

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MONROE COUNTY

GLENN R. DARRAH ET AL.,

Plaintiffs-Appellees,

v.

MARJORIE BAUMBERGER ET AL.,

Defendants-Appellants.

OPINION AND JUDGMENT ENTRY
Case No. 19 MO 0019

Civil Appeal from the
Court of Common Pleas of Monroe County, Ohio
Case No. 2014-186

BEFORE:

David A. D'Apolito, Gene Donofrio, Cheryl L. Waite, Judges.

JUDGMENT:

Affirmed.

Atty. Jason Yoss, Yoss Law Office, LLC, 122 North Main Street, P.O. Box 271,
Woodsfield, Ohio 43793, for Plaintiffs-Appellees and

Atty. Patrick Brown, 439 North Market Street, Suite A, Wooster, Ohio 44691, for
Defendants-Appellants.

Dated: September 25, 2020

D'APOLITO, J.

{¶1} Appellant, Wanda Rush (“Ms. Rush”), appeals from the August 22, 2019 judgment of the Monroe County Court of Common Pleas, denying her Civ.R. 60(B) motion for relief from judgment without a hearing. Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

{¶2} The commencement of this matter involved the following parties: Plaintiffs, Glen Darrah, Kathie Darrah, Roger Darrah, and Susan Darrah (“the Darrahs”); and Defendants, Marjorie Baumberger (“Baumberger”), Donald Schnegg and James Schnegg (“the Schneggs”), and Ms. Rush. Ms. Rush is the only named Appellant in this appeal.

{¶3} By way of background, the Darrahs are the owners of a particular parcel of property located in Perry Township, Monroe County, Ohio. The Darrahs’ predecessors in title, William and Elizabeth Kindelberger, excepted and reserved certain oil and gas rights in a 1908 warranty deed to Harry Blatter as follows:

It is understood between the grantors and grantee that all the coal, together with the usual mining rights and privileges also one half of the oil and gas contained in or lying under said above described premises are excepted and reserved and not conveyed by these presents. In the event that any rental is paid on an oil or gas lease, the grantors are to receive the one-half of said rental.

(5/27/2014 Complaint, Reservation Deed, p. 2).

{¶4} The mineral interest was transferred to Dorothy Caldwell and Elizabeth Caldwell by Quit Claim deed in 1936. Defendants are the sole heirs of Dorothy Caldwell, who died November 3, 2012. Defendants claimed to own an undivided 1/4 interest in the oil and gas underlying the property.

{¶5} In February 2013, Ms. Rush’s son-in-law, Ed Pfalzgraf, contacted Yoss Law Office expressing an interest in purchasing his mother-in-law’s property, subject to an oil

and gas lease with Condevco.¹ Ms. Rush's daughter, Sheryl Pfalzgraf, followed up with Yoss Law Office requesting a day to be scheduled for her mother to sign to cancel the lease. Ms. Rush signed the Cancellation of Lease on April 5, 2013. On June 27, 2013, Ms. Rush transferred her interest in the 82.438-acre parcel to the Pfalzgrafs. The real estate transaction between Ms. Rush and the Pfalzgrafs concluded on July 1, 2013.

{¶16} On August 7, 2013, the Darrahs filed an Affidavit of Abandonment. On December 4, 2013, the Darrahs served a Notice of Abandonment to Defendants, including Ms. Rush, and on December 19, 2013, the Darrahs served a Notice of Abandonment by publication.

{¶17} On December 6, 2013, Ed Pfalzgraf called Yoss Law Office inquiring whether terms could be worked out regarding Ms. Rush. The Darrahs agreed to offer \$10,000 to settle the Rush interest. On December 20, 2013, Mr. Pfalzgraf, who had apparently been in communication with Ms. Rush, contacted Yoss Law Office and left a message that Ms. Rush had accepted the offer. On December 30, 2013, Attorney Richard Yoss contacted the Darrahs by letter concerning the \$10,000 acceptance. The next day, Attorney Yoss sent a letter to Ms. Rush indicating that the Darrahs would pay her \$10,000 to resolve the matter.

