Obtaining Relief from an Adjudication of Delinquency: Does Rule 60 Apply?

Several years ago when I was an appellate attorney for the State, I filed a cert petition seeking appellate review of a court order granting a Rule 60(b)(6) motion to set aside an adjudication of delinquency for first degree sex offense. The court found that the allegations were proven beyond a reasonable doubt but then allowed the juvenile's Rule 60(b) motion because the offense (fellatio) was four years old, it was not committed in a violent manner, the juvenile showed no risk of reoffending, and labeling the juvenile as a sex offender would do him more harm than good. Based on these findings, the court concluded that "extraordinary circumstances" existed and that justice required granting the juvenile's motion. The Court of Appeals declined to review the order and still hasn't addressed whether Rule 60(b) applies to delinquency cases.

District court judges throughout the state disagree on the answer (which I discovered during a lively debate in my first juvenile delinquency course at the School of Government). There is no clear answer, but appellate cases suggest that Rule 60(b) does apply. However, it may not authorize setting aside an adjudication order, as described above. Here's why.

What is Rule 60(b)?

Under Rule 60(b) of the Rules of Civil Procedure, a court may set aside "a final judgment, order, or proceeding" for reasons stated in the rule such as mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, and fraud. G.S. 1A-1, Rule 60(b). In addition to establishing one of the enumerated grounds, the movant must present evidence of a meritorious defense to the action. *Royal v. Hartle*, 145 N.C. App. 181, 184 (2001).

A court may also set aside a final judgment for "[a]ny other reason justifying relief from the operation of the judgment." G.S. 1A-1, Rule 60(b)(6). To obtain relief under this catch-all provision, a party must show that: (1) extraordinary circumstances exist and (2) justice demands relief from the judgment. *Royal*, 145 N.C. App. at 184. However, even if a movant establishes these two requirements, the lack of a meritorious defense precludes relief. *Id.* at 185.

Rule 60(b)(6) is commonly invoked to set aside default judgments in civil actions when the defaulting party had no opportunity to be heard or to present a defense. For example, in one case, a debtor who failed to appear in court due to insufficient notice of the trial date was granted relief from a default judgment entered against her. *See Dollar v. Tapp*, 103 N.C. App. 162, 165 (1991). Evidence that the debt was repaid constituted a meritorious defense and the procedural deficiencies (lack of notice) satisfied the other requirements of Rule 60(b)(6). *Id.*

In light of the purposes for granting Rule 60(b) relief, some judges are reluctant to apply the rule in

delinquency proceedings where juveniles typically have sufficient notice and a full opportunity to present a defense, unlike a losing party in a default judgment. However, despite these concerns, the rule probably still applies.

Reasons Why Rule 60(b) May Apply in Delinquency Cases.

1.Delinquency proceedings are civil actions.

Despite the practical reality of juvenile court (which operates much like a criminal court), delinquency proceedings are civil actions governed by the Rules of Civil Procedure unless the Juvenile Code provides otherwise. *See Matter of Bullabough*, 89 N.C. App. 171, 179 (1988). Thus, when the Juvenile Code is silent, the Rules of Civil Procedure may fill procedural gaps. *See, e.g.*, *In re D.S.B.*, 179 N.C. App. 577, 579 (2006) (holding that because juvenile proceedings are civil actions, a juvenile may waive defects in service of process by making a general appearance).

2.The Juvenile Code does not set forth a procedure to vacate an adjudication order.

Under G.S. 7B-2600(a), a court may modify or vacate a disposition order based on "changes in circumstances or the needs of the juvenile." However, there is no similar procedure to obtain relief from an adjudication of delinquency without filing a direct appeal to the NC Court of Appeals. As a result, Rule 60(b) probably applies when a juvenile is seeking to have the underlying adjudication of delinquency set aside based on newly discovered evidence or one of the other enumerated grounds, including Rule 60(b)(6).

3.Rule 60(b) applies in other juvenile cases.

Although there are no delinquency appellate cases addressing the merits of a Rule 60(b) motion, the rule has been applied in other juvenile cases. *See, e.g., In re J.T.F.*, 194 N.C. App. 371 (2008) (unpublished) (describing the appropriate use of Rule 60 to raise the issue of ineffective assistance of counsel in a termination of parental rights case); *In re A.B.D.*, 173 N.C. App. 77 (2005) (holding that the trial court erred in denying a parent's Rule 60 motion to set aside a TPR order for lack of personal jurisdiction); *In re L.C. and A.N.*, 174 N.C. App. 622 (2005) (affirming the trial court's dismissal of respondent's Rule 60 motion to set aside an order terminating her parental rights). It is unlikely that the appellate courts would exclude Rule 60 from delinquency proceedings when it has applied the rule in other juvenile contexts.

Even if Rule 60 Applies, It *May* Not Authorize Relief from an Adjudication Order.

1.An Adjudication of Delinquency is not a Final Order.

The plain language of Rule 60(b) states that relief may be granted only from "a final judgment, order, or proceeding." An adjudication of delinquency is not a final order under the Juvenile Code

and is not appealable prior to the entry of a disposition. *See* G.S. 7B-2602; *see also In re J.V.J.*, 209 N.C. App. 737, 739 (2011).

However, there may be room to argue that an adjudication of delinquency may be considered final when no disposition is made within 60 days after entry of the order, since the Court of Appeals has held that an adjudication order may be appealed under these circumstances. *In re M.L.T.H.*, 200 N.C. App. 476, 481 (2009). Also, in a recent DSS case, the Court of Appeals held that a Rule 60(b) motion was a proper method to challenge a voluntary dismissal without prejudice filed by DSS, even though prior decisions questioned whether such a dismissal was a final judgment for purposes of Rule 60(b). *In re E.H.*, 227 N.C. App. 525, 528-530 (2013). The court distinguished juvenile cases from other civil actions, stating that "[n]o judgment or order is ever truly 'final' in the juvenile context if the trial court retains jurisdiction." *Id.* at 530.

Assuming the "final judgment" hurdle is crossed, there's still the requirement of a meritorious defense.

2.Rule 60(b) Relief Requires Evidence of a "Meritorious Defense."

You may recall that in the delinquency case I discussed above, the juvenile did not assert a meritorious defense to the allegations. The court granted the juvenile's Rule 60(b)(6) motion based solely on the existence of extraordinary circumstances and a finding that justice required relief. Other judges may also be overlooking this requirement since defenders are likely invoking the rule to obtain a reversal of the adjudication without any further proceedings in the matter, similar to a motion for appropriate relief in a criminal case filed under G.S. 15A-1415 (I'll save that discussion for another post).

Unlike an MAR, the purpose of requiring the movant to present a meritorious defense in a Rule 60(b) motion is to establish that there is some possibility that the outcome of the proceeding would be different after a full hearing on the merits. *Baker v. Baker*, 115 N.C. App. 337, 340 (1994). This requirement contemplates that following the setting aside of a final judgment, there will be a new trial on the merits. *Id.*

As I stated earlier, there is no clear answer. Hopefully, someone else will have better luck obtaining appellate review of this issue so the courts will ultimately answer these questions. Please comment if you have thoughts or concerns about filing Rule 60(b) motions in your district. I'm sure there are other issues surrounding this practice that I've missed.