[Cite as *Kolick v. Kondzer*, 2010-Ohio-2354.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93679

KOLICK & KONDZER

PLAINTIFF-APPELLEE

vs.

MAIJA A. BAUMANIS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-671220

BEFORE: Kilbane, P.J., Stewart, J., and Dyke, J.

RELEASED: May 27, 2010

JOURNALIZED:

APPELLANT

Maija A. Baumanis, pro se
2338 Chestnut Drive
Westlake, Ohio 44145

ATTORNEY FOR APPELLEE

Michael T. Schroth
24500 Center Ridge Road
Suite 175
Westlake, Ohio 44145

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R.

2.2(A)(1).

MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellant, Maija Baumanis ("Baumanis"), appeals from the trial court's judgment denying her motion for relief from judgment pursuant to Civ.R. 60(B). After a review of the record and pertinent law, we affirm.

{¶ 2} The following facts give rise to this appeal.

{¶ 3} On September 1, 2004, Baumanis was hired as a registered nurse at Oakridge Home, located at 26520 Center Ridge Road in Westlake, Ohio. At the end of each shift, each nurse at Oakridge Home was responsible for verifying that all medications were accounted for. On September 3, 2005, Baumanis began work at 6:30 p.m., and she was scheduled to work until 7:00 a.m. the next morning.

{¶ 4} Shortly before Baumanis was scheduled to finish her shift on the morning of September 4, 2005, she felt ill and left work early without conducting an inventory of the medications. Baumanis believed a supervisor would inventory the medications after she left. Later that day, it was determined that medications were missing, and Baumanis was found to be at fault because she failed to inventory the medications prior to the end of her shift. On September 12, 2005, Baumanis was terminated.

{¶ 5} On November 7, 2005, Baumanis retained the law firm of Kolick & Kondzer to represent her in proceedings pending before the Ohio Unemployment Compensation Review Commission and subsequent appeals. Ultimately, Baumanis received a favorable ruling regarding her unemployment benefits. Baumanis also retained Kolick & Kondzer to represent her in another matter in which Baumanis alleged that her name had been forged on numerous documents at Oakridge Home. After charging what appears to be excessive legal fees, Kolick & Kondzer advised Baumanis to not pursue the claim and informed her that if she wished to proceed she should secure new counsel.

{¶ 6} During the course of the representation on both of these matters, Kolick & Kondzer sent Baumanis numerous invoices totaling $31,203.50. Baumanis made payments to the firm totaling $17,401.25, and only received an unemployment benefits award in the amount of $8,606.

{¶ 7} On May 28, 2008, Kolick & Kondzer filed a three-count complaint against Baumanis in Rocky River Municipal Court for breach of contract, unjust enrichment, and action upon an account. Kolick & Kondzer were seeking an additional $9,488.25 in unpaid legal fees. On July 7, 2008, Baumanis filed an answer asserting that Kolick & Kondzer had failed to provide her with satisfactory legal services, and filed a counterclaim against Kolick & Kondzer seeking the return of $17,000 that she paid in legal fees.

On August 4, 2008, Kolick & Kondzer filed an answer to Baumanis's counterclaim denying all allegations.

{¶ 8} On September 22, 2008, the matter was transferred to the Cuyahoga Court of Common Pleas because Baumanis's counterclaim exceeded the jurisdictional limit.

{¶ 9} On December 11, 2008, Kolick & Kondzer filed a motion for summary judgment as to their complaint and Baumanis's counterclaim.[1] On January 29, 2009, after receiving an extension of time, Baumanis filed a brief in opposition to the motion for summary judgment. On February 9, 2009, Kolick & Kondzer filed a reply brief.

{¶ 10} On April 17, 2009, Baumanis filed a second brief in opposition to Kolick & Kondzer's motion for summary judgment and filed a motion to dismiss Kolick & Kondzer's complaint.

{¶ 11} On April 27, 2009, Kolick & Kondzer filed a motion to strike Baumanis's motions. On the same date, Baumanis filed a motion requesting that the trial court rule on her outstanding motion to dismiss, and grant her motion based upon alleged admissions Kolick & Kondzer made at a settlement conference.

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[1]The motion for summary judgment explained the calculation for the amount Baumanis still owed and determined that the amount due was $9,462.07, not $9,488.25 as originally sought in the complaint.

{¶ 12} On May 15, 2009, the trial court issued two journal entries. The first entry granted Kolick & Kondzer's motion for summary judgment with respect to both the complaint and Baumanis's counterclaims. The trial court specifically found that Kolick & Kondzer met their initial burden and, although Baumanis attempted to introduce evidence to contradict the claims made by Kolick & Kondzer, Baumanis failed to comply with the Rules of Civil Procedure and, therefore, her evidence could not be considered. The second entry rendered all other pending motions moot.

{¶ 13} On June 12, 2009, Baumanis filed a motion for relief from judgment. She argued that she was unaware of the requirements for producing evidence in accordance with the Rules of Civil Procedure and should be afforded a second opportunity to submit evidence. On June 26, 2009, Kolick & Kondzer filed a brief in opposition arguing that Baumanis never rebutted the allegations in the complaint and should not be afforded relief from judgment.

{¶ 14} On July 21, 2009, the trial court issued an entry, without opinion, denying Baumanis's motion for relief from judgment.

{¶ 15} Baumanis appealed asserting one assignment of error for our review.[2]

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[2]Baumanis initially appealed the trial court's grant of summary judgment in favor of Kolick & Kondzer; however, that assignment of error was stricken as it was

{¶ 16} ASSIGNMENT OF ERROR NUMBER ONE

"THE TRIAL COURT ERRED IN DENYING THE DEFENDANTS-APPELLANT'S [SIC] RULE 60 AND 61 MOTION FOR RELIEF FROM JUDGMENTS ON JULY 21, 2009."

{¶ 17} Baumanis argues that the trial court erred when it denied her motion for relief from judgment because she was unaware of the applicable civil rules when responding to discovery and motions during the course of the action. Kolick & Kondzer argue that Baumanis was properly denied relief because she did not meet the standard outlined in Civ.R. 60.

{¶ 18} Trial courts are afforded broad discretion when determining whether a party should be afforded relief from judgment pursuant to Civ.R. 60(B). *Grange Mut. Cas. Co. v. Palladino*, 8th Dist. No. 93584, 2009-Ohio-6472, at ¶6, citing *Griffey v. Rajan* (1987), 33 Ohio St.3d 75, 514 N.E.2d 1122. A trial court's ruling on a motion for relief from judgment will not be reversed absent a showing that the trial court abused its discretion. An 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* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

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untimely filed.

{¶ 19} In order for a party to prevail on a motion for relief from judgment it must be demonstrated that "(1) the party has a meritorious defense or claim to present if the relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1)-(5), and (3) the motion is made within a reasonable time." *Mitchell v. W. Res. Area Agency on Aging*, 8th Dist. No. 91546, 2009-Ohio-6632, at ¶22, quoting *GTE Automatic Elec. Inc. v. ARC Industries Inc.* (1976), 47 Ohio St.2d 146, 150, 351 N.E.2d 113. The party is only entitled to relief if she can meet all three elements. *Mitchell* at ¶22, citing *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 20, 520 N.E.2d 564.

{¶ 20} We will first analyze the second prong of the test because we find it dispositive. The second prong requires Baumanis to demonstrate that she is entitled to relief pursuant to one of the grounds enumerated in Civ.R. 60(B). Pursuant to Civ.R. 60(B) a party may seek relief from judgment for:

> **"(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, * * * misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released, or discharged, * * * or; (5) any other reason justifying relief from judgment." Civ.R. 60(B).**

{¶ 21} Baumanis argues that she was unaware of the applicable civil rules when she failed to timely return requests for admissions and respond to the motion for summary judgment with evidence that conforms to the

requirements outlined in Civ.R. 56. However, lack of knowledge regarding the civil rules does not entitle Baumanis to relief pursuant to Civ.R. 60(B).

{¶ 22} Pro se litigants must adhere to the same rules and obligations imposed upon counsel. *Tisdale v. Javitch, Block & Rathbone*, 8th Dist. No. 83119, 2003-Ohio-3883, at ¶10. This court has recently held that pro se litigants "are not to be accorded greater rights and must accept the results of their own mistakes and errors." *Rhoades v. Greater Regional Transit Auth.*, 8th Dist. No. 92024, 2009-Ohio-2483, at ¶10, citing *Tisdale.* Parties are entitled to represent themselves but are subject to the same rules and procedures as litigants who are represented by counsel. *Seven Seventeen Credit Union, Inc. v. Dickey*, 11th Dist. No. 2006-T-0107, 2009-Ohio-2946, at ¶22, citing *Ragan v. Akron Police Dept.* (Jan. 19, 1994), 9th Dist. No. 16200. Therefore, Baumanis's argument that she was unaware of the rules for submitting evidence does not entitle her to relief.

{¶ 23} Although Baumanis argues that the trial court erred in granting Kolick & Kondzer's motion for summary judgment, that issue is not properly before this court. A motion for relief from judgment pursuant to Civ.R. 60(B) is not a substitute for a direct appeal. *Pursel v. Pursel*, 8th Dist. No. 91837, 2009-Ohio-4708, at ¶13, citing *Key v. Mitchell* (1998), 81 Ohio St.3d 89, 1998-Ohio-643, 689 N.E.2d 548. Baumanis did not file a direct appeal

regarding the trial court's summary judgment ruling, therefore, she cannot not raise the issue in the instant appeal.

{¶ 24} Further, a motion for relief from judgment, which essentially argues that the trial court should reconsider its prior judgment, does not advance a viable basis for relief pursuant to Civ.R. 60(B). *Karnofel v. Girard Police Dept.*, 11th Dist. No. 2009-T-0045, 2009-Ohio-4446, at ¶12.

{¶ 25} Consequently, as Baumanis failed to articulate any basis entitling her to relief pursuant to Civ.R. 60(B), the trial court did not abuse its discretion in denying her motion. Baumanis's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

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

MARY EILEEN KILBANE, PRESIDING JUDGE

MELODY J. STEWART, J., and
ANN DYKE, J., CONCUR