{¶18} On January 6, 2014, Attorney Yoss contacted Ms. Rush by letter indicating that the paperwork would be done in a few days. Ms. Rush signed the Quit Claim Deed on January 31, 2014. The deed was not recorded at that time because further negotiations were occurring involving the other Defendants with potential interests.

{¶19} Unable to settle the other potential claims at that time, on May 27, 2014, the Darrahs filed a complaint for declaratory judgment against Baumberger, the Schneggs, and also named Ms. Rush.² The Darrahs asserted, inter alia, claims under both the 1989 DMA and the 2006 DMA. Baumberger and the Schneggs filed an answer and counterclaim, also seeking declaratory judgment and asserting claims under both the 1989 DMA and the 2006 DMA.

¹ For purposes of this appeal, the three named attorneys at Yoss Law Office are: (1) Richard Yoss; (2) Jason Yoss; and (3) Craig Sweeney.

² Prior to the filing of the complaint, Yoss Law Office sent a letter to Ms. Rush informing her that she did not need to do anything after receiving service of the complaint since she had already sold her interest to the Darrahs for \$10,000.

{¶10} On August 25, 2014, the trial court entered default judgment in favor of the Darrahs and against Ms. Rush.

{¶11} On December 1, 2014, the Darrahs and Baumberger and the Schneggs filed competing motions for summary judgment.

{¶12} On February 13, 2015, the trial court, relying on the 1989 DMA, granted summary judgment in favor of the Darrahs. Baumberger and the Schneggs filed an appeal with this court, Case No. 15 MO 0002. This court initially held the appeal in abeyance pending the Ohio Supreme Court's decisions in several oil and gas cases. On September 27, 2017, this court reversed the trial court's grant of summary judgment because it relied on the 1989 DMA and remanded the matter for the trial court to proceed under the 2006 DMA. *Darrah v. Baumberger*, 7th Dist. Monroe No. 15 MO 0002, 2017-Ohio-8025.

{¶13} Thereafter, the Darrahs and Baumberger and the Schneggs were involved in settlement negotiations. On June 4, 2018, they approved, and the trial court ordered and filed, an agreed entry.

{¶14} On June 3, 2019, Ms. Rush filed a Civ.R. 60(B)(3) and/or (5) motion for relief from judgment. Specifically, Ms. Rush filed her motion from the R.C. 2502.02 and Civ.R. 54(B) final appealable order of June 4, 2018, resulting from the earlier August 25, 2014 default judgment against her. In support, Ms. Rush attached five exhibits: (1) Defendant's Exhibit A, a May 28, 2019 affidavit of her daughter, Sheryl Pfalzgraf, who averred without documentation that Ms. Rush has dementia and that Ms. Rush believed that Attorney Richard Yoss is her lawyer and that Ms. Rush followed Attorney Yoss's advice to accept \$10,000 for her mineral interest; (2) Defendant's Exhibit B, a December 4, 2013 letter to Ms. Rush from Attorney Richard Yoss, "Attorney for Landowners Glenn R. Darrah and Kathie D. Darrah and Roger E. Darrah and Susan D. Darrah," notifying Ms. Rush of the Darrahs' intent to declare the oil and gas rights under the property abandoned (Defendant's Exhibit B, p. 2); (3) Defendant's Exhibit C, a check from Attorney Richard Yoss's trust account to Ms. Rush for her mineral interests, Check No. 8438, dated January 14, 2014, in the amount of \$10,000; (4) Defendant's Exhibit D, an April 30, 2014 letter from Attorney Richard Yoss to Ms. Rush advising her that he was unable to reach an agreement with Baumberger or the Schneggs, that he was forced to file a lawsuit on

behalf of his clients, the Darrahs, that it was necessary to name Ms. Rush as a defendant in the lawsuit but that she did not need to do anything after receiving service of the complaint, and further informed Ms. Rush that she would incur no expense; and (5) Defendant's Exhibit E, the Quit Claim Deed from Ms. Rush to the Darrahs, executed on January 31, 2014, Instrument No. 201600091074, Volume 344, Page 321.

