

unconscionable, or arbitrary. Accordingly, we affirm the trial court's judgment.

I. Facts

{¶2} In February 2009, WCCS filed a complaint in the Washington County Court of Common Pleas, Juvenile Division, alleging that A.B., the child of McIntyre and Timothy Blake, was neglected, and asking the court to order protective supervision of the child. At a hearing in March where McIntyre appeared with the assistance of counsel, the trial court allowed WCCS to amend the complaint. WCCS dismissed the allegations of neglect and added an allegation that A.B. was dependent because her "condition or environment [was] such to warrant the state, in the interests of the child, in assuming the child's guardianship" under R.C. 2151.04(C).

{¶3} McIntyre admitted that A.B. was a dependent child. The trial court's adjudication and dispositional order states that it "personally [questioned McIntyre] concerning the voluntariness of her admission and her understanding as to the nature of the proceedings, possible dispositions, and the rights she were [sic] waiving by admitting." The court found that McIntyre "made the admission voluntarily with understanding of the nature of the allegations and the consequences of the admission, and that she understood that by entering the admission she was waiving the right to challenge the witnesses and evidence against her, to remain silent, and to introduce evidence at the adjudicatory hearing[.]" The court accepted her admission and found A.B. dependent under R.C. 2151.04(C). The court's order states that "[w]ith the consent of the parties, [it] proceeded to disposition." The court found that it was in A.B.'s best interest to remain in McIntyre's custody subject to protective supervision by WCCS.

{¶4} Shortly after the court filed this order, McIntyre's counsel filed a motion for

leave to withdraw as counsel, which the court granted. McIntyre then filed a motion to withdraw her admission that A.B. was a dependent child. McIntyre argued that she “admitted due to advice from previous counsel that if she did not her child would be taken from her the [sic] following hearing.” She also argued that she had “significant evidence that she had not been advised on and was not advised as to the strengths of her case.” McIntyre attached an affidavit to her motion averring that her former attorney (1) spent less than one hour with her; (2) “did not allow [her] time to explain all the possible defenses”; (3) told her that if she did not admit that A.B. was a dependent child, she would “lose [her] child at the next hearing”; and (4) did not advise her regarding “the medical evidence” she provided him.

{¶15} After the trial court denied the motion, McIntyre filed this appeal. She attached the trial court’s adjudication and dispositional order to the notice of appeal but did not attach the trial court’s entry denying the motion to withdraw her admission.

II. Assignment of Error

{¶16} McIntyre assigns the following error for our review:

THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT’S MOTION TO WITHDRAW HER ADMISSION THAT HER CHILD WAS A DEPENDENT CHILD BECAUSE OF INEFFECTIVE ASSISTANCE OF COUNSEL

III. Civ.R. 60(B)

{¶17} In her sole assignment of error, McIntyre contends that the trial court erred by denying her motion to withdraw her admission that A.B. was a dependent child. McIntyre acknowledges that the court made the appropriate inquiries under Juv.R. 29(D) before it accepted her admission, which the trial court’s adjudication and

dispositional order confirms.¹ Instead, McIntyre argues that she received ineffective assistance of counsel at the time she made the admission. McIntyre implies, but does not explicitly assert, that her admission was not made knowingly, voluntarily, or intelligently due to counsel's alleged deficiencies. The only evidence McIntyre offers in support of this contention are the statements in the affidavit she attached to her "motion to withdraw" the admission. McIntyre filed this motion after the trial court adjudicated A.B. as a dependent child and entered its dispositional order.

{¶8} An adjudication by a juvenile court that a child is "neglected" or "dependent" as defined in R.C. Chapter 2151, followed by an order of disposition under R.C. 2151.353(A), constitutes a "final order" within the meaning of R.C. 2505.02. See *In re Murray* (1990), 52 Ohio St.3d 155, 556 N.E.2d 1169, at syllabus; *In re H.F.*, 120 Ohio St.3d 499, 2008-Ohio-6810, 900 N.E.2d 607, at ¶18. The Ohio Rules of Juvenile Procedure do not provide for a "motion to withdraw" an admission of dependency once the court enters this final order. Moreover, although the juvenile rules permit certain parties to file a motion to terminate "any order of disposition," e.g. an order of protective supervision, they provide no authority for a party to ask the trial court to vacate its decision to adjudicate a child as dependent after the court has journalized its dispositional order. See Juv.R. 34(G); see, also, R.C. 2151.353(E)(2).

