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Indiana Court of Appeals: When Can a Trial Court Change Its Mind?

Today on the Hoosier Litigation Blog we are going to have a double-dip–*id est*, two posts. This is the first of our two posts and will take a look at a recent Indiana Court of Appeals case that examines the basic question when can a trial court change its mind? Our second post for the day will return to a prior discussion on the case *Alldredge v. The Good Samaritan Home, Inc*. The prior discussion was of the decision from the court of appeals. Today's discussion follows the case to a decision by the Indiana Supreme Court.

As a preliminary note before we swing into our discussions for today: the Hoosier Litigation Blog will be changing hosts in the very near future. All of our prior posts will be transitioned to the new host and we hope to be able to maintain the URLs as well. Nevertheless, expect a major change to the appearance of the HLB very soon and be mindful that the transition may lead to a few technical glitches. Please bear with us.

That said; let us now turn to today's discussion of *Celadon Trucking Services, Inc. v. United Equipment Leasing, LLC*. The vast majority of the decision focuses on the facts of the underlying case. Your author knows the facts of the case as well as anyone–your author is one of UEL's two attorney's on the case. In light of that familiarity, I ask you to accept my guidance here as well thought out and not mere ukase: the facts of the case do not matter at all to the court's decision and so we are going to skip right by them.

The facts aside, the procedural background of the case is very important. So let us take a brief look at how this case found its way onto Judge Ezra Friedlander's desk. The case was filed on March 12, 2012, UEL filed its complaint seeking damages and for replevin of property. Replevin is a unique process in the law, whereby a plaintiff seeks the immediate return of a piece of property. Most cases limit what a plaintiff can seek to money damages. A typical example would be an automobile accident. In such a situation, if the plaintiff's car is totaled, the plaintiff can sue for the money to replace the car, but the plaintiff cannot sue the defendant in that situation and demand that the defendant return plaintiff's car. Unless the defendant has mastered the dark arts of time travel, it would be pretty much impossible to return the exact car, let alone the fact that the defendant would not likely have the car in his possession. Replevin is used when the defendant wrongfully has control over the property of the plaintiff. Because it is a unique remedy, it comes with a unique mechanism in meeting its goal. That is, a replevin action allows a very early determination of who has possession of the property, who is the owner of the property, and whether the possession is wrongful. If the court finds that the defendant wrongfully possesses the property, then the court will order it to be immediately returned to the plaintiff.

Seeking to utilize the replevin procedures, UEL sought an early hearing to determine its replevin action. That hearing, after a continuance, was held on April 26, 2012. Just over a month later–on May 31–the court issued its decision. It found that UEL failed to show that Celadon was wrongfully in possession of UEL's property. Shortly thereafter, Celadon filed a motion to dismiss. The parties briefed and argued this issue with discovery stayed until after a determination on the motion to dismiss. With that motion still pending, on May 30, 2013 UEL filed a Motion for Relief from the Court's May 31, 2012 Order. UEL argued that it had come to possess information that directly contradicted testimony at the replevin hearing. The information came from subsequent first-hand investigation and from Celadon's discovery responses in the spring of 2013. After a hearing, the court issued an order in October 2013 denying Celadon's motion to dismiss and granting UEL's motion for relief. The order overturned the May 31, 2012 Order. Celadon appealed.

In UEL's brief in support of its motion for relief it relied upon Ind. Trial Rule 60(B) as the authority for the trial court to vacate its May 31 order. Specifically, UEL relied upon subdivisions 60(B)(3) & (8). Celadon, focusing on cases saying that T.R. 60(B) only works to permit relief from a final judgment, appealed.

There are two types of decisions issued by a trial court: final judgments and interlocutory orders. The distinction is one of great importance in determining when

an appeal can be made. We've briefly discussed interlocutory appeals before, but in short, an interlocutory order is one that does not decide all issues in the case. Interlocutory appeals then are a special type of appeal because it occurs at some juncture before the end of the case. Some matters may be taken as an interlocutory appeal automatically; others require leave from the trial court. Decisions under T.R. 60(B) are appealable as of right. Because the order granting the motion to relief did not dispose of all issues in the case, it was an interlocutory order, not a final judgment. Consequently, Celadon brought its appeal under T.R. 60(C) that permits interlocutory appeals of decisions granting or denying a T.R. 60(B) motion. As will be discussed further below, this created a very interesting jurisdictional conundrum.