{¶15} On July 12, 2019, the Darrahs filed a memorandum contra to Ms. Rush's Civ.R. 60(B) motion. In support, the Darrahs attached 14 exhibits: (1) Plaintiffs' Exhibit A, the Warranty Deed from Ms. Rush to the Pfalzgrafs, executed on June 27, 2013, Instrument No. 201300068879, Volume 246, Page 426; (2) Plaintiffs' Exhibit B, a June 24, 2013 letter from Attorney Jason Yoss to the Pfalzgrafs which enclosed a draft of the Warranty Deed that the Pfalzgrafs requested Yoss Law Office to prepare, requested that the Pfalzgrafs review the Warranty Deed carefully, and enclosed a statement for Attorney Yoss's services; (3) Plaintiffs' Exhibit C, a July 1, 2013 letter from Attorney Jason Yoss to the Pfalzgrafs which enclosed the Pfalzgrafs' original recorded Warranty Deed for the 82.438 acres and indicated if they require any further assistance to please contact Yoss Law Office; (4) Plaintiffs' Exhibit D, a July 12, 2019 affidavit of Attorney Richard Yoss averring the following: in 2003 and 2004 Yoss Law Office handled the estate of Floyd Stine, Ms. Rush's step-father, in which Ms. Rush was the administrator; that estate matter did not involve the same oil and gas interest here; Ms. Rush was served by certified mail on December 5, 2013 with the Notice of Abandonment; on December 6, 2013, Ms. Rush's son-in-law, Ed Pfalzgraf, contacted Yoss Law Office by phone asking if "something could be worked out" and wanting to "work out terms" for Ms. Rush; Mr. Pfalzgraf agreed to accept the \$10,000 offer from the Darrahs for Ms. Rush's mineral interest; Attorney Yoss prepared the Agreement and informed Ms. Rush by letter dated December 31, 2013 that the Darrahs would pay \$10,000; Attorney Yoss informed Ms. Rush by letter dated January 6, 2014 that he had the \$10,000 settlement amount and that the paperwork was almost finalized; all of Attorney Yoss's other contacts were with Mr. Pfalzgraf; the Quit Claim Deed was then prepared and subsequently signed by Ms. Rush together with the Agreement on January 31, 2014; the Darrahs filed their complaint on May 27, 2014; the Quit Claim Deed itself was not recorded prior to the filing of the complaint due to concerns of having recorded a "title transaction" within the prior 20 year period; and on or about

May 10, 2014, Attorney Yoss sent a letter to Ms. Rush telling her she did not need to file an answer to the complaint since she had already conveyed her interest in the property by virtue of the Quit Claim Deed to the Darrahs (Plaintiffs' Exhibit D, p. 1-2); (5) Plaintiffs' Exhibit D1, an August 6, 2013 affidavit of the Darrahs averring that the oil and gas interest has been abandoned and is now vested in them, the present surface owners of the real estate; (6) Plaintiffs' Exhibit D2, the December 4, 2013 "Notice of Abandonment" letter from the Darrahs' counsel, Attorney Richard Yoss, to Ms. Rush; (7) Plaintiffs' Exhibit D3, the January 31, 2014 "Agreement" between the Darrahs and Ms. Rush in which Ms. Rush agreed to convey or quit claim any and all oil and gas mineral interest under said property to the Darrahs; (8) Plaintiffs' Exhibit D4, the Quit Claim Deed from Ms. Rush to the Darrahs dated January 31, 2014; (9) Plaintiffs' Exhibit E, a phone memo message from Ed Pfalzgraf to Attorney Yoss regarding Ms. Rush, dated December 6, 2013 at 10:44 a.m., inquiring if he could "work out terms/deal?/work something out?" (Plaintiffs' Exhibit E); (10) Plaintiffs' Exhibit F, a phone memo message from Mr. Pfalzgraf to Yoss Law Office, dated December 20, 2013 at 1:20 p.m., regarding \$10,000 and that "Wanda Rush has decided to accept the offer." (Plaintiffs' Exhibit F); (11) Plaintiffs' Exhibit G, a December 30, 2013 letter from Attorney Richard Yoss to the Darrahs concerning the \$10,000 offer and stating "[a]ll of my contacts have been with Ed Pfalzgraf[.]" (Plaintiffs' Exhibit G); (12) Plaintiffs' Exhibit H, a December 31, 2013 letter from Attorney Richard Yoss to Ms. Rush stating that he was contacting her "to follow up on [his] conversation with Ed concerning the above matter[.]" and "also to confirm the fact that [his] clients will pay [her] the sum of \$10,000.00 to resolve this matter[.]" (Plaintiffs' Exhibit H); (13) Plaintiffs' Exhibit I, a January 6, 2014 letter from Attorney Richard Yoss to Ms. Rush advising her that "the \$10,000.00 settlement amount [is] in [his] trust account, and [they] will have the paperwork done in a few days." (Plaintiffs' Exhibit I); and (14) Plaintiffs' Exhibit J, the June 4, 2018 Agreed Entry between the Darrahs and Baumberger and the Schneggs.

