

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Monica Griggs, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 16AP-229
 : (C.P.C. No. 15CV-5654)
 Sacarlos Thompson, :
 : (REGULAR CALENDAR)
 Defendant-Appellant. :

D E C I S I O N

Rendered on September 30, 2016

On brief: *The Gerth Law Office, and Philip W. Gerth*, for appellee. **Argued:** *Philip W. Gerth*.

On brief: *Derek A. Farmer*, for appellant. **Argued:** *Derek A. Farmer*.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Sacarlos Thompson is appealing from the ruling of the Franklin County Court of Common Pleas which denied him relief from a judgment entered against him. For the following reasons, we affirm the trial court's decision. Thompson assigns a single error for our consideration:

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR RELIEF FROM JUDGMENT, OR IN THE ALTERNATIVE, TO PERMIT THE DEEMED ADMITTED ADMISSIONS BE WITHDRAWN AND HIS ATTACHED RESPONSE BE TO THE REQUEST FOR ADMISSIONS BE ADMITTED.

{¶ 2} Monica Griggs and Sacarlos Thompson used to live together. Eventually the relationship deteriorated and Griggs sued Thompson, alleging that she had made a series of loans to him but Thompson had not repaid the loans.

{¶ 3} Thompson initially hired a lawyer to represent him but part way through the litigation the lawyer was permitted to withdraw as counsel on September 15, 2015. Counsel for Griggs remained in the case and began to pursue discovery.

{¶ 4} Counsel for Griggs served requests for admissions on the then pro se Thompson. The requests for admissions were not timely answered or responded to, so counsel for Griggs filed a motion for summary judgment on November 11, 2015. On December 22, 2015, Griggs' motion for summary judgment was granted by the trial court which found that Thompson had failed to respond to a properly served request for admissions and, as such, he had admitted all facts necessary to support Griggs' claims.

{¶ 5} Thompson once again hired counsel to represent him. The attorney filed a Civ.R. 60(B) motion asking that the judgment be set aside in January 2016. The trial court judge overruled the motion on March 3, 2016. On March 25, 2016, this appeal was then commenced.

{¶ 6} Counsel for Griggs has alleged that the appeal should be dismissed as not having been timely filed. Counsel for Griggs is incorrect as to the ruling on the Civ.R. 60(B) motion. The trial court judge overruled the Civ.R. 60(B) motion on March 3, 2016. Thompson filed a notice of appeal on March 25, 2016. The appeal was filed within the 30 days allowed for filing of appeals as to the Civ.R. 60(B) ruling. The appeal was not filed within the time allowed for a direct appeal of the underlying judgment. App.R. 4(A)(1). To the extent that the assignment of error attempts to raise issues leading to the initial granting of judgment, counsel for Griggs is correct and we have no jurisdiction to adjudicate those issues.

{¶ 7} Turning to the words of the assignment of error, the suggestion that the trial court abused its discretion in not permitting the admissions to be withdrawn is not something this appellate court can address except in the context of the merits of the Civ.R. 60(B) ruling.

{¶ 8} Civ.R. 60(B) states as follows:

(B) Mistakes; Inadvertence; Excusable neglect; Newly discovered evidence; Fraud; etc. 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. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation.

{¶ 9} In order to prevail on a motion brought pursuant to 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.' " *Caron v. Manfreda*, 10th Dist. No. 98AP-1399 (Sept. 23, 1999), quoting *Argo Plastic Products Co. v. Cleveland*, 15 Ohio St.3d 389, 391 (1984), quoting *GTE Automatic Elec. v. ARC Industries*, 47 Ohio St.2d 146 (1976), paragraph two of the syllabus.

{¶ 10} A motion for relief from judgment is addressed to the sound discretion of the trial court, and a ruling will not be disturbed absent an abuse of discretion. *Griffey v. Rajan*, 33 Ohio St.3d 75, 77 (1987). "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 11} Turning to the merits of the Civ.R. 60(B) motion, the trial court had a valid reason for denying the motion. Counsel for Thompson has never put forth evidence of a meritorious defense as required by *GTE Automatic Elec.* Counsel for Thompson has argued that the trial court handled the discovery issues badly, but has never put forth any proof that Thompson does not owe Griggs the money as alleged in the complaint.

{¶ 12} Counsel points out that the denial of a debt was included in the original answer filed on behalf of Thompson. However, the denial in the answer was not sufficient to constitute placing this factual issue before the trial court judge at the time of the ruling on the summary judgment motion. *See* Civ.R. 56(E) which reads:

Form of affidavits; further testimony; defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to or served with the affidavit. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

{¶ 13} In ruling on the Civ.R. 60(B) motion, the trial court noted that Griggs filed an affidavit in conjunction with her motion for summary judgment. The affidavit fully supported the facts in the complaint and was a sufficient basis for granting summary judgment, regardless of the issues argued by counsel for Thompson with respect to the request for admissions.

{¶ 14} We cannot say that the trial court judge abused his discretion in overruling the Civ.R. 60(B) motion. We therefore overrule the sole assignment of error and affirm the judgment of the trial court.

Judgment affirmed.

DORRIAN, P.J., and BRUNNER, J., concur.
