

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-938

Filed 2 September 2026

Cabarrus County, No. 22CVS003358-120

ARTHUR L. PERRY and LISA GILLESPIE PERRY, Plaintiffs,

v.

CITIMORTGAGE, INC. and DAVID SMITH, Defendants.

Appeal by Plaintiffs from order entered 5 March 2025 by Judge William A. Wood in Cabarrus County Superior Court. Heard in the Court of Appeals 13 August 2026.

Speaks Law Firm, by Jonathan Salmons, for the Plaintiffs-Appellants.

Adams & Reese LLP, by Ashlee B. Poplin, for Defendant-Appellee CitiMortgage, Inc.

WOOD, Judge.

Arthur Perry and Lisa Perry (collectively “Plaintiffs”), appeal the trial court’s order denying their Rule 60(b) motion for relief from judgment. Plaintiffs assert their underlying voluntary dismissal with prejudice was entered without their consent which created extraordinary circumstances such that justice demands relief from judgment. After careful review of the record and applicable law, we hold the trial court did not abuse its discretion by denying Plaintiffs’ motion to set aside judgment.

I. Factual and Procedural Background

On 20 October 2022, Plaintiffs filed a complaint against CitiMortgage, Inc. (“CitiMortgage”) and its Chief Executive Officer, David Smith (“Smith”) (collectively “Defendants”) alleging multiple violations under the Fair Credit Reporting Act stemming from an allegedly fraudulent deed of trust against Plaintiffs’ property that was recorded on 1 May 2006 to secure a \$49,000.00 loan from Corinthian Mortgage Corporation d/b/a SouthBanc Mortgage (“Corinthian”); the deed of trust was purportedly assigned to CitiMortgage later that year. Plaintiffs claimed they were unaware of the deed of trust and did not learn about it until February 2019, the day they were scheduled to sell the property. This deed of trust prevented the sale of the property. Plaintiffs investigated the origin of the deed of trust and contacted CitiMortgage who they alleged refused to cancel the deed of trust despite the discrepancies that were uncovered within the connected loan application.

Following CitiMortgage’s refusal to cancel the deed of trust, Plaintiffs initiated the lawsuit against CitiMortgage. The initial complaint was filed by Ann-Charlotte Dowless (“Attorney Dowless”). On 2 June 2023, the trial court ordered the case be referred to a mediated settlement conference to take place at least forty-five days prior to trial. On 11 September 2023, Defendants filed a motion for sanctions against Plaintiffs pursuant to N.C. Gen. Stat. § 7A-38.1(g) alleging that Plaintiffs had been unresponsive to attempts to select an agreed upon mediator and to select a date for mediation prior to the court ordered deadline. Additionally, Defendants alleged that Plaintiffs had “previously consented to the dismissal of Defendant, David Smith,

Individually and as CEO of CitiMortgage, Inc.,” but this had not yet been done. Defendants filed a motion to dismiss on 12 September 2023 pursuant to Rules 12(b)(4), (5), and (6). A report from the mediator indicates the parties eventually went to mediation but reached an impasse.

On 3 October 2023, Attorney Dowless filed a motion to withdraw as counsel for Plaintiffs which stated they discharged her, and a motion to continue hearings. The trial court granted Attorney Dowless’ motion to withdraw as counsel and motion to continue hearings on 6 October 2023. On 24 October 2023, Attorney Dowless filed notice of withdrawal as counsel of record for Plaintiffs.

On 6 November 2023, the trial court entered an order indicating that the case had been scheduled for trial on 9 October 2023 pursuant to a scheduling order entered on 28 July 2023 but, because Plaintiffs’ counsel was allowed to withdrawal, the trial did not go forward as scheduled. The order further stated that “Defendant’s motions for sanctions and to dismiss are scheduled for December 4, 2023” and the matter was scheduled for trial the week of 8 January 2024 if still pending.

Attorney Jonathan Salmons (“Attorney Salmons”) first learned about Plaintiffs and their case on 29 November 2023 via a legal referral service; Attorney Salmons met with Mrs. Perry for an initial consultation on 1 December 2023. During the initial consultation, Attorney Salmons discussed the possibility of a voluntary dismissal *without* prejudice, which would allow one year to refile the case pursuant to Rule 41; Mrs. Perry agreed to the voluntary dismissal *without* prejudice. On the

morning of 4 December 2023, Attorney Salmons emailed counsel for CitiMortgage, Attorney Ashlee Poplin (“Attorney Poplin”), to request a copy of the motion to dismiss the trial court was scheduled to hear later that same day; Attorney Salmons also emailed Attorney Dowless requesting information on Plaintiffs’ case. Soon after receiving the relevant motions from Attorney Poplin, Attorney Salmons entered notice of appearance. Minutes later, Attorney Salmons entered a voluntary dismissal pursuant to Rule 41(a) *with* prejudice to all claims against Defendants.¹

