[Cite as *In re Estate of Dombroski*, 2014-Ohio-5828.]

STATE OF OHIO, HARRISON COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

IN THE ESTATE OF:	)	CASE NO. 14 HA 5
	)	
LAWRENCE DOMBROSKI, SR.	)	O P I N I O N
	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court, Probate Division, Case No. 20111034.

JUDGMENT: Affirmed.

APPEARANCES:
For Plaintiff-Appellee: Attorney John Tabacchi
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For Defendant-Appellant: Attorney Scot McMahon
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JUDGES:
Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: December 29, 2014

VUKOVICH, J.

{¶1} The Harrison County Probate Court denied a Civ.R. 60(B)(5) motion for relief from a judgment which had granted an application for summary release of the Lawrence Dombroski Estate from administration. The decedent's adult children appeal, arguing that the estate should be reopened for a further administration. They contend that their mother, rather than the decedent's subsequent wife, was the surviving spouse due to a common law marriage, and they allege the decedent's new wife failed to disclose all assets of the decedent on her application for summary release from administration.

{¶2} The decedent's surviving spouse responds that Civ.R. 60(B)(5) is reserved for extraordinary circumstances and cannot be used when a more specific ground applies, the motion was untimely filed, and there are not sufficient operative facts demonstrating entitlement to relief from judgment. For the following reasons, the judgment of the trial court is affirmed.

STATEMENT OF THE CASE

{¶3} Lawrence Dombroski Sr. (the decedent) had seven children with Pamela McLaughlin Dombroski. They were divorced on July 27, 1979. The decedent began residing with Marna Dombroski in the 1990's. In the mid-1990's, the decedent bought a house on one acre of land and had it titled joint and survivor with Marna. A 1971 mobile home owned by the decedent was also located on that lot. Marna and the decedent were married on March 5, 2007.

{¶4} The decedent died intestate on October 23, 2009, at which time they were living at a leased property. On June 7, 2011, Marna Dombroski, with counsel, filed an application in the probate court seeking summary release of his estate from administration as the decedent's surviving spouse. *See* R.C. 2113.031 (assets less than $40,000 allowance for support plus up to a $5,000 allowance for burial expenses paid by surviving spouse). She listed the mobile home valued at $1,000 and personal property valued at $1,000 as the assets of the estate. The court granted the release that same day.

{¶5} Thereafter, Marna was informed that the decedent and his five brothers each owned a 1/6 mineral interest in property in Jefferson County (with the surface of

the 139+ acres owned by one of the brothers). In order to lease the minerals, they needed a signature for the decedent's 1/6 interest.

{¶6} On August 12, 2011, two months after the original application, Marna's attorney refiled the application for summary release to add the decedent's 1/6 mineral interest, valuing it at $625. The probate court granted the amended application for summary release from administration that same day, issuing a certificate of transfer to Marna for the 1/6 mineral interest.

{¶7} On December 2, 2013, the decedent's six living children and the estate of a deceased child (the appellants) filed a motion to set aside the entry granting summary release from administration. They set forth two arguments under Civ.R. 60(B)(5), claiming unjust operation of a judgment and fraud upon the court. They urged that their positions were supported by considerations of fairness, equity, and public policy.

{¶8} As for the first allegation, they argued that the 2007 marriage of the decedent to Marna was invalid because the decedent was still married to their mother, Pamela, through a post-divorce common law marriage. They thus urged that their mother rather than Marna was the surviving spouse. Although the decedent and their mother got divorced in 1979, they apparently continued living together until 1984 (when Pamela moved to Indiana). The petitioners submitted the July 27, 1979 decree of dissolution and the incorporated separation agreement, which recited that the parties were married in June of 1963 (also said to be a common law marriage).

{¶9} An affidavit was submitted by one of the petitioners (who was 12 in 1979), stating that her parents lived together from 1979 until 1984, slept in the same bed, raised their seven children as husband and wife until 1984, were regarded as husband and wife in the community, and went places together as a couple until 1984. To further support that the parents held themselves out as married even after the divorce, they submitted a 1982 deed transferring the decedent's inherited 1/6 share in the surface to a brother and listing the decedent and Pamela as husband and wife. The probate court suggested that this may merely show the release of an old (pre-divorce) dower interest.

{¶10} The second argument for setting aside the summary release revolved around the claim that Marna committed a fraud upon the court by knowingly undervaluing the estate in order to keep the value below the monetary threshold for a summary release because notice to heirs is not required for a summary release from administration. The petitioners stated that Marna failed to list in the application for release: a hutch, a living room set, guns, a punch bowl, some lawnmowers, a tractor, and two trailers. Motor vehicles are a separate category on the application for summary release, and none were listed. The petitioners said that the decedent owned multiple vehicles, including a Ford Model A classic car. They attached Marna's deposition in support.[1]

{¶11} Marna testified that she kept none of these items except one vehicle (as she was permitted by probate law). (Tr. 34). When asked why she did not list these items on the summary release, Marna simply expressed that they were already gone or they were still at the leased property, and her specific answers suggested that many items were thought of as belonging to the children prior to the decedent's death. (Tr. 32).

{¶12} For instance, she said there may have been four guns in the house when the decedent died, but certain children took which gun belonged to them. (Tr. 9-10). She said that the decedent's daughter took the hutch (as it had been belonged to her mother). (Tr. 9, 16). She left the family punch bowl at the house where the decedent's son remained, she believed his daughter now had it, and she did not know if it was an antique. (Tr. 16-17).

