

[Cite as *Clinton v. MetroHealth Sys.*, 2017-Ohio-4073.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104957

KAREN CLINTON

PLAINTIFF-APPELLANT

vs.

METROHEALTH SYSTEM

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-04-530108

BEFORE: S. Gallagher, P.J., Blackmon, J., and Jones, J.

RELEASED AND JOURNALIZED: June 1, 2017

FOR APPELLANT

Karen Clinton, pro se
2045 Glenwood Drive
Twinsburg, Ohio 44087

ATTORNEYS FOR APPELLEE

Michael C. O'Malley
Cuyahoga County Prosecutor
By: Charles E. Hannan
Assistant Prosecuting Attorney
Justice Center - 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

SEAN C. GALLAGHER, P.J.:

{¶1} Appellant Karen Clinton, pro se, appeals from the trial court's decision that denied her motion for relief from judgment and her motion to disqualify. Upon review, we affirm the trial court's decision.

{¶2} In December 2001, Clinton filed a worker's compensation case related to injuries she claimed to have suffered as a result of exposure to toxic fumes from an incinerator incident occurring in 1999 while she was working at MetroHealth System. After the worker's compensation case was resolved, Clinton, through her attorney, requested MetroHealth System's records related to the incinerator incident.

{¶3} On May 5, 2004, and without receiving the requested documents, Clinton filed a mandamus action against MetroHealth System, Cuyahoga C.P. No. CV-04-530108. Clinton sought to compel production of records under the Ohio Public Records Act, R.C. 149.43, and an award of attorney fees. She also made a claim for forfeiture pursuant to R.C. 149.351 for destruction of public records and sought other relief. MetroHealth System filed a motion for summary judgment, in which it argued that no genuine issues of material fact remained and that the case was moot because it had submitted all the materials Clinton had requested. Clinton filed a motion for partial summary judgment and reserved the issues of damages and attorney fees for trial. Clinton claimed that MetroHealth System had originally possessed some of the requested public records documents but had destroyed them during building renovations. On July

20, 2005, the trial court granted MetroHealth System's motion, and denied Clinton's motion.

{¶4} The trial court's judgment was affirmed on appeal to this court. *Clinton v. MetroHealth Sys.*, 8th Dist. Cuyahoga No. 86886, 2006-Ohio-3582 ("*Clinton I*"). In part, the court found that the incinerator was operated under a "Title V" permit, which required a three-year record retention period. The court held that "not only does the record fail to direct this Court on the tenuous issue of whether additional documentation existed, the record also reflects that since Clinton's [public records] request was untimely, MetroHealth cannot be penalized for any alleged destruction." *Id.* at ¶ 17-18. Clinton's motion for reconsideration was denied, and no appeal was filed with the Ohio Supreme Court.

{¶5} In April 2010, Clinton filed a second mandamus action against MetroHealth System, upon an expanded public records request, Cuyahoga C.P. No. CV-10-733691. That case also was decided on summary judgment in favor of MetroHealth System and affirmed on appeal in *State ex rel. Clinton v. MetroHealth Sys.*, 8th Dist. Cuyahoga No. 100590, 2014-Ohio-4469 ("*Clinton II*"), *discretionary appeal not allowed*, 142 Ohio St.3d 1465, 2015-Ohio-1896, 30 N.E.3d 974. On May 20, 2015, Clinton filed a motion for relief from judgment in the second mandamus action. That motion was denied, and the ruling was affirmed on appeal in *State ex rel. Clinton v. MetroHealth Sys.*, 8th Dist. Cuyahoga No. 104685, 2017-Ohio-2855.

{¶6} Also, on May 20, 2015, Clinton filed a motion for relief from judgment pursuant to Civ.R. 60(B) in the first mandamus action. Additionally, she filed a motion to disqualify the Cuyahoga County Prosecutor's Office from representing MetroHealth System in the Civ.R. 60(B) litigation. Both motions were denied by the trial court. This appeal was taken from those rulings.

{¶7} Clinton raises six assignments of error for our review. As an initial matter, several of her assignments of error are not related to the trial court's denial of her motions. Rather, her second, third, and fifth assignments of error raise a number of challenges relating to the trial court's 2005 decision in the first mandamus action and this court's decision in *Clinton I*. Clinton claims, among other assertions, that the trial court should not have granted MetroHealth System's motion for summary judgment and that the ruling was against the manifest weight of the evidence. She claims the decision in *Clinton I* was erroneous and that a five-year record retention rule, as opposed to a three-year record retention rule, should have applied to her claims. She also challenges certain factual findings that were made. She further claims that certain record requests were not addressed in these earlier decisions. Clinton is precluded by the doctrines of res judicata and the law of the case from raising these arguments herein.

{¶8} It is well settled that Civ.R. 60(B) cannot be used as a substitute for appeal, in which event the doctrine of res judicata applies. *Pilkington N. Am., Inc. v. Toledo Edison Co.*, 145 Ohio St.3d 125, 2015-Ohio-4797, 47 N.E.3d 786, ¶ 34. The doctrine of res

judicata bars claims that were or could have been raised on direct appeal. *M & T Bank v. Steel*, 8th Dist. Cuyahoga No. 101924, 2015-Ohio-1036, ¶ 13.

