

[Cite as *Palmer v. Lopez*, 2006-Ohio-5981.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

DAVID D. PALMER :
Plaintiff- Appellant : C.A. Case No. 21392
vs. : T.C. Case No. 05-CV-3528
STEVEN HOBBS & JOSE LOPEZ : (Civil Appeal from Common
: Pleas Court)
Defendant-Appellees :

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OPINION

Rendered on the 9th day of November, 2006.

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DAVID D. PALMER, #329-601, P.O. Box 8107, Mansfield, Ohio 44901
Plaintiff-Appellant, Pro Se

JOSE LOPEZ, 18 E. Water Street, Troy, Ohio 45373
Defendant-Appellee, Pro Se

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PER CURIAM:

{¶ 1} David Palmer appeals from the judgment of the trial court overruling his motion for Civ.R. 60(B) relief. On April 22, 2005, Palmer, who is presently incarcerated, filed a complaint asserting that defendants, Steven Hobbs and Jose Lopez were guilty of legal malpractice in their representation of him in the matter leading to his conviction.

{¶ 2} On May 24, 2005, Lopez answered and denied the allegations of Palmer's

complaint. He moved to dismiss the complaint because he alleged Palmer's action was barred by the statute of limitations. Lopez also counterclaimed seeking the trial court's determination that Palmer is a vexatious litigator. On July 25, 2005, Lopez moved for summary judgment. On September 12, 2005, the trial court granted Lopez's summary judgment motion. On September 29, 2005, the trial court denied Palmer's motion for "service of defendant Hobbs" and entered a Civ.R. 54(B) "no just-cause for delay" finding.

{¶ 3} Instead of appealing the trial court's September 29, 2005 decision, Palmer moved for Civ.R. 60(B) relief in which he argued the statute of limitations had not expired and he also alleged Lopez had committed a fraud on the court in his representation of him in his criminal case. He asserted the fraud was clear in the evidence provided by him in the original filing of his claim. On October 27, 2005, the trial court overruled Palmer's motion for Civ.R. 60(B) relief. On December 5, 2005, Palmer appealed the trial court's decision of October 27, 2005. The appeal appeared untimely, but because the trial court neglected to insert Civ.R. 58(B) language to the judgment, we will consider Palmer's appeal timely. It is clear, however, Palmer merely wishes to express his dissatisfaction with the trial court's summary judgment ruling in his motion for Civ.R. 60(B) relief. A motion to vacate judgment pursuant to Civ.R. 60(B) cannot be used as a substitute for appeal. *Town & Country Drive-In Shopping Center v. Abraham* (1975), 45 Ohio App.2d 262. Judgment of the trial court is affirmed.

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Brogan, J., Wolff, J., and Walters, J., concur.

(Hon. Sumner E. Walters, retired from the Third Appellate District, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

David D. Palmer
Jose Lopez
Hon. Dennis J. Langer