule 60(b)(1). For the following reasons, we hold the trial court did not abuse its discretion and affirm the order.

I. Background

This case arises from allegations of a series of sexual assaults at Massage Envy Spa locations throughout North Carolina, including Iredell County. On 6 April 2020, several plaintiffs, including J.Z., filed a complaint in Mecklenburg County, alleging various torts against multiple defendants, including the above-named defendants. The matter was docketed at 20 CVS 5678, and on 5 October 2020 an amended complaint was filed to include identical causes of action on behalf of several more plaintiffs. In December 2020, defendants filed motions to sever the actions, which were heard on 3 February 2021. The Mecklenburg County trial court entered an order on 12 July 2021 severing the matters. That order contemplated that any amended complaints should be filed under the original docket number in Mecklenburg County.

Despite said contemplation, plaintiff filed an individual complaint in Iredell County on 11 August 2021, docketed as 21 CVS 2216.¹ Plaintiff's *pro hac vice* counsel contacted counsel for defendants seeking consent to voluntarily dismiss the amended complaint and refile a second amended complaint under the original docket in Mecklenburg County. Counsel for Alex McCorkle and PGD consented, but counsel for CCR Mooresville Wellness and the Roedlichs did not respond.

On 23 September 2021, plaintiff's former counsel filed a second amended complaint in Mecklenburg County under docket 20 CVS 5678. Plaintiff's counsel filed a voluntary dismissal in the 21 CVS 2216 docket to allow the second amended complaint to proceed under the appropriate docket number; however, the voluntary dismissal stated that it was *with* instead of *without* prejudice.

Pursuant to the notice of voluntary dismissal with prejudice, defendants filed a motion to dismiss the action in docket 20 CVS 5678 based on res judicata. On 21 January 2022, plaintiff filed a Rule 60 motion requesting that the court change plaintiff's voluntary dismissal from with prejudice to without prejudice.²

Following a hearing on 10 October 2022, the trial court entered an order

¹ Plaintiff's counsel at the time, who also represented the other plaintiffs in the original complaint, similarly filed amended complaints for those plaintiffs under different dockets.

² In January 2023, the attorneys for the respective sides filed affidavits regarding their communications about the voluntary dismissal. Plaintiff's attorney stated that he spoke with opposing attorneys to obtain consent to re-file the complaint under the original docket number, and "[a]t no time did I express any opinion or legal reasoning that these incorrectly filed matters must have been dismissed with prejudice." Defendant's attorney asserted that during a telephone conversation, plaintiff's attorney stated he "had no choice" but to file voluntary dismissals with prejudice.

granting plaintiff's Rule 60 motion on 31 January 2023. The trial court found that "it was an inadvertent, unintentional and mistaken error . . . and that the voluntary dismissal was merely intended to correct the error of filing this matter in this Court under a new file number[.]" also noting substantively identical dismissals filed by the other plaintiffs from the original case. The trial court concluded that the motion should be granted on these grounds, and that Rule 60(b) "provides a permissible method to reopen [a] case" in these circumstances.

Defendants filed notice of appeal on 2 March 2023.

II. Discussion

Defendants contend there was no competent evidence to support Findings of Fact 8, 13, and 14, and that the trial court erred in Conclusions of Law 2, 3, and 4. Defendants further contend the trial court applied the incorrect standard. We disagree.

A. Standard of Review

We review a trial court's order on a Rule 60(b) motion for abuse of discretion. *Davis v. Davis*, 360 N.C. 518, 523 (2006) (citing *Sink v. Easter*, 288 N.C. 183, 198 (1975)). "Under the abuse-of-discretion standard, we review to determine whether a decision is manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision." *Mark Grp. Int'l, Inc. v. Still*, 151 N.C. App. 565, 566 (2002). Discretionary orders should not be disturbed unless a court "is reasonably convinced by the cold record that the trial judge's ruling probably

amounted to a substantial miscarriage of justice.” *Worthington v. Bynum*, 305 N.C. 478, 487 (1982).

B. Rule 60(b)

Under Rule 60(b)(1), a trial court may relieve a party from a final judgment, order, or proceeding for mistake, inadvertence, surprise, or excusable neglect. N.C. Gen. Stat. 1A-1, Rule 60(b) (2023). A motion under Rule 60(b)(1) must be made within a reasonable time, not more than one year after the judgment, order, or proceeding was entered or taken. *Id.*

“Rule 60(b) is an unusual rule, having been described as ‘a grand reservoir of equitable power.’” *Carter v. Clowers*, 102 N.C. App. 247, 253 (1991) (citation omitted). “The purpose of Rule 60(b) is to strike a proper balance between the conflicting principles of finality and relief from unjust judgments,” and is meant to be “liberally construed.” *Id.* at 254 (citation omitted). “Procedural actions that prevent litigants from having the opportunity to dispose of their case on the merits are not favored.” *Id.* (citation omitted).