{¶16} On July 26, 2019, Ms. Rush filed a reply in support of her Civ.R. 60(B) motion in which she attached one exhibit: (1) Defendant's Exhibit A, an April 9, 2013 letter from Attorney Jason Yoss to Ms. Rush which enclosed the recorded Cancellation of Lease along with a statement of services.

{¶17} On August 2, 2019, the Darrahs filed a response to Ms. Rush’s reply. In support, they attached eight exhibits: (1) Plaintiffs’ Exhibit A, a phone memo message from Ed Pfalzgraf to Attorney Jason Yoss, dated February 12, 2013 at 10:37 a.m., in which Mr. Pfalzgraf indicated his intention to purchase his mother-in-law’s property, subject to a lease with Condevco that was set to expire on February 18, 2013, and requested that Attorney Yoss look into the matter; (2) Plaintiffs’ Exhibit B, a phone memo message from Mr. Pfalzgraf to Yoss Law Office, dated February 20, 2013 at 3:00 p.m., to follow up regarding the Condevco lease; (3) Plaintiffs’ Exhibit C, a February 26, 2013 letter from Attorney Jason Yoss to Carl Heinrich, President of Condevco, about releasing the expired oil and gas lease “between Wanda Rush and Condevco.” (Plaintiffs’ Exhibit C); (4) Plaintiffs’ Exhibit D, a phone memo message from Mr. Pfalzgraf to Yoss Law Office, dated March 6, 2013 at 11:25 a.m., inquiring whether he would be receiving a letter confirming that the Condevco lease was void; (5) Plaintiffs’ Exhibit E, an undated phone memo message from Sheryl Pfalzgraf to Yoss Law Office requesting “to set up [a] day Ms. Rush can stop by [and] sign” the cancellation of the Condevco lease. (Plaintiffs’ Exhibit E); (6) Plaintiffs’ Exhibit F, Cancellation of Lease, executed on April 5, 2013, and signed by Ms. Rush and Mr. Heinrich on behalf of Condevco; (7) Plaintiffs’ Exhibit G, a handwritten Yoss Law Office Client/Case Service Record with respect to the work performed regarding the cancellation of the Condevco lease, noting that the only contacts made were with Ed Pfalzgraf, not with Ms. Rush, and revealing a March 26, 2013 notation to “Bill Ed” with Wanda Rush’s name placed below as an apparent reference to what the case was about. (Plaintiffs’ Exhibit G); and (8) Plaintiffs’ Exhibit H, the Condevco lease signed by Ms. Rush on February 18, 2008.

{¶18} On August 22, 2019, the trial court denied Ms. Rush’s Civ.R. 60(B) motion for relief from judgment without a hearing. Ms. Rush filed this appeal and raises two assignments of error.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING APPELLANT’S MOTION FOR RELIEF FROM JUDGMENT UNDER CIVIL RULE 60(B).