On 22 November 2024, Attorney Salmons refiled the complaint against Defendants.² Defendants removed the case from Cabarrus County Superior Court to the United States District Court for the Middle District of North Carolina and requested an extension of time to file their responsive pleading. Plaintiffs agreed to the extension and Defendants filed their answer on 17 January 2025 asserting an affirmative defense that the claims against Defendants had previously been voluntarily dismissed *with* prejudice. Attorney Salmons did not review Defendants’ answer until 24 January 2025, purportedly because he was busy filing two appellate briefs, Attorney Salmons asserted he thought it was strange to see the dismissal he

¹ Generally, a plaintiff may refile a claim within one year after voluntarily dismissing it pursuant to Rule 41(a)(1); “[u]nless otherwise stated in the notice of dismissal . . . the dismissal is without prejudice.” N.C. Gen. Stat. § 1A-1, Rule 41(a)(1).

² The initial complaint was against only CitiMortgage and Smith, while the refiled complaint was against CitiMortgage, Corinthian, and Trust Title Company d/b/a TTC Settlement and Escrow Company.

filed was *with* prejudice and contacted Plaintiffs immediately to obtain their consent for him to file a Rule 60(b) motion for relief from judgment in the underlying case.

On 27 January 2025, Attorney Salmons filed a motion for relief from judgment pursuant to Rule 60(b) requesting the trial court grant relief to correct the voluntary “dismissal to accurately reflect it is to be *without* prejudice.” The motion asserts that grounds for relief exist pursuant to Rule 60(b)(1), (4), and (6). The trial court heard the Rule 60(b) motion on 4 March 2025 and the next day entered its order denying Plaintiffs’ motion for relief from judgment finding “that there was no excusable neglect, no extraordinary circumstances, no avenue for relief to be had pursuant to [N.C. Gen. Stat.] § 1A-1, Rule 60(b), and that the relief sought would prejudice Defendants.” Plaintiffs filed notice of appeal on 27 March 2025.³

II. Analysis

Plaintiffs argue the trial court erred by denying their motion for relief from judgment made pursuant to Rule 60(b)(4) and Rule 60(b)(6) because “Plaintiffs never consented to or authorized their counsel to file a voluntary dismissal with prejudice” and “former counsel failed to prosecute their claims, missed deadlines, and withdrew from their case shortly before trial.” After careful review of the record and applicable law, we conclude the trial court did not abuse its discretion by denying Plaintiffs’ motion for relief from judgment.

³ Smith is not a party to this appeal individually, or in his capacity as CEO of CitiMortgage, Inc.

A. Standard of Review

This Court reviews a trial court’s denial of a Rule 60(b) motion for an abuse of discretion. *T.H. v. SHL Health Two, Inc.*, 293 N.C. App. 462, 464, 900 S.E.2d 719, 722 (2024).

Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision. Our Supreme Court has indicated that this Court cannot substitute “what it considers to be its own better judgment for a discretionary ruling of a trial court, and that this Court should not disturb a discretionary ruling unless it probably amounted to a substantial miscarriage of justice.”

Id. at 465, 900 S.E.2d at 722 (quoting *Huggins v. Hallmark Enters., Inc.*, 84 N.C. App. 15, 25, 351 S.E.2d 779, 785 (1987) (cleaned up)).

B. Motion for Relief From Judgment

Plaintiffs argue the trial court abused its discretion by denying their motion for relief from judgment under Rule 60(b)(6) because their former counsel “failed to prosecute their claims, missed deadlines, and withdrew from their case shortly before trial.” Additionally, Plaintiffs argue the trial court abused its discretion by denying relief from judgment pursuant to Rule 60(b)(4) because they never consented to having their claim voluntarily dismissed *with* prejudice. In contrast, Defendants assert that Plaintiffs repackaged a time barred Rule 60(b)(1) theory into their Rule 60(b)(6) argument and, regardless, grounds did not exist under any Rule 60(b) theory that would have warranted relief from judgment.

“The main objective of Rule 60(b) is to ‘strike a proper balance between the conflicting principles of finality and relief from unjust judgments.’” *Yang Real Est. Invs., LLC v. Affordable Mini Storage of Newton, LLC*, 300 N.C. App. 114, 118, 920 S.E.2d 231, 235 (2025) (quoting *Carter v. Clowers*, 102 N.C. App. 247, 254, 401 S.E.2d 662, 666 (1991)). “A voluntary dismissal can be considered a ‘proceeding’ allowing relief under Rule 60(b).” *Bradley v. Bradley*, 206 N.C. App. 249, 254, 697 S.E.2d 422, 426 (2010). The trial court “may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) [m]istake, inadvertence, surprise, or excusable neglect; . . . (4) [t]he judgment is void; . . . [or] (6) [a]ny other reason justifying relief from the operation of the judgment.” N.C. Gen. Stat. § 1A-1, Rule 60(b). In order to obtain relief from judgment, “[t]he motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered or taken.” *Id.*

Unless requested to do so by a party, a trial court is not required to make written findings of fact. *Judd v. Tilghman Med. Assocs., LLC*, 272 N.C. App. 520, 529, 847 S.E.2d 45, 51 (2020). “Where the trial court does not make findings of fact in its order denying the motion to set aside the judgment, the question on appeal is whether, on the evidence before it, the court could have made findings of fact sufficient to support its legal conclusion.” *Id.* (quoting *Monaghan v. Schilling*, 197 N.C. App. 578, 582, 677 S.E.2d 562, 565 (2009)).