Celadon's argument focused primarily on the claim that T.R. 60(B) only applies to final judgments and the May 31, 2012 order was not a final judgment. Be mindful that here we are talking about the May 31, 2012 order, not the motion granting relief. To that end, Celadon was correct; the May 31, 2012 order is an interlocutory order. The problem was Celadon's reliance on antiquated case law. Earlier this year, the Indiana Supreme Court decided *Mitchell v. 10th & The Bypass, LLC*. As Justice Robert D. Rucker pointed out:

> However, Rule 60(B) was amended in 2008 effective January 1, 2009, which is the current version of the Rule, and the Rule in effect at the time LLC filed its motion. The 2008 amendment deleted the word "final" such that the rule now provides in relevant part, "the court may relieve a party or his legal representative from a judgment, including a judgment by default . . . ." Thus, the express language of the rule no longer limits relief only from a "final" judgment as was the case when we decided *Allstate*[*Ins. Co. v. Fields*, 842 N.E.2d 804 (Ind. 2006)]. In light of the 2008 amendment, LLC is not precluded from seeking Trial Rule 60(B) relief from the trial court's January 2010 order on grounds that the order was not a final judgment. On this point the trial court erred.

Due to this change in the language of T.R. 60(B), the court of appeals determined that the trial court was permitted to decide the relief order under T.R. 60(B) and so it did not err.

The court also went on to recognize that the trial court had more at its disposal than just T.R. 60(B). As Justice Rucker noted in *Mitchell*, Trial Rule 54(B) states that an interlocutory order "is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the

parties." Justice Rucker and Judge Freidlander both recognized this portion of T.R. 54(B) for what it is: "recognition, through [the Indiana Supreme Court's] rule making authority, of a well-settled practice in this state, namely: 'We have long and consistently held a trial court has inherent power to reconsider, vacate, or modify any previous order so long as the case has not proceeded to final judgment.'" That is to say, it has long been the rule, even before the change to T.R. 60(B), that a trial court can revisit an interlocutory order at any time.

Peculiarly, the final paragraph of the decision states:

> The trial court's grant of United's motion for relief is sustainable under the trial court's inherent power to reconsider, vacate, or modify any previous order so long as the case has not proceeded to final judgment. This is precisely what the trial court did in this case. The trial court was well within its discretion to grant United the requested relief.

The Indiana Law Blog's short write-up of the case summarized the decision by quoting this sentence in its entirety. The Indiana Lawyer's summary, though slightly more lengthy, comes to the same conclusion. Here is the problem: I think that the inherent power and T.R. 54(B) discussion is entirely dicta (opinions of the court that are not binding upon the final outcome).

Mind you, I do not say that the court is at all wrong in its statement that T.R. 54(B) was a proper mechanism, we argued as much in the brief. The problem is the jurisdictional conundrum I mentioned above. You see, the trial court's order did not state the basis for the decision. After rehashing the procedural posture of the case and an eighth acknowledging that the court withheld issuing the order until after an unsuccessful mediation, the order merely stated: "IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion for Relief from the May 31, 2012 Order is GRANTED." Our observant readers will recognize that the trial court never states the basis for its decision. Of course, UEL had argued T.R. 60(B), and, therefore, that is the presumptive basis. However, Indiana caselaw adds the presumption on appeal that the trial court knows and applies Indiana law correctly.

So what does this mean? As we argued, this means that because the basis was not stated in the trial court's order, on appeal, if there is any acceptable basis for the decision then the appellate court must presume the decision was made on that ground. Let us return to our discussion of interlocutory appeals. An order under T.R. 54(B) is an interlocutory order that can only be taken up on appeal upon leave of the trial court. Celadon did not obtain such leave. The only jurisdictional basis for the appeal then was T.R. 60(C) allowing for appeals from grants/denials of

T.R. 60(B) motions. So what's my point? Well, if T.R. 60(B), as Celadon argued, could not provide the basis for the decision, then the court of appeals has to assume the trial court used a permissible basis–i.e., T.R. 54(B). But a T.R. 54(B) decision could not have been appealed at that time. This means that the only basis the court of appeals could use to decide the case was T.R. 60(B). It could decide that the trial court properly decided the motion under T.R. 60(B) and off-handedly note that T.R. 54(B) would also have been fine. Alternatively, it could have found that T.R. 60(B) was not a permissible basis, but because T.R. 54(B) was a permissible basis, the court lacks jurisdiction to decide the appeal and thereby dismiss it. But what the court couldn't do was decide that T.R. 54(B) was the proper basis and do anything other than dismiss the case.