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING APPELLANT’S MOTION FOR RELIEF FROM JUDGMENT UNDER CIVIL RULE 60(B) WITHOUT HOLDING A HEARING.

{¶19} Ms. Rush argues in her first assignment of error that the trial court abused its discretion in denying her Civ.R. 60(B) motion for relief from judgment. Ms. Rush contends in her second assignment of error that the trial court abused its discretion in denying her Civ.R. 60(B) motion for relief from judgment without a hearing. Because Ms. Rush’s assignments are interrelated, and for ease of discussion, we will address them together.

In order to prevail on a Civ.R. 60(B) motion, “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.” *Ohio Receivables, LLC v. Millikin*, 7th Dist. Columbiana No. 17 CO 0038, 2018-Ohio-3734, ¶ 19, quoting *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus. Courts are not required to hold a hearing on a Civ.R. 60(B) motion unless the motion and accompanying materials contain operative facts to support relief under Civ.R. 60(B). *Id.* at ¶ 19, citing *Summers v. Lancia Nursing Homes, Inc.*, 2016-Ohio-7935, 76 N.E.3d 653, ¶ 40 (7th Dist.).

The standard of review used to evaluate the trial court’s decision to grant or deny a Civ.R. 60(B) motion is abuse of discretion. *Ohio Dept. of Job & Family Servs. v. State Line Plumbing & Heating, Inc.*, 7th Dist. Mahoning No. 15 MA 0067, 2016-Ohio-3421, ¶ 12. An abuse of discretion connotes conduct which is unreasonable, arbitrary, or unconscionable. *State ex rel.*

Edwards v. Toledo City School Dist. Bd. Of Edn., 72 Ohio St.3d 106, 107, 647 N.E.2d 799 (1995).

Paczewski v. Antero Resources Corp., 7th Dist. Monroe No. 18 MO 0016, 2019-Ohio-2641, ¶ 26-27.

{¶20} In this case, the parties do not dispute the timeliness of Ms. Rush’s Civ.R. 60(B) motion for relief from judgment (*GTE* third prong). (1/23/2020 Appellees’ Brief, p. 18) (“Appellant has only arguably established that her 60(B) Motion was timely.”) Rather, the two main issues here are whether Ms. Rush has demonstrated a meritorious defense or claim (*GTE* first prong) and whether Ms. Rush is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5) (*GTE* second prong).

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (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; or (5) any other reason justifying relief from the judgment.

Civ.R. 60(B).

{¶21} The essence of Ms. Rush’s argument on appeal is that Attorney Richard Yoss gave her legal advice that was contrary to her best interests and that Ms. Rush is under the impression that Attorney Yoss was, and still is, her attorney.

{¶22} Regarding the *GTE* first prong, Ms. Rush claims she has demonstrated “a meritorious defense or claim” that would justify granting her Civ.R. 60(B) motion. Specifically, Ms. Rush alleges that had she been properly advised and answered the Darrahs’ complaint, she would have prevailed on the merits in the first appeal, Case No.

15 MO 0002, and would have received substantially more money like her co-defendants. Ms. Rush summarizes her argument by stating, “Put simply, [the Darrahs]’ act of suing [her] invalidated any ‘settlement’ that [she] purportedly entered into.” (12/11/2019 Appellant’s Brief, p. 9).

{¶23} Contrary to Ms. Rush’s allegations, the record shows no attorney/client relationship between her and Yoss Law Office with respect to this case. The 2013 real estate matter referred to by Ms. Rush was a transaction initiated by the Pfalzgrafs, and Yoss Law Office prepared the necessary paperwork at *their* request. The 2013 Condevco oil and gas lease cancellation was again a transaction initiated by the Pfalzgrafs, not by Ms. Rush. (Plaintiffs’ Exhibits A, B, C, D, and E). Ms. Rush signed the Cancellation of Lease on April 5, 2013. (Plaintiffs’ Exhibit F). It was merely a clerical error that Ms. Rush received a bill for services from Yoss Law Office as all of the contacts were at the direction of the Pfalzgrafs and Ms. Rush’s name was apparently included as a reference as to what the matter was about. (Plaintiffs’ Exhibit G).

{¶24} Ms. Rush was served by certified mail with the Notice of Abandonment on December 5, 2013 and service by publication was also made on December 19, 2013. The Notice of Abandonment clearly reads at the signature line, “Richard A. Yoss Attorney for Landowners Glenn R. Darrah and Katie Darrah and Roger E. Darrah and Susan Darrah.” (Plaintiffs’ Exhibit 2).

{¶25} Ed Pfalzgraf initiated the discussion of the \$10,000 settlement terms and acted as the primary contact with Yoss Law Office in procuring the Agreement. The Pfalzgrafs participated in finalizing the terms of the Agreement. On December 31, 2013, Attorney Richard Yoss sent a letter to Ms. Rush informing her that he was contacting her to “follow up on [his] conversation with Ed concerning the above matter” and that “[his] clients [would] pay [her] the sum of \$10,000 to resolve this matter.” (Plaintiffs’ Exhibit H).

{¶26} The Agreement was made between Ms. Rush and the Darrahs. The Agreement specifies that “the parties have reached an accommodation to resolve any possible litigation” and agree to a “full and complete settlement of this matter.” (Plaintiffs’ Exhibit D3). Ms. Rush further agreed to “quit claim any and all oil and gas and mineral interest under said property to the Darrahs.” (*Id.*) Ms. Rush and the Darrahs all signed the Agreement.

{¶27} Ms. Rush accepted the \$10,000 from the Darrahs and signed the Quit Claim Deed on January 31, 2014 conveying any and all oil and gas and mineral interest under the property to the Darrahs. (Plaintiffs’ Exhibit 4). By preparing the Quit Claim Deed, Attorney Richard Yoss simply followed the terms of the Agreement between the Darrahs and Ms. Rush.

{¶28} By the time the Darrahs filed their complaint on May 27, 2014, Ms. Rush simply no longer had any mineral interest to protect. Ms. Rush was apparently included as a named Defendant as a mere formality. As stated, the deed was not recorded on January 31, 2014 because further negotiations were occurring involving the other Defendants with potential interests. Thus, when Attorney Yoss sent a letter to Ms. Rush instructing her that she would not have to do anything as a result of the filing of the complaint, he was simply stating the obvious, i.e., that because Ms. Rush had quit claimed her interest to the mineral rights back on January 31, 2014 and accepted \$10,000 from the Darrahs, she did not have to do anything because she no longer owned any mineral rights in the property. By no means did the filing of the complaint breach the terms of the Agreement based on the facts in this case.

{¶29} Based on the facts presented, Ms. Rush has not demonstrated a meritorious defense or claim that would justify granting her motion.

{¶30} Regarding the *GTE* second prong, Ms. Rush argues she is entitled to relief under Civ.R. 60(B)(3) (“fraud,” “misrepresentation,” “or other misconduct”) and (5) (“any other reason justifying relief”).

{¶31} First, Ms. Rush contends she is entitled to relief under Civ.R. 60(B)(3) because the Darrahs’ actions via their counsel, Attorney Richard Yoss, amounted to fraud, misrepresentation, and other misconduct. Ms. Rush alleges that Attorney Yoss had represented her and she believed him to be her lawyer at all pertinent times. Ms. Rush claims Attorney Yoss misadvised her that she had no claim to the mineral rights and misinformed her that she did not have to answer the Darrahs’ complaint in which she was named as a Defendant.

{¶32} As addressed, the evidence reveals that Ms. Rush’s claims are unfounded. Back in 2003, Attorney Richard Yoss handled the estate of Ms. Rush’s step-father, Floyd Stine. Ms. Rush was the administrator of the estate. The property probated in that matter

was located in Switzerland Township and has no relation to the property at issue in this case. Mr. Stine's estate was closed some 15 years ago.

{¶33} With respect to this matter, as stated, there is no attorney/client relationship between Yoss Law Office and Ms. Rush. The 2013 real estate matter was a transaction initiated by the Pfalzgrafs, and Yoss Law Office prepared the necessary paperwork at *their* request. The deed memorializing the transfer of property from Ms. Rush to the Pfalzgrafs was recorded on June 27, 2013. (Plaintiffs' Exhibit A). The deed was prepared at the request and direction of the Pfalzgrafs, as evidenced by two letters, one dated June 24, 2013 (Plaintiffs' Exhibit B) and the other dated July 1, 2013 (Plaintiffs' Exhibit C). In addition, as addressed, the 2013 Condevco oil and gas lease cancellation was also a transaction initiated by the Pfalzgrafs, not by Ms. Rush. (Plaintiffs' Exhibits A, B, C, D, E, and F).

{¶34} Ms. Rush herself has not made any accusations of misconduct against Yoss Law Office. Rather, the main support for Ms. Rush's position that she was somehow misled, misrepresented, misadvised, and defrauded of her interest is the affidavit of her daughter, Sheryl Pfalzgraf. (Defendant's Exhibit A). Based on the facts presented, such allegations which consist almost entirely of hearsay statements contained in Ms. Pfalzgraf's self-serving affidavit is insufficient to warrant relief. See *Brownfield v. Jeffers*, 7th Dist. Monroe No. 19 MO 0003, 2019-Ohio-5045, ¶ 34, citing *Roberts v. Turner*, 7th Dist. Mahoning No. 98 C.A. 85, 2000 WL 341127, * 4 (Mar. 30, 2000); *In re A.I.*, 8th Dist. Cuyahoga No. 83167, 2004-Ohio-239, ¶ 18; *Miller v. Miller*, 9th Dist. Summit No. 21770, 2004-Ohio-1989, ¶ 15. Besides her own self-serving statements, Ms. Pfalzgraf offers nothing to substantiate her assertions that Ms. Rush has been diagnosed with dementia and that she is her power of attorney. Ms. Pfalzgraf's affidavit is silent as to whether Ms. Rush is subject to a guardianship or that she has ever been judicially or medically declared incompetent. Ms. Pfalzgraf's sworn statement as to what Ms. Rush believes, while also alleging she has dementia, is troubling. This court, like the trial court, cannot simply take Ms. Pfalzgraf's word for it.

{¶35} Upon a thorough review of the record, the trial court did not abuse its discretion in concluding that Ms. Rush was not entitled to relief under Civ.R. 60(B)(3)

without a hearing as her motion and accompanying materials do not contain operative facts to support relief. See *Paczewski, supra*, at ¶ 26.

{¶36} Second, Ms. Rush alleges she is entitled to relief under the “any other reason justifying relief” provision in Civ.R. 60(B)(5). This “catch-all” provision, however, only applies when a more specific provision does not. *Tabor v. Tabor*, 7th Dist. Mahoning No. 02-CA-73, 2003-Ohio-1432, ¶ 30. The grounds for invoking Civ.R. 60(B)(5) should be substantial. *Id.*

{¶37} For the same reasons above, involving the specific provision in Civ.R. 60(B)(3), the trial court did not abuse its discretion in concluding that Ms. Rush was not entitled to relief under Civ.R. 60(B)(5) without a hearing as her motion and accompanying materials do not contain operative facts to support relief. See *Paczewski, supra*, at ¶ 26.

{¶38} Ms. Rush’s first and second assignments of error are without merit.

CONCLUSION

{¶39} For the foregoing reasons, Ms. Rush’s assignments of error are not well-taken. The judgment of the Monroe County Court of Common Pleas denying Ms. Rush’s Civ.R. 60(B) motion for relief from judgment without a hearing is affirmed.

Donofrio, J., concurs.

Waite, P.J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Monroe County, Ohio, is affirmed. Costs to be taxed against the Appellants.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.