

COURT OF APPEALS  
GUERNSEY COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

CONNIE L. VASKO	:	JUDGES:
	:	
	:	Hon. Julie A. Edwards, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 10CA000005
WILLIAM R. VASKO	:	
	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Guernsey County Court of  
Common Pleas, Case No. 02DR526

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: November 9, 2010

APPEARANCES:

For Defendant-Appellant:

STACEY L. JAMES  
604 Main St.  
P.O. Box 159  
Zanesville, OH 43702-0159

For Plaintiff-Appellee:

DANIEL G. PADDEN  
139 W. 8<sup>th</sup> St.  
P.O. Box 640  
Cambridge, OH 43725-0640

*Delaney, J.*

{¶1} Defendant-Appellant, William R. Vasko, appeals the January 4, 2010 judgment entry of the Guernsey County Court of Common Pleas denying Appellant's Motion for Relief from Judgment Pursuant to Civ.R. 60(B). Plaintiff-Appellee is Connie L. Vasko.

### **STATEMENT OF THE FACTS AND CASE**

{¶2} Appellant and Appellee were married on December 27, 1969. On November 2, 2002, Appellee filed a complaint for divorce against Appellant in the Guernsey County Court of Common Pleas.

{¶3} A contested divorce trial was held before the trial court on October 20, 2003. Pursuant to a Decree of Divorce filed on December 31, 2003, the trial court ordered Appellant to pay spousal support to Appellee in the amount of \$500.00 per month for eight years. The trial court further awarded Appellee one-half of Appellant's pension due to financial misconduct of the Appellant.

{¶4} On January 14, 2004, the trial court received and time-stamped a letter from Appellant. Appellant's letter challenged the trial court's findings as to financial misconduct and the determination of spousal support. The trial court treated Appellant's letter as a Civ.R. 60(B) motion and held an evidentiary hearing on matter. The trial court issued a judgment entry on May 3, 2004, ordering that Appellee receive one-half of Appellant's net monthly pension. Specifically and relevant to this appeal, the trial court stated that, "the division of Defendant's postal service pension \* \* \* is to be one-half (1/2) of the net monthly payment (or \$1,900), as both parties should share equally

in the tax and insurance deductions.” The trial court did not modify spousal support or the finding of financial misconduct.

{¶5} Appellant, represented by counsel, appealed the May 3, 2004 judgment entry to this Court.

{¶6} On October 4, 2004, the Amended Qualified Domestic Relations Order was filed for Appellant’s postal service pension. The QDRO assigned Appellee \$1,171 per month from Appellant’s benefits.

{¶7} While his appeal was pending, counsel for Appellant filed a Motion to Correct Retirement Payment Amount on May 2, 2005. He argued that the retirement payment obligation should be \$950 per month, not \$1,171 per month. The trial court stayed Appellant’s motion until this Court ruled on the pending appeal.

{¶8} On June 23, 2005, we issued our decision in *Vasko v. Vasko* (June 23, 2005), Guernsey App. No. 04 CA 14 (*Vasko I*). In the appeal, Appellant had argued the trial court erred in its calculation of spousal support and finding that Appellant committed financial misconduct. We affirmed the judgment of the trial court. We determined that Appellant had improperly utilized a Civ.R. 60(B) motion as a substitute for a timely appeal. *Id.* at ¶13. Appellant could have raised his arguments in a direct appeal of the December 31, 2003 Divorce Decree. *Id.* at ¶12.

{¶9} Appellant renewed his May 2, 2005 motion after the decision was issued. The trial court set the matter for an evidentiary hearing on November 10, 2005.

{¶10} The trial court issued a judgment entry on November 14, 2005. Among other issues, the trial court received testimony and evidence on the issue of the proper amount of the Qualified Domestic Relations Order, the proper division between the

parties, and the amount of monthly payment that the trial court would find just and equitable. (Nov. 14, 2005 judgment entry). In Paragraph 5 of the judgment entry, the trial court stated:

{¶11} “The Court finds that the prior Order of the Court was dividing the pension of \$1900.00 per month and that was the figure before the Court at the time that Order was made. Therefore, the Court finds one-half (1/2) of the pension should be \$950.00. The Court further finds that the monthly spousal support obligation is \$510.00 including processing charge. Therefore, the total monthly deduction from the pension of the Defendant to the Plaintiff is \$1,460.00.”

{¶12} Within the November 14, 2005 entry, the trial court ordered counsel for Appellee to prepare a judgment entry journalizing the agreement of the parties and the decision of the Court.

{¶13} On November 29, 2005, counsel for Appellee prepared a judgment entry pursuant to the trial court’s order. Within the entry and pertinent to this appeal, Paragraph 4 stated:

{¶14} “The Court hereby orders that a second amended Qualified Domestic Relations Order be prepared and filed forthwith which provides for a division of the Defendant’s pension in the sum of \$950.00 per month effective the filing of this Entry. This amount shall continue until such time as spousal support is no longer paid. At that time, the amount shall be increased to \$1,440.00 per month.”