Thus, my point is this: the real basis for the decision is T.R. 60(B) and 60(B) alone. The discussion of T.R. 54(B) could not actually be the basis for the decision because the court would lack jurisdiction to find that. Consequently, the proper summary of the decision should focus on the T.R. 60(B) conclusion and not the last paragraph noting T.R. 54(B)'s appropriate use.

Hypertechnical? Certainly; but that's what I get paid for.

One thing to keep in mind is that the new approach to T.R. 60(B) has likely opened a can of worms. The case law of T.R. 60(B) is full of tests for application and other rules developed with interests derived from protecting final judgments. For example, as recently as 2008 (the year before the amendment to T.R. 60(B)), the Indiana Supreme Court recognized a nine-part test to apply T.R. 60(B)(2)–relief from judgment because of newly discovered evidence:

> (1) the evidence has been discovered since the trial; (2) it is material and relevant; (3) it is not cumulative; (4) it is not merely impeaching; (5) it is not privileged or incompetent; (6) due diligence was used to discover it in time for trial; (7) the evidence is worthy of credit; (8) it can be produced upon a retrial of the case; and (9) it will probably produce a different result at retrial.

The first point that merits note is that the way there is interplay between T.R. 60(B)(2) and Ind. Trial Rule 59 making the test better stated–for rule 60(B)(2)–as discovered more than 30 days after trial. Aside from the fact that the test is replete with the word "trial" there is a more fundamental problem in applying this test to an interlocutory order: the recognized purpose underlying the test is that "Indiana courts have long received motions for a new trial with 'great caution' because courts

place 'a high value on finality of judicial resolutions.'" That is, the test is designed to meet a purpose that is wholly absent in interlocutory orders.

Another example, and to me the more important one, is T.R. 60(B)(8). Subdivision (8) is a catchall provision that states:

> On motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons: . . . (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4).

What you won't see in the text of the rule is the requirement of "exceptional/extraordinary circumstances." Nevertheless, this requirement has been read into the rule in meeting the purpose of protecting the finality of judgments. With this concern removed, the exceptional/extraordinary circumstances interpretation finds no basis in the text of the rule and makes little sense as applied to interlocutory orders.

Now we reach my advice: the best way to avoid the problems of using T.R. 60(B) in the interlocutory order arena is to file the motion under T.R. 54(B), thereby invoking the court's inherent power to vacate an interlocutory order. It will prevent creating a jurisdictional basis for an interlocutory appeal that only exists if T.R. 60(B) is invoked and it will sidestep the litany of T.R. 60(B) decisions that are rooted in very different interests.

Join us again next time for further discussion of developments in the law.

Sources

- *Celadon Trucking Servs., Inc. v. United Equip. Leasing, LLC*, --- N.E.3d ---, No. 30A01-1311-CC-0507, 2014 WL 2466646 (Ind. Ct. App. June 3, 2014) (Freidlander, J.).
- *Mitchell v. 10th & The Bypass, LLC*, 3 N.E.3d 967 (Ind. 2014) (Rucker, J.).
- *Allstate Ins. Co. v. Fields*, 842 N.E.2d 804 (Ind. 2006) (Dickson, J.).

- *Speedway SuperAmerica, LLC v. Holmes*, 885 N.E.2d 1265, 1271 (Ind. 2008) (Boehm, J.).

- Indiana's Replevin Statute, codified at Ind. Code ch. 32-35-2.

- Ind. Trial Rule 60(B).

- Ind. Trial Rule 54(B).

- Ind. Trial Rule 59.

- Colin E. Flora, *7th Cir. (Posner) Examines Interlocutory Appeals of Class Certification Decisions Under 23(f)*, HOOSIER LITIGATION BLOG (Jan. 24, 2014).