

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

RANDY SHEPHERD
Plaintiff-Appellant

-vs-

RICHLAND COUNTY CHILD
SUPPORT ENFORCEMENT AGENCY
Defendant-Appellee

JUDGES:
Hon. Julie A. Edwards, P.J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. 10CA38

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Richland County Court of
Common Pleas, Case No. 2008CV0294

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

September 28, 2010

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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Hoffman, J.

{¶1} Plaintiff-appellant Randy Shepherd appeals the February 23, 2010 Judgment Entry of the Common Pleas Court of Richland County, overruling his Civ.R. 60(B)(5) Motion for Declaratory Judgment Civ.R. 57.

{¶2} The instant appeal results from Appellant's refusal to accept this Court's decision in *Shepherd v. Richland County Child Support Enforcement Agency* (Feb. 10, 2009), Richland County App. No. 08 CA 83, 2009-Ohio-1671.¹ Appellant filed a Notice of Appeal from our prior decision to the Ohio Supreme Court. The Ohio Supreme Court declined jurisdiction on July 1, 2009. See, 122 Ohio St.3d 1455; 2009-Ohio-3131.

{¶3} Thereafter, Appellant filed the instant motion in the trial court attempting to collaterally attack this Court's prior decision, raising many of the same arguments he did in the prior appeal as well as a new argument challenging the authority of Appellee's counsel. As aptly stated in the trial court's February 23, 2010 Judgment Entry, "Most of the reasons Plaintiff provides in his Civ.R. 60(B)(5) motion for relief from judgment are merely tired rehashing of the assignments of error that he presented to the Fifth District Court of Appeals . . . [T]his court does not have discretion to decide those issues in a manner inconsistent with the ruling of the Fifth District Court of Appeals". February 23, 2010 Judgment Entry at p.3.

{¶4} We fully concur in the trial court's characterization of Appellant's motion as nothing more than a "tired rehashing". We note, not only did the trial court have no discretion to do anything inconsistent with our prior opinion, but also it had no jurisdiction to do so. "The judgment of a reviewing court is controlling upon the lower

¹ See this Court's prior opinion for a Statement of the Case.

court as to all matters within the compass of the judgment. See, *State ex rel. Special Prosecutors v. Judges* (1978) 55 Ohio St.2d 94, at 97.

{¶15} Furthermore, Appellant’s attempt to assert a new argument questioning the authority of Appellee’s counsel could have been raised in the original appeal and is clearly barred under the principle of res judicata.

{¶16} All of Appellant’s assignments of error are overruled.

{¶17} The judgment of the Richland County Court of Common Pleas is affirmed.

FRIVOLOUS APPEAL

{¶18} In its reply brief, Appellee has requested permission to submit a statement of “reasonable expenses . . . including attorney fees and costs” under App.R. 23. We find the instant appeal is frivolous and grant Appellee’s request. Appellee shall submit its statement of reasonable expenses incurred in this appeal within 20 days of the entry of our opinion, with appropriate service upon Appellant. Appellant will have 20 days from the date of the filing of Appellee’s statement of reasonable expenses to respond, with appropriate service upon Appellee.

By: Hoffman, J.

Edwards, P.J. and

Wise, J. concur

s/ William B. Hoffman

HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards

HON. JULIE A. EDWARDS

s/ John W. Wise

HON. JOHN W. WISE