While the trial court here did not make findings of fact, we can deduce findings

from the record sufficient to support the trial court's ruling. Further, our careful review of the transcripts demonstrates that the trial court's decision to deny relief was supported by competent inquiry and evidence; thus, its decision was not manifestly unsupported by reason. *See LouEve, LLC v. Ramey*, 286 N.C. App. 263, 269, 880 S.E.2d 431, 436 (2022).

At the hearing, the trial court began by taking time to read the brief submitted in support of Plaintiffs' motion and further allowed Attorney Salmons to "take all the time [he] need[ed]" to argue Plaintiffs' case. Throughout both parties' arguments, the trial court asked questions and at the end, orally concluded:

Well, considering the entirety of the circumstances of the file I've read and all the briefs and the motions itself, any negligence was not excusable negligence. There's no extraordinary circumstance that exists to warrant a Rule 60 relief.

Relief requested under 60(b)(4), 60(b)(6) are denied. I believe the defendant would be prejudiced if forced back into the litigation.

Relief pursuant to Rule 60(b)(6) should only be granted when both prongs of its test are met: "(1) extraordinary circumstances must exist, and (2) there must be a showing that justice demands that relief be granted." *Crumel v. Morton*, __ N.C. App. __, __, 926 S.E.2d 431, 434 (2026) (quoting *Howell v. Howell*, 321 N.C. 87, 91, 361 S.E.2d 585, 588 (1987)). "While not technically a catch-all provision, Rule 60(b)(6) provides trial courts with a vast reservoir of equitable power," however, "[e]xercise of this power is within the full discretion of the trial judge." *N.C. Dep't of Transp. v.*

Laxmi Hotels of Spring Lake, Inc., 259 N.C. App. 610, 621, 817 S.E.2d 62, 71 (2018) (cleaned up). “In the context of Rule 60(b)(4), a judgment is void only when the issuing court has no jurisdiction over the parties or subject matter in question or has no authority to render the judgment entered.” *Bradley*, 206 N.C. App. at 254, 697 S.E.2d at 426 (cleaned up).

Our review of the record reveals the following inquiry and evidence that would support the trial court’s conclusions. First, the record supports that Attorney Salmons entered Plaintiffs’ voluntary dismissal on 4 December 2023 and their motion for relief from judgment was not filed until 27 January 2025; thus, relief pursuant to Rule 60(b)(1) for mistake, inadvertence, surprise, or excusable neglect was unavailable to Plaintiffs. N.C. Gen. Stat. § 1A-1, Rule 60(b). Second, Attorney Salmons argued that the circumstances in which he was brought on as counsel for Plaintiffs constituted an extraordinary circumstance because the “major time crunch” he was under led to the voluntary dismissal. However, in considering this argument, the trial court acknowledged Defendants’ allegations that prior to Attorney Salmons taking over as Plaintiffs’ counsel, Plaintiffs “failed to appear for depositions, failed to appear for mediation, and failed to meaningfully engage in the litigation as a whole.” Third, Defendants asserted they would be prejudiced if the trial court granted Plaintiffs’ relief. After Attorney Dowless’ motion to withdraw as counsel was granted on 6 October 2023, Plaintiffs waited until Friday, 1 December 2023, to obtain new counsel despite knowing Defendants’ motion to dismiss and motion for sanctions were

set to be heard on Monday, 4 December 2023, and their failure to obtain new counsel “would have brought finality to the case on that end because they hadn’t found [new counsel].” Finally, the record is devoid of definitive evidence to establish the voluntary dismissal *with* prejudice to be void which would have warranted relief pursuant to Rule 60(b)(4). While Plaintiffs assert Attorney Salmons did not have the authority to enter the voluntary dismissal *with* prejudice, only a voluntary dismissal *without* prejudice, the “trial court is better suited than us to discern credibility,” and we cannot substitute our own judgment for a discretionary ruling left to the trial court. *T.H.*, 293 N.C. App. at 468, 900 S.E.2d at 724.

III. Conclusion

For the reasons stated herein, we conclude the trial court did not abuse its discretion by denying Plaintiffs’ motion to set aside the voluntary dismissal with prejudice because its ruling was not manifestly unsupported by reason. The record reveals the trial court’s decision to deny relief was supported by competent inquiry and evidence. Thus, we affirm the trial court’s order denying Plaintiffs’ motion for relief from judgment.

AFFIRMED.

Judges ZACHARY and GORE concur.