[Cite as *Steinriede v. Cincinnati*, 2011-Ohio-1480.]

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

HENNY P. STEINRIEDE,	:	APPEAL NO. C-100289 TRIAL NO. A-0810197
Plaintiff-Appellee,	:	
vs.	:	*D E C I S I O N.*
CITY OF CINCINNATI,	:	
Defendant-Appellant.	:	

Civil Appeal From: Hamilton County Common Pleas Court

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: March 30, 2011

William B. Singer, for Plaintiff-Appellee,

John P. Curp, City Solicitor, *Richard Ganulin*, and *Paula Boggs Meuthing*, Assistant City Prosecutors, for Defendant-Appellant.

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

Per Curiam.

{¶1} In a single assignment of error, defendant-appellant, the city of Cincinnati, appeals the decision of the trial court granting plaintiff-appellee Henny P. Steinriede's motion for relief from judgment. Steinriede, the owner of two dilapidated and vacant houses located in Cincinnati, sought relief from the city's orders to repair and maintain the buildings. When Steinriede failed to respond to the city's motion for judgment on the pleadings, the trial court entered judgment for the city. Steinriede sought relief from that judgment under Civ.R. 60(B). Because nothing in the record supports a conclusion that Steinriede's failure to respond to the city's motion was the result of excusable neglect or that she had a meritorious claim to present if relief were granted, the trial court abused its discretion in granting Steinriede relief from judgment.

{¶2} In numerous proceedings in 2007 and 2008, the city sought to have Steinriede repair her vacant properties or to enter them in the city's Vacant Building Maintenance License ("VBML") program. Steinriede ultimately filed an amended complaint seeking a declaration that the VBML ordinance was a constitutionally invalid exercise of the city's police powers because there was no rational basis between the VBML fee and the cost of administering the VBML program. She also sought to enjoin the city from enforcing the VBML ordinance against her vacant properties. The case was referred to a visiting judge.

{¶3} The city moved for judgment on the pleadings under Civ.R. 12(C). Steinriede did not reply to the motion. On October 7, 2009, the trial court granted the city's motion and entered judgment in its favor.

{¶4} Five days later, Steinriede's trial counsel filed a paper captioned only "Declaration of [Counsel]." In this unsworn statement, counsel acknowledged that he had received notice that the case had been set for hearing on October 7, that he had received a copy of the city's motion for judgment on the pleadings, and that he had intended to contact opposing counsel to obtain an agreement for an extension of

time. But he admitted that he did not respond to the motion "within the 10 days required by local rules, because it got lost in the shuffle of papers on my desk." Steinriede then moved under Civ.R. 60(B) for relief from the entry of judgment against her, asserting that she had a meritorious claim to assert and that her counsel's inaction constituted mistake, inadvertence, surprise, or excusable neglect. On April 19, 2009, the trial court, then acting through the regularly assigned judge, granted the motion in a bare-bones entry. This appeal followed.

{¶5} An order that vacates or sets aside a judgment is a final order under R.C. 2505.02(B)(3).[1] We review a trial court's decision to grant or deny relief from judgment under Civ.R. 60(B) under an abuse-of-discretion standard.[2] Reversal is warranted only when the court's decision was unreasonable, arbitrary, or unconscionable. An unreasonable decision is one that no sound reasoning process supports.[3]

{¶6} Under Civ.R. 60(B)(1), a trial court may relieve a party from a final judgment that resulted from "mistake, inadvertence, surprise or excusable neglect." Thus a party seeking relief under Civ.R. 60(B)(1) must demonstrate that (1) she has a meritorious claim to present if relief is granted; (2) she is entitled to relief under Civ.R 60(B)(1); and (3) her motion has been made within a reasonable time.[4]

{¶7} Here, Steinriede clearly moved for relief within a reasonable time. But nothing in this record would support a conclusion that she was entitled to relief because of her counsel's excusable neglect.[5] Indeed her trial counsel's declaration demonstrates not excusable neglect but inaction that constituted an indifference and

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[1] See *Bourque v. Bourque* (1986), 34 Ohio App.3d 284, 286, 518 N.E.2d 49; see, also, *Irion v. Incomm Electronics*, 4th Dist. No. 05CA1, 2006-Ohio-362.
[2] See *Harris v. Anderson*, 109 Ohio St.3d 101, 2006-Ohio-1934, 846 N.E.2d 43, ¶7.
[3] See *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597.
[4] See *GTE Automatic Electric v. ARC Industries* (1976), 47 Ohio St.2d 146, 150-151, 351 N.E.2d 113.
[5] Civ.R. 60(B)(1).

disregard for the judicial system.[6] Any mistake or neglect by her counsel in failing to respond to the city's motion should have been imputed to Steinriede under Civ.R. 60(B)(1).[7] Thus Steinriede failed to demonstrate an element necessary for granting relief.