Defendants contend there was no competent evidence to support Findings of Fact 8, 13, and 14, arguing that the filing of a dismissal with prejudice was neither inadvertent nor unintentional. However, the record includes an email exchange between trial counsel for the parties in which plaintiff’s trial counsel stated the intention to “voluntarily dismiss the new actions we filed and re-file the same Second Amended Complaints in Mecklenburg so that the Court can transfer them according

to the order.” Although defendants argue that plaintiff should have filed affidavits or declarations to support the motion, the evidence indicates plaintiff’s intention to re-file a complaint in Mecklenburg County, not to voluntarily dismiss the case with prejudice.

As this Court noted in *Carter*, Rule 60(b) is to be liberally construed, and “procedural actions that prevent litigants from having the opportunity to dispose of their case on the merits are not favored.” *Id.* at 254. Here, in the order severing the original actions, the trial court contemplated that individual plaintiffs should re-file amended complaints under the original docket number. After plaintiff’s complaint was mistakenly filed in Iredell County, the attorneys on each side communicated about the intention to voluntarily dismiss and re-file in Mecklenburg County.

In light of the prior order severing the actions and the communicated intention to re-file in Mecklenburg County, the inadvertently filed dismissal with prejudice should not prevent plaintiff from having the opportunity to dispose their case on the merits. Defendants have failed to show the trial court’s order was manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision. Accordingly, we hold the trial court did not abuse its discretion in determining that the voluntary dismissal with prejudice was inadvertent.

Defendants alternatively contend the trial court erred in applying an incorrect standard under Rule 60(b)(6), arguing “Rule 60(b)(6) cannot be the basis for a motion to set aside a judgment if the facts supporting it are facts which more appropriately

would support one of the five preceding clauses.” *Bruton v. Sea Captain Properties, Inc.* 96 N.C. App. 485, 488 (1989). It is unnecessary to address this argument given our holding that the trial court did not abuse its discretion in granting the motion under Rule 60(b)(1), one of the five preceding clauses.

C. *T.H. v. SHL Health Two, Inc.*

We note this Court’s recent decision in *T.H. v. SHL Health Two, Inc.*, which relates to a different set of parties in the original matter prior to severance. 900 S.E.2d 719 (N.C. Ct. App. 2024). There are many similarities between *T.H.* and the present case: the plaintiff also filed a new complaint under a new case number, plaintiff’s counsel contacted defendants’ counsel and obtained consent to a voluntary dismissal, then plaintiff filed a voluntary dismissal with prejudice and a subsequent Rule 60(b) motion seeking relief. *Id.* at 721. The attorneys also filed substantially similar affidavits with the same opposing assertions, *i.e.*, that plaintiff’s attorney did not express “any opinion or legal reasoning that these incorrectly filed matters must have been dismissed with prejudice[,]” compared to defendant attorney’s averment that plaintiff’s counsel stated he had “no choice” but to dismiss with prejudice. *Id.*

However, in *T.H.*, the trial court denied the plaintiff’s Rule 60(b) motion, reasoning that the “filing of the Voluntary Dismissal With Prejudice, including without limitation the taking of such dismissal ‘with prejudice,’ was an intentional, deliberate, volitional, and willful decision of the Plaintiff’s counsel at the time” and that it was “[m]ore likely than not, Plaintiff’s counsel did not appreciate the res

judicata impact of the filing of the Voluntary Dismissal With Prejudice.” *Id.* This Court affirmed the denial, reasoning that plaintiff’s counsel made an intentional decision to dismiss with prejudice but misunderstood the consequences of his actions. *Id.* at 723. This Court held that the denial was a “reasoned decision” and not an abuse of discretion because the denial was not based on a mistake of law, and that the trial court did not abuse its discretion in finding defendants’ counsel more credible than plaintiff’s counsel. *Id.* at 724.

Although the cases are closely related, the respective trial courts had discretion to weigh the evidence and intentions of the parties, and we find the result and reasoning to be distinguishable from *T.H.* Here, the trial court found that plaintiff’s voluntary dismissal with prejudice was filed inadvertently and by mistaken error, and apparently made a different determination as to the credibility of the opposing attorneys and their communications. It is within a trial court’s discretion to make these determinations, and we are unconvinced by the cold record that the trial court’s order amounted to a substantial miscarriage of justice in this case.

III. Conclusion

For the foregoing reasons, we affirm the trial court’s order.

AFFIRMED.

Before a panel consisting of Judges MURPHY, ARROWOOD, and HAMPSON.

Report per Rule 30(e).