

[Cite as *Cuyahoga Metro. Hous. Auth. v. Rabb*, 2010-Ohio-1870.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93561

**CUYAHOGA METROPOLITAN
HOUSING AUTHORITY**

PLAINTIFF-APPELLEE

vs.

CLAUDE RABB

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cleveland Municipal Court
Case No. 2008 CVG 008714

BEFORE: Stewart, P.J., Boyle, J., and Sweeney, J.

RELEASED: April 29, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

MELODY J. STEWART, P.J.:

{¶ 1} Defendant-appellant, Claude Rabb, appeals from a municipal court housing division order denying his motion for relief from a judgment in forcible entry and detainer that ordered his eviction from an apartment owned by plaintiff-appellee, Cleveland Metropolitan Housing Authority (“CMHA”). He argues that his eviction constituted a “satisfaction of judgment” in the forcible entry and detainer action, thus meriting relief from that judgment.

{¶ 2} “To prevail on a motion brought under Civ.R. 60(B), the movant must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceeding was entered or taken.” *GTE Automatic Elec., Inc. v. ARC Indus., Inc.* (1976), 47 Ohio St.2d 146, 351 N.E.2d 113, paragraph two of the syllabus. Failure to establish any of these three elements warrants denying the motion. *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 520 N.E.2d 564.

{¶ 3} Rabb argues that CMHA’s repossession of the premises established grounds for the motion under Civ.R. 60(B)(4): “the judgment has

been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application[.]”

{¶ 4} The Staff Notes to Civ.R. 60(B)(4) state that the rule “would most likely operate to afford relief from the operation of a prospectively operating judgment such as an injunction.” The analogous federal rule, Fed.R.Civ.P. 60(B)(5), is interpreted in the same manner. For example, in *Rufo v. Inmates of Suffolk Cty. Jail* (1992), 502 U.S. 367, 112 S.Ct. 748, 116 L.Ed.2d 867, the United States Supreme Court interpreted Fed.R.Civ.P. 60(B)(5) to note that the modification of a consent decree “is also appropriate when a decree proves to be unworkable because of unforeseen obstacles” or “when enforcement of the decree without modification would be detrimental to the public interest[.]” *Id.* at 384 (citations omitted).

{¶ 5} Rabb’s argument that he “satisfied” the judgment confuses the execution of a judgment with the satisfaction of a judgment. The “judgment” obtained by CMHA in the forcible entry and detainer action was Rabb’s eviction from the premises. This judgment was not prospective in nature in the sense that it governed the conduct of the parties in the future — Rabb’s eviction from the premises ended the “first cause” aspect of CMHA’s forcible entry and detainer action. Having been removed from the premises, Rabb

could not “satisfy” the eviction order because his eviction was the execution of judgment.

{¶ 6} We therefore find that Rabb failed to establish grounds for relief under Civ.R. 60(B)(4), so the court did not abuse its discretion by denying the motion for relief from judgment.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cleveland Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, PRESIDING JUDGE

MARY J. BOYLE, J., and
JAMES J. SWEENEY, J., CONCUR