{¶8} Similarly, nothing in this record would support a conclusion that Steinriede had demonstrated a meritorious claim to present if relief were granted. She had sought declarations that the VBML ordinance was a constitutionally invalid exercise of the city's police powers because there was no rational basis between the VBML fee and the cost of administering the VBML program.

{¶9} Yet from the various decisions, orders, and notices of violation from the city's department of buildings and inspections attached to her complaint and amended complaint, it appears that Steinriede has failed to comply with valid orders to repair the vacant properties issued in early 2007. At the suggestion of city employees, she then agreed to apply for a VBML license and to undergo an inspection of the properties. She agreed to make the repairs or to join the VBML program if the inspection revealed that it made "more sense" to do so. The most recent document, a November 18, 2008, decision and order by one of the city's administrative hearing examiners, recounts in its findings of fact and conclusions of law that orders had been issued to barricade the properties and to keep them vacant under the VBML program.

{¶10} We note that the city also asserts that Steinriede had entered a no-contest plea in a related criminal prosecution for failure to comply with lawful orders to maintain the properties. While the city has attached documents from this criminal case to its appellate brief, they were never filed with the trial court in this case. Thus, they are not part of the record on appeal.[8] A reviewing court cannot add matter to

[6] See *Kay v. Glassman*, 76 Ohio St.3d 18, 20, 1996-Ohio-430, 665 N.E.2d 1102, quoting *GTE Automatic Electric*, 47 Ohio St.2d at 153, 351 N.E.2d 113; see, also, *UBS Real Estate Securities Inc. v. Teague*, 2nd Dist. No. 2010 CA 5, 2010-Ohio-5634.
[7] See *Poe v. Ferguson*, 1st Dist. Nos. C-070445 and C-070446, 2008-Ohio-1442, ¶13.
[8] See App.R. 9(A).

the record before it and then decide the appeal on that basis.[9] Therefore, we do not consider these documents in resolving the assignment of error.

{¶11} What is clear from the record properly submitted for our review is that Steinriede did not avail herself of the procedures for timely administrative and judicial review of the city's orders, including orders placing her properties under the VBML program.[10] While the principal purpose of a declaratory-judgment action is "to relieve parties from acting at their own peril in order to establish their legal rights,"[11] a party may not "substitute a declaratory judgment proceeding for the appellate remedy which was available to [her]."[12] Here, Steinriede had ample opportunity to challenge the constitutional impact of the city's repair and vacant-building orders and fees in a direct appeal from those orders. And she did not. Those other aspects of Steinriede's claim that do survive because they could not have been raised in a direct appeal, such as her "belie[f]" that the city wishes to confiscate her property to make "water works improvements," are so diffuse and hypothetical that they are not ripe for adjudication.

{¶12} The assignment of error is sustained.

{¶13} Therefore, the judgment of the trial court granting Steinriede's motion for relief from judgment is reversed. This case is remanded to the trial court with instructions for it to enter judgment on the pleadings in favor of the city.

Judgment accordingly.

CUNNINGHAM, P.J., SUNDERMANN and **HENDON, JJ.**

Please Note:

The court has recorded its own entry on the date of the release of this decision.

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[9] See *State v. Tekulve*, 188 Ohio App.3d 792, 2010-Ohio-3604, 936 N.E.2d 1030, ¶4, citing *State Farm Fire and Cas. Co. v. Condon*, 163 Ohio App.3d 584, 2005-Ohio-5208, 839 N.E.2d 464, ¶21, and *State v. Ishmail* (1978), 54 Ohio St.2d 402, 377 N.E.2d 500, syllabus.
[10] See, e.g., R.C. 2505.07 and 2506.01.
[11] *Gray v. Willey Freightways, Inc.* (1993), 89 Ohio App.3d 355, 362, 624 N.E.2d 755.
[12] *Greatorex v. Univ. of Cincinnati* (June 18, 1980), 1st Dist. No. C-790204.