{¶9} Because the juvenile rules provide no method for a party to request relief in the trial court under these circumstances, we look to the Ohio Rules of Civil Procedure for guidance. Juv.R. 45(B) ("If no procedure is specifically prescribed by these rules or local rule, the court shall proceed in any lawful manner not inconsistent

¹ The record does not contain a transcript of the hearing at which McIntyre admitted that A.B. was a dependent child because McIntyre instructed the court reporter that no transcript was necessary for this appeal.

with these rules or local rule.”); *In re H.W.*, 114 Ohio St.3d 65, 2007-Ohio-2879, 868 N.E.2d 261, at ¶11, citing Civ.R. 1(C)(7) and *State ex. rel. Fowler v. Smith*, 68 Ohio St.3d 357, 360, 1994-Ohio-302, 626 N.E.2d 950 (“The Rules of Civil Procedure apply to custody proceedings in juvenile court except when they are clearly inapplicable[.]”). Under the civil rules, “[t]he only motions a trial court may consider and grant to relieve a party from a final order are motions * * * pursuant to Civ.R. 50(B) (motion notwithstanding the verdict), Civ.R. 59 (motion for new trial), and Civ.R. 60(B) (motion for relief from judgment).” *Perez v. Angell*, Franklin App. No. 07AP-37, 2007-Ohio-4519, at ¶3, citing *Pitts v. Dept. of Transp.* (1981), 67 Ohio St.2d 378, 380, 423 N.E.2d 1105. Here, the proper vehicle for McIntyre to raise her argument was in a Civ.R. 60(B) motion for relief from the trial court’s judgment.

{¶10} Even if we were to presume that McIntyre’s “motion to withdraw” qualified as a Civ.R. 60(B) motion and that she properly appealed from the court’s entry denying it, the trial court did not abuse its discretion in denying the motion. In order to prevail on a Civ.R. 60(B) motion, the movant must demonstrate: 1) a meritorious claim or defense 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) timeliness of the motion. *Buckeye Fed. S. & L. Assn. v. Guirlinger* (1991), 62 Ohio St.3d 312, 314, 581 N.E.2d 1352. Absent an abuse of discretion, we will not disturb a trial court’s decision on a Civ.R. 60(B) motion. *Griffey v. Rajan* (1987), 33 Ohio St.3d 75, 77, 514 N.E.2d 1122. An abuse of discretion involves more than an error of judgment; it connotes an attitude on the part of the court that is unreasonable, unconscionable, or arbitrary. *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144. When applying the abuse of discretion standard, a

reviewing court is not free to merely substitute its judgment for that of the trial court. *In re Jane Doe 1* (1991), 57 Ohio St.3d 135, 138, 566 N.E.2d 1181.

{¶11} Aside from the issues of the timeliness of McIntyre's motion and her entitlement to relief under Civ.R. 60(B)(1) through (5), McIntyre failed to demonstrate a meritorious defense to the dependency charge. "The movant's burden is to allege a meritorious defense, not to prevail with respect to the truth of the meritorious defense." *Colley v. Bazell* (1980), 64 Ohio St.2d 243, 247, fn. 3, 416 N.E.2d 605. This requires the moving party to allege operative facts "with enough specificity to allow the trial court to decide whether he or she has met that test." *Spaulding-Buescher v. Skaggs Masonry, Inc.*, Hocking App. No. 08CA1, 2008-Ohio-6272, at ¶10 (per curiam), quoting *Syphard v. Vrable*, 141 Ohio App.3d 460, 463, 2001-Ohio-3229, 751 N.E.2d 564. Ultimately, "a proffered defense is meritorious if it is not a sham and when, if true, it states a defense in part, or in whole, to the claims for relief set forth in the complaint." *Id.*, quoting *Amzee Corp. v. Comerica Bank-Midwest*, Franklin App. No. 01AP-465, 2002-Ohio-3084, at ¶20.

{¶12} In her affidavit, McIntyre claims that her attorney did not give her an opportunity to explain her "possible defenses" to the dependency charge, but she fails to state with specificity what those defenses were. McIntyre also argues that her attorney failed to advise her on "the medical evidence" she provided him, but again, she makes no effort to describe this evidence or otherwise indicate how it impacted her defense. McIntyre even concedes in her appellate brief that "[i]t cannot be determined from the present record whether the case was prejudiced" by her counsel's alleged actions or inaction. Because McIntyre failed to allege operative facts with enough

specificity to allow the trial court to determine she had a meritorious defense to the dependency charge, its decision to deny her motion was not unreasonable, unconscionable, or arbitrary. Accordingly, we overrule McIntyre's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Court of Common Pleas, Juvenile Division, to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Abele, J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.