[Cite as *Effective Shareholder Solutions v. Natl. City Bank*, 2009-Ohio-6200.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

EFFECTIVE SHAREHOLDER SOLUTIONS, INC.,	:	APPEAL NOS. C-080451 C-090117
Plaintiff-Appellant,	:	TRIAL NO. A-0603767
vs.	:	*D E C I S I O N.*
NATIONAL CITY BANK,	:	
Defendant-Appellee.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: November 25, 2009

Stephen R. Felson, for Plaintiff-Appellant,

Vorys, Sater, Seymour & Pease LLP, Glenn V. Whitaker, and Adam C. Sherman, for Defendant-Appellee.

Please note: This case has been removed from the accelerated calendar.

DINKELACKER, Judge.

{¶1} In this trade-secrets case, the trial court did not abuse its discretion when it denied the motion of plaintiff-appellant Effective Shareholder Solutions, Inc., for relief from judgment. Nor did the trial court abuse its discretion when it denied the request of ESS to conduct discovery, post-verdict, into the background of the jury foreman. We affirm.

Jury Selection Results in Attorney-Juror

{¶2} ESS filed suit against defendant-appellee National City Corporation alleging violations of the Ohio Uniform Trade Secrets Act and breach of a confidentiality agreement executed by the parties. The case proceeded to a jury trial.

{¶3} One of the prospective jurors in the case was Vincent Antaki, a Cincinnati attorney with the law firm Reminger and Reminger. During voir dire, Antaki indicated that he and his law firm had represented clients as both plaintiff's counsel and defense counsel. He had represented large corporations, as well as small businesses. He had experience with contract claims, intellectual property, confidentiality clauses, and noncompete agreements.

{¶4} Antaki testified that his wife was also an attorney. He said that she worked part-time on a contract basis. Prior to that, "she used to work at Klekamp, and before that at the prosecutor's office."

{¶5} Antaki said that he was not concerned about whether he could be a fair and impartial juror in the case. He was asked if "there is [anything] about your work with Reminger or your experience as a defense counsel that will make you side with the defendant based on any preconceived notions, based on any kind of alignment that you might feel with them doing similar work?" Antaki replied, "I don't think so." He was

later asked if he knew anyone in the case. He responded that he knew attorneys Glen Whitaker and Art Rabourn, and that he had had cases with the Vorys firm. He then said that "otherwise, I don't know any of the parties other than the name National City." He was asked if either he or his wife owned stock in National City. He said that they did not. He also said that he had never banked at National City or its predecessor, Provident Bank.

{¶6} Antaki was seated on the jury and the trial proceeded. After hearing the case, the jury returned a verdict in favor of National City. Over two months after the verdict, a member of ESS looked at Reminger's website and discovered that National City was listed as a "representative client." The ESS member further discovered that Reminger's Cleveland office had represented National City in a 2002 probate case in Cuyahoga County.[1] ESS also discovered that Antaki's wife may have been with the law firm Keating, Meuthing and Klekamp during a period in which the firm had represented Provident Bank.

{¶7} Since the decision of the trial court had already been appealed to this court, ESS requested a remand to seek relief from judgment on the basis of the foregoing discoveries. The trial court declined to allow discovery on the issue and denied the motion for relief from judgment. ESS has appealed that decision, and the two appeals have been consolidated for review and decision.

ESS Was Not Entitled to Relief From Judgment

{¶8} In two related assignments of error, ESS argues that the trial court improperly denied its motion for relief from judgment and its request to conduct discovery in support of that motion. A trial court's decision on a motion for relief from

[1] See *Natl. City Bank. v. Noble*, 8th Dist. No. 85696, 2005-Ohio-6484, at ¶11.

judgment is reviewed on an abuse-of-discretion basis.[2] Likewise, "a trial court's ruling on a motion for a new trial based on a juror's failure to disclose information during voir dire is reviewed under the abuse-of-discretion standard."[3]

{¶9} An abuse of discretion suggests that a decision is unreasonable, arbitrary, or unconscionable.[4] Few decisions rendered by a trial court are alleged to be arbitrary or unconscionable. Thus, the vast majority of cases in which an abuse of discretion is asserted involve claims that the decision is unreasonable. A decision is unreasonable "if there is no sound reasoning process that would support that decision. It is not enough that the reviewing court, were it deciding the issue de novo, would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result."[5]

{¶10} A party seeking relief under Civ.R. 60(B) 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."[6] Since ESS failed in this case to meet the first prong of the test, the trial court did not abuse its discretion when it denied its motion.

No Meritorious Defense or Claim

{¶11} In *Grundy v. Dhillon*, the Ohio Supreme Court addressed the question of when a party is entitled to a new trial on the basis of a juror's failure to disclose

---

[2] *Watts v. Forest Ridge Apts. & Town Homes*, 1st Dist. No. C-060079, 2007-Ohio-1176, at ¶8, citing *Strack v. Pelton*, 70 Ohio St.3d 172, 174, 1994-Ohio-107, 637 N.E.2d 914.
[3] *Grundy v. Dhillon*, 120 Ohio St.3d 415, 2008-Ohio-6324, 900 N.E.2d 153, at ¶3.
[4] *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.
[5] *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597.
[6] *Poe v. Ferguson*, 1st Dist. Nos. C-070445 and C-070446, 2008-Ohio-1442, at ¶7, quoting *GTE Automatic Elec. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, 150, 351 N.E.2d 113.

information during voir dire.[7] The court held that "the moving party must show that a juror failed to answer honestly a material question on voir dire and that the moving party was prejudiced by the presence on the trial jury of a juror who failed to disclose material information."[8]

{¶12} ESS failed to satisfy the first part of the *Grundy* test—that Antaki had failed to answer a material question honestly. At no point in its argument below or before this court has ESS pointed to a question that Antaki answered incorrectly. ESS argues that "while ESS does not contend that Mr. Antaki *deliberately* failed to disclose his two conflicts of interest, he nevertheless failed to inform the Court that his law firm represented one of the parties at the time of the trial and that his wife's firm represented the predecessor bank, Provident." ESS contends that this is "sufficient to satisfy the first prong of the *Grundy* test."

{¶13} It is not. ESS did not ask Antaki about his law firm's clients or the clients of his wife's former firm. The trial court found that Antaki's responses were accurate. As Chief Justice Rehnquist has written, "[a] trial represents an important investment of private and social resources, and it ill serves the important end of finality to wipe the slate clean simply to recreate the peremptory challenge process because counsel lacked an item of information which objectively he should have obtained from a juror on voir dire examination."[9]

{¶14} For ESS to succeed on appeal, this court would have to hold either that an attorney-juror is required to conduct a conflict check before being seated on a case and to report those findings to the court, or that, in the case of an attorney-juror, the first

[7] *Grundy*, supra.
[8] Id. at 3.
[9] *McDonough Power Equip., Inc. v. Greenwood* (1984), 464 U.S. 548, 555, 104 S.Ct. 845, as quoted in *Grundy*, supra at ¶27.

prong of the *Grundy* test can be met by imputing knowledge of the attorney's entire law firm, in all of its locations, to the attorney-juror. And ESS argues for both propositions.

{¶15} But ESS does not make these arguments for all professions. A doctor, plumber, accountant, architect, engineer, or anyone else could find themselves in the position where their employer (or their spouse's) might somehow be connected to litigation. ESS argues that lawyers are special—that "[w]hile such a holding may impose a greater burden upon lawyers serving on juries than it does upon other jurors, the bar must tolerate that burden because of the nature of the practice of law."

{¶16} By highlighting the uniqueness of the practice of law as the basis of its argument, ESS has made it clear that it seeks the one thing this court cannot grant. It is not the function of this court to enact rules, through the cases we decide, that regulate the manner in which an attorney may serve on a jury.[10] "[T]he power and responsibility to admit and discipline persons admitted to the practice of law, to promulgate and enforce professional standards and rules of conduct, and to otherwise broadly regulate, control, and define the procedure and practice of law in Ohio rests inherently, originally, and exclusively in the Supreme Court of Ohio."[11]

{¶17} ESS was not entitled to relief from judgment. It failed to establish that Antaki "failed to answer honestly a material question on voir dire." Accordingly, ESS did not establish that it had a meritorious claim or defense—the first requirement of Civ.R. 60(B). The trial court did not abuse its discretion by so concluding.

{¶18} We note that, within this assignment of error, ESS argues that Antaki's service on the jury violated its constitutional rights. But ESS did not make this

[10] See Section 2(B)(1)(g), Article IV, Ohio Constitution.
[11] *Shimko v. Lobe*, 103 Ohio St.3d 59, 2004-Ohio-4202; 813 N.E.2d 669, at ¶15

argument below. New arguments may not be raised for the first time on appeal.[12] "A party who fails to raise an argument in the court below waives his or her right to raise it here."[13]

{¶19} We overrule ESS's first assignment of error.

No Additional Evidence Required

{¶20} In its second assignment of error, ESS claims that it was improper for the trial court to deny its request to conduct discovery before ruling on its motion for relief from judgment. Generally, the question of whether to allow for the collection of additional evidence is addressed to the sound discretion of the trial court.[14] Since ESS failed to make a prima facie case for relief from judgment, it was not entitled to conduct discovery. The trial court did not abuse its discretion in so finding. ESS's second assignment of error is overruled.

Conclusion

{¶21} The trial court did not abuse its discretion when it determined that ESS was not entitled to relief from judgment. Nor did it err when it refused to allow discovery into the issue. For these reasons, the two assignments of error advanced by ESS are overruled, and the trial court's judgment is affirmed.

Judgment affirmed.

HILDEBRANDT, P.J., and **MALLORY, J.,** concur**.**

Please Note:

The court has recorded its own entry this date.

---

[12] See *Marysville Newspapers, Inc. v. Delaware Gazette Co., Inc.*, 3d Dist. No. 14-06-34, 2007-Ohio-4365, at ¶23.
[13] *Niskanen v. Giant Eagle, Inc.*, 122 Ohio St.3d 486, 2009-Ohio-3626, 912 N.E.2d 595, at ¶34, quoting *State ex rel. Zollner v. Indus. Comm.* (1993), 66 Ohio St.3d 276, 278, 611 N.E.2d 830.
[14] *Your Fin. Community v. Emerick* (1997), 123 Ohio App.3d 601, 605, 704 N.E.2d 1265; *Schafer v. Continental Airlines, Inc.* (1989), 62 Ohio App.3d 855, 857, 577 N.E.2d 715; *U.A.P. Columbus JV326132 v. Plum* (1986), 27 Ohio App.3d 293, 294, 500 N.E.2d 924.