{¶9} Further, the law of the case doctrine precludes a litigant from raising arguments “which were fully pursued, or available to be pursued, in a first appeal.” *Hubbard ex rel. Creed v. Sauline*, 74 Ohio St.3d 402, 404-405, 1996-Ohio-174, 659 N.E.2d 781. Pursuant to the doctrine of the law of the case, “the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels.” *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984). The doctrine has been deemed necessary “to ensure consistency of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution.” *Id.*

{¶10} Accordingly, Clinton is precluded from raising arguments she did raise or could have raised before the trial court or in the original appeal. Further, the decision reached in *Clinton I* remains the law of the case with regard to these arguments. Clinton’s second, third, and fifth assignments of error are overruled.

{¶11} Clinton’s first and fourth assignments of error challenge the trial court’s ruling on her Civ.R. 60(B) motion for relief from judgment. We review a decision on a Civ.R. 60(B) motion for an abuse of discretion. *See Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20, 520 N.E.2d 564 (1988). To constitute an abuse of discretion, the trial court’s ruling must be “unreasonable, arbitrary or unconscionable.” *Blakemore v.*

Blakemore, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). In order to prevail on a motion for relief from judgment pursuant to Civ.R. 60(B), the movant must demonstrate (1) a meritorious defense or claim to present if relief is granted; (2) entitlement to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the timeliness of the motion. *GTE Automatic Elec., Inc. v. ARC Industries*, 47 Ohio St.2d 146, 150-151, 351 N.E.2d 113 (1976). The failure to establish any one of these requirements will result in the denial of the motion. *See Rose Chevrolet, Inc.* at 20.

{¶12} On appeal, Clinton claims she is entitled to relief from judgment under Civ.R. 60(B)(4) and (5). Much of her argument is speculative and unclear, and once again she challenges the earlier decisions reached in the case. Her argument is premised upon the claim that she obtained newly discovered evidence as to the fate of the missing records during the second mandamus action in *Clinton II* that would contradict deposition testimony and evidence offered in *Clinton I*. She further claims that res judicata should not be applied because she asserts there was a fraud upon the court.

{¶13} Although we can empathize with Clinton's belief that she has been aggrieved, we find no evidence in this record that the prosecutor in the case has been untruthful. The prosecutor acknowledged at oral hearing that some records were destroyed, but asserted that Clinton has been given everything MetroHealth System has and that Clinton is in search of facts in records that MetroHealth never possessed.

{¶14} Although Clinton disputes this, the prosecutor explained that there were two classes of documents related to the incinerator: first, the daily incinerator reports, which

were under a three-year retention schedule; and second, the incinerator activity reports that were under a five-year retention schedule. The prosecutor represented that the daily reports were the ones originally destroyed, but the incinerator activity reports were retained and disclosed to Clinton. MetroHealth System maintains that these reports contained all the information originally contained in the destroyed daily incinerator reports.

{¶15} Although Clinton disputes this and asserts there is conflicting information in the disclosures, there is no dispute that Clinton was aware of the asserted conflicts at least four years prior to filing her Civ.R. 60(B) motion because her claimed newly discovered information was learned in 2012. Clinton did not file her Civ.R. 60(B) motion in this case until 2016. Nonetheless, Clinton argues that the pursuit of her claims in *Clinton II* were not exhausted at the time she discovered these claimed conflicts and that she brought her Civ.R. 60(B) motion within one year of the Ohio Supreme Court's denial of a discretionary appeal in *Clinton II*. However, the cases in *Clinton I* and *Clinton II* are separate and distinct and arise from separate mandamus actions. *Clinton* cannot piggyback the untimely Civ.R. 60(B) motion claims of the first mandamus action involved in *Clinton I* onto *Clinton II*.

{¶16} A motion brought under Civ.R. 60(B) must be made within a reasonable time, and when the grounds for relief in a motion to vacate are based on Civ.R. 60(B)(1), (2), or (3), the motion must not be filed more than one year after the judgment was entered. Civ.R. 60(B); *GTE Automatic*, 47 Ohio St.2d 146, 351 N.E.2d 113, at paragraph

two of the syllabus. Here, the motion was filed nearly ten years after the 2005 judgment was entered, and four years after learning of the claimed newly discovered evidence. Under these circumstances, Clinton's motion was untimely. Accordingly, her first and fourth assignments of error are overruled.

{¶17} Finally, we consider Clinton's sixth assignment of error, under which she claims the trial court erred by denying her motion to disqualify the Cuyahoga County Prosecutor's Office. Clinton fails to provide any legitimate basis upon which to disqualify the prosecutor's office in this matter and has not provided any relevant authority in support of her argument. *See* App.R. 16(A)(7). Upon our review of the argument as presented, we find no error in the trial court's decision. Clinton's sixth assignment of error is overruled.

{¶18} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

SEAN C. GALLAGHER, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
LARRY A. JONES, SR., J., CONCUR