{¶15} The entry is stamped with the language, “Final Appealable Order.” The judgment entry is signed by the trial court judge, counsel for Appellee, Appellee, and counsel for Appellant.

{¶16} On September 13, 2006, Appellant filed a Motion to Correct Paragraph Four (4) in the Entry Dated November 29, 2005. He argued that the language of Paragraph 4 of the November 29, 2005 was incorrect in that it did not reflect the evidence presented at the hearing and was different from the trial court's November 14, 2005 entry.

{¶17} The trial court set Appellant's motion for a non-oral hearing. After briefing, the trial court denied Appellant's Motion to Correct Paragraph Four on June 27, 2007. The judgment entry was stamped with the language, "Final Appealable Order."

{¶18} On July 25, 2007, Appellant filed a pro se appeal of the June 27, 2007 judgment entry with this Court stating the trial court made a mistake in the calculation of the pension payment division.

{¶19} Appellant withdrew his appeal on September 27, 2007.

{¶20} On August 21, 2009, Appellant filed a Motion for Relief from Judgment Pursuant to Civ.R. 60(B) arguing that the November 29, 2005 judgment entry should be modified to correct the spousal support and the pension provisions. Appellant did not specify which prong of Civ.R. 60(B) he was entitled to relief from judgment. Appellee responded to the motion on October 11, 2009.

{¶21} On January 4, 2010, without an evidentiary hearing, the trial court denied Appellant's motion for relief from judgment.

{¶22} It is from this decision Appellant now appeals.

**ASSIGNMENT OF ERROR**

{¶23} Appellant raises one Assignment of Error:

{¶24} “THE TRIAL COURT ERRED BY NOT GRANTING THE APPELLANT’S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO CIV.R. 60(B) BECAUSE THE TRIAL COURT’S NOVEMBER 29, 2005 JOURNAL ENTRY (APP. AT A-3) IS NOT CONSISTENT WITH THE TRIAL COURT’S NOVEMBER 14, 2005 JOURNAL ENTRY (APP. AT A-2) ON SPOUSAL SUPPORT AND PENSION ISSUES, NOR THE TRIAL COURT’S TRANSCRIPT OF THE NOVEMBER 10, 2005 EVIDENTIARY HEARING.”

{¶25} Appellant argues in his Assignment of Error that the trial court abused its discretion in denying Appellant’s motion for relief from judgment. We disagree.

{¶26} Before this latest appeal, Appellant has previously raised the issue of the pension payments and the discrepancy between the November 14, 2005 and November 29, 2005 entries before the trial court and this Court. After the issuance of the November 29, 2005 entry, Appellant filed a “Motion to Correct Paragraph Four” on September 13, 2006, almost one year later. The trial court denied the motion to correct. Appellant appealed the denial of the motion to correct the November 29, 2005 entry to this Court on July 25, 2007. However, Appellant dismissed his appeal on September 27, 2007. Appellant now attempts to bring the same issue before the trial court again with his Civ.R. 60(B) motion filed on August 21, 2009, two years after the filing of his appeal and four years after the original judgment entry.

{¶27} As was the issue in Appellant’s appeal in *Vasko I*, it is well settled that Civ.R. 60(B) “is not available as a substitute for a timely appeal \* \* \* nor can the rule be used to circumvent or extend the time requirements for an appeal.” *Postel v. Koskal*,

Richland App. No. 08-COA-0002, 2009-Ohio-252, ¶ 25 citing *Blasco v. Mislik* (1982), 69 Ohio St.2d 684, 686, 433 N.E.2d 612. The issues raised in Appellant's August 21, 2009 Civ.R. 60(B) motion were issues cognizable in Appellant's July 25, 2007 appeal.

{¶28} We find that Appellant cannot use Civ.R. 60(B) as a substitute for an appeal and its filing does not toll the time during which a direct appeal must be filed. See *Vasko I*, supra.

{¶29} Appellant's sole Assignment of Error is overruled.

{¶30} The judgment of the Guernsey County Court of Common Pleas is affirmed.

By: Delaney, J.

Edwards, P.J. and

Wise, J. concur.

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HON. PATRICIA A. DELANEY

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HON. JULIE A. EDWARDS

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HON. JOHN W. WISE

PAD:kgb

IN THE COURT OF APPEALS FOR GUERNSEY COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

CONNIE L. VASKO	:	
	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
WILLIAM R. VASKO	:	
	:	
	:	
	:	Case No. 10CA000005
Defendant-Appellant	:	

For the reasons stated in our accompanying Opinion on file, the judgment of the Guernsey County Court of Common Pleas is AFFIRMED. Costs assessed to Appellant.

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HON. PATRICIA A. DELANEY

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HON. JULIE A. EDWARDS

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HON. JOHN W. WISE