

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Jeanne C. Packard,	:	
	:	
Plaintiff-Appellee,	:	No. 16AP-416
	:	(C.P.C. No. 15DR-116)
v.	:	
	:	(REGULAR CALENDAR)
Jay S. Packard,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 30, 2016

On brief: *Connie Hall*, for appellee.

On brief: *Elizabeth V. Westfall*, for appellant.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations

LUPER SCHUSTER, J.

{¶ 1} Defendant-appellant, Jay S. Packard, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, denying his motion for relief from judgment pursuant to Civ.R. 60(B). For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} In early 2015 plaintiff-appellee, Jeanne C. Packard, filed a complaint for divorce, and Jay filed a counterclaim for divorce. Both parties submitted an affidavit of income and expenses. Jeanne averred that she received \$5,628 annually from Social Security as a retirement benefit. Jay averred that Jeanne received \$7,000 annually in Supplemental Security Income. Both parties identified Jay's annual income as \$60,000, which he receives from the Ohio Police and Fire Pension Fund.

{¶ 3} In November 2015 and in lieu of a trial, the parties agreed to a full settlement of all matters, including property division, as memorialized in a "Divorce Settlement Memorandum." In regard to Jay's pension, the Divorce Settlement Memorandum states: "Wife shall be awarded 50% of marital portion of Husband's DROP, Police and Fire Pension and Deferred Comp. Husband affirms that he elected joint survivorship annuity." (Divorce Settlement Memo. at 4.) The parties jointly requested the court to include their settlement terms in the court's final order.

{¶ 4} The trial court incorporated the agreed on pension division into its Agreed Judgment Entry – Decree of Divorce, filed January 20, 2016. Soon after, however, Jay filed a motion for relief from judgment pursuant to Civ.R. 60(B). In support of his motion, Jay stated that Jeanne receives \$600 of Social Security disability income per month, that this income was not discussed as part of the parties' settlement negotiations, and that the trial court did not consider this relevant information when it approved the division of property in the divorce decree. Jay asserted that the pension benefits Jeanne is entitled to receive as part of the property division should be reduced due to her receipt of Social Security benefits. Jay requested relief under Civ.R. 60(B) in order to correct this "oversight." (Feb. 2, 2016 Mot. for Relief from Jgmt. at 2.)

{¶ 5} In May 2016 the trial court denied Jay's motion for relief from judgment pursuant to Civ.R. 60(B). In denying Jay's motion, the trial court noted that the parties agreed to the pension division, that no experts were retained to determine the proper manner to reduce Jeanne's portion of the pension due to Social Security benefits, and that other factors not discussed may have an impact on the division of the pension, such as Jeanne's apparent inability to work and any income tax considerations regarding any offset. The trial court concluded that because Jay failed to present operative facts demonstrating a meritorious defense or claim, he cannot satisfy the test for relief under Civ.R. 60(B). Accordingly, the trial court denied the motion without a hearing.

{¶ 6} Jay timely appeals.

II. Assignment of Error

{¶ 7} Jay assigns the following error for our review:

The trial court erred in denying appellant's motion for relief from judgment pursuant to Civil Rule 60(B).

III. Discussion

{¶ 8} In his sole assignment of error, Jay alleges the trial court erred in denying his motion for relief from judgment pursuant to Civ.R. 60(B). Jay argues that, at a minimum, he was entitled to a hearing on his motion. We disagree and find that his assignment of error lacks merit.

{¶ 9} To prevail on a Civ.R. 60(B) motion for relief from judgment, the movant must satisfy a three-prong test. The movant must demonstrate (1) he has a meritorious defense or claim to present if relief is granted; (2) he 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, when relying on a ground for relief set forth in Civ.R. 60(B)(1), (2), or (3), he filed the motion not more than one year after the judgment, order, or proceeding was entered or taken. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146 (1976), paragraph two of the syllabus. There will be no relief if the movant fails to satisfy any one of the prongs of the *GTE* test. *Strack v. Pelton*, 70 Ohio St.3d 172, 174 (1994).

{¶ 10} An appellate court reviews a trial court's denial of a Civ.R. 60(B) motion for an abuse of discretion. *Harris v. Anderson*, 109 Ohio St.3d 101, 2006-Ohio-1934, ¶ 7; *Oberkonz v. Gosha*, 10th Dist. No. 02AP-237, 2002-Ohio-5572, ¶ 12. An abuse of discretion is more than merely an error of judgment; it connotes a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 11} In view of these standards, "if the Civ.R. 60(B) motion contains allegations of operative facts that would warrant relief from judgment, the trial court should grant a hearing to take evidence to verify those facts before it rules on the motion." *Mattingly v. Deveaux*, 10th Dist. No. 03AP-793, 2004-Ohio-2506, ¶ 7. Conversely, "[i]f the material submitted by the movant in support of a motion for relief from judgment under Civil Rule 60(B) contains no operative facts or meager and limited facts and conclusions of law, it will not be an abuse of discretion for the trial court to overrule the motion and refuse to grant a hearing." *Adomeit v. Baltimore*, 39 Ohio App.2d 97 (8th Dist.1974), paragraph four of the syllabus.

{¶ 12} Jay's assertion that he is entitled to relief from judgment derives from the absence of language in the divorce decree addressing Jeanne's Social Security benefits. "Social security benefits themselves are not subject to division in a divorce proceeding," but a trial court has discretion in determining whether Social Security benefits are relevant for the purpose of dividing a public pension. *Neville v. Neville*, 99 Ohio St.3d 275, 2003-Ohio-3624, ¶ 8; R.C. 3105.171(B). Pursuant to R.C. 3105.171(F)(9), when dividing marital property, the trial court shall consider "any retirement benefits of the spouses, excluding the social security benefits of a spouse except as may be relevant for purposes of dividing a public pension."

{¶ 13} Here, the parties entered a settlement agreement dividing the marital property on their own. When divorcing parties enter into a settlement agreement in the presence of the court, such an agreement constitutes a binding contract. *Frost v. Frost*, 10th Dist. No. 14AP-1044, 2015-Ohio-3596, ¶ 11. "Neither a change of heart nor poor legal advice is a ground to set aside a settlement agreement. A party may not unilaterally repudiate a binding settlement agreement." *Walther v. Walther*, 102 Ohio App.3d 378, 383 (1st Dist.1995). Consequently, "[i]n the absence of fraud, duress, overreaching, undue influence or a factual dispute over the existence or terms of the settlement agreement, the trial court is not required to inquire further." *Richmond v. Evans*, 8th Dist. No. 101269, 2015-Ohio-870, ¶ 21. Jay does not claim fraud, duress, overreaching, undue influence, or a factual dispute over the existence or terms of the settlement agreement. Thus, the settlement agreement is binding on Jay despite his dissatisfaction with its terms.

{¶ 14} Furthermore, as reflected in their affidavits of income and expenses, both parties knew at the outset of the case that Jeanne was receiving Social Security benefits. Thus, this is not a case involving a party discovering previously unknown marital assets of the other spouse after judgment is entered. See *Trenner v. Trenner*, 10th Dist. No. 01AP-743 (Jan. 31, 2002) (failure to disclose marital asset may be grounds for setting aside property settlement). Even though the parties knew Jeanne was receiving Social Security benefits, the settlement agreement does not include any language reducing the portion Jeanne will receive of Jay's pension based on her Social Security benefits. We find that Jay's attempt to obtain a modification of the agreed on terms of the marital property

division, by asserting that he inadvertently did not raise the issue of a potential Social Security benefits offset during property division negotiations, is not a proper basis for relief from judgment under Civ.R. 60(B).

{¶ 15} For these reasons, we conclude that the trial court did not abuse its discretion in denying Jay's motion for relief from judgment without a hearing. Accordingly, we overrule Jay's sole assignment of error.

IV. Disposition

{¶ 16} Having overruled Jay Packard's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

Judgment affirmed.

DORRIAN, P.J., and TYACK, J., concur.