{¶13} As to the Ford Model A, she believed the decedent bought it in the 1960's and answered in the affirmative when asked if it was rare but said that it was also "junk," it did not run, and it was rusty. (Tr. 25, 27). She expressed that the decedent had the intent to give his son the vehicle prior to his death; he tried to officially put the title in his son's name but returned from the courthouse "mad" saying

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[1]Her deposition was taken in a general division case where these appellants filed suit against Marna for fraud and negligence (and against the decedent's brothers for conspiracy in the fraud). The general division dismissed the case for lack of subject matter jurisdiction, stating that the probate court had exclusive jurisdiction as the claims revolved around the summary release and the administration of a probate estate. That decision was appealed in *Estate of Lawrence T. Dombroski v. Dombroski*, 7th Dist. No. 14HA3.

they rejected his request as the car was too old. (Tr. 25-26). The decedent's son took the car after the decedent died because: "It was given to him. And when he died, he was to get it and only him was to have it, nobody else was to have it." (Tr. 25, 33). No evidence was provided by appellants contradicting any of these statements.

{¶14} The decedent's son took the living set (which included two chairs, a couch, two end tables, and two lamps); she was not asked to value this furniture. Regarding the tractor, Marna believed it was operable and explained that the decedent's son took it, but she characterized it as "junk" and opined that it was not valuable. (Tr. 18, 32). The decedent may have had three riding mowers as well; two did not run, and she gave the one that worked to the decedent's grandson. (Tr. 18, 32).

{¶15} She sold a car trailer to her son for $500. She said the decedent titled some operable vehicles in her name and had some "junk" cars in his name. (Tr. 19-20). She was asked about four trucks. She stated that one of the decedent's sons gave her $500 for the red pickup truck and $50 for an old green dump truck that did not run and had no title. He also bought a flatbed truck, but she was not asked how much he paid. (Tr. 21). Another of the decedent's sons "got" a gray pickup truck. (Tr. 24).

{¶16} Marna also explained that after the original summary release, she learned of the mineral interest from her sister-in-law and so provided paperwork to her attorney that she received from the decedent's brothers. The lawyer provided the value of the minerals on the amended application. (Tr. 35, 38, 40, 47). A month after the amended summary release, she went to a large convention in Wheeling with one of the decedents' brothers (the other brothers were also there) and signed a lease over the 1/6 mineral interest for which she received $115,170 as a signing bonus. (Tr. 44, 48).

{¶17} The probate court scheduled a hearing on the motion. The parties presented oral arguments. Appellants presented no testimony or new evidentiary material. The court questioned whether the value of the listed items would be enough to put the estate outside of the $40,000 (plus $5,000 for burial) limit for a summary release. In response, appellants pointed to the Ford Model A. Their attorney

mentioned that he conducted an online search and found undisclosed widely diverging prices depending on the vehicle's condition; no evidence was presented on those prices or on the condition of the car said to be at issue (besides Marna's testimony that it was not running, it was "junk," it was rusty, and it was taken by the son to whom it had been given).

{¶18} Nor did appellants provide evidence of the value they claimed Marna should have listed for the mineral interest. Their attorney admitted the date of the decedent's death was legally the proper valuation date and did not dispute that $625 could have been a proper figure to utilize on the date of death. Instead, he made a policy argument that when paperwork is being filled out in 2012, the present knowledge of what was to come after 2009 should have been utilized to increase the value used in the paperwork. (Tr. 8-11). The probate court disagreed, explaining that if Apple stock was worth $100 at the time death but then skyrocketed to $700 at the time the estate is administered, the amount that was a future value at the time of death need not be utilized. (Tr. 10.)

{¶19} Marna's attorney responded that the motion was based upon allegations of fraud, misrepresentation, or mistake and thus fell under the more specific provisions in Civ.R. 60(B) with a maximum one-year time limit. It was alternatively argued that the petitioners failed to set forth sufficient operative facts as one cannot assume or "think" facts but must specifically set facts when seeking relief from judgment, adding that there was no evidence of intent for fraud.

{¶20} On February 11, 2014, the probate court overruled the Civ.R. 60(B) motion for relief from the entry granting summary release from administration. The court ruled that the argument about undervaluing the estate's inventory constituted an allegation of fraud, misrepresentation, or misconduct, which fell under Civ.R. 60(B)(3) and was thus barred by the one-year time limit. The court stated that the common law marriage argument fell under the same ground or under (B)(1)'s mistake and thus was also time-barred. The court alternatively ruled that the common law marriage argument would not be a substantial reason for relief under the catch-all provision in Civ.R. 60(B)(5) in any event. The court pointed out that Pamela made no challenge to the marriage or to the estate during her lifetime. The court further opined, "purely for

arguments sake," that evidence on the parents' common law marriage after their 1979 divorce was lacking.

Civ.R. 60(B)

{¶21} On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment for reasons of: (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; (3) fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. Civ.R. 60(B).

{¶22} The question of whether relief should be granted is left to the trial court's sound discretion. *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20, 520 N.E.2d 564 (1988). In reviewing for abuse of discretion, the reviewing judges do not substitute their judgment for that of the trial court, and the court cannot reverse unless the decision is unreasonable, unconscionable, or arbitrary. *State v. Herring*, 94 Ohio St.3d 246, 255, 2002-Ohio-796, 762 N.E.2d 940.

{¶23} In order to prevail on a motion for relief from judgment, the movant must demonstrate each of the following: (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 five grounds provided in the rule; and (3) the motion was timely. *GTE Automatic Electric, Inc. v. ARC Indus.*, 47 Ohio St.2d 146, 150-151, 351 N.E.2d 113 (1976). As to the first *GTE* factor, a party must allege a meritorious claim or defense but need not prove that the alleged claim or defense will prevail at trial. *Rose Chevrolet*, 36 Ohio St.3d at 20.

{¶24} As to the second *GTE* factor, although a movant is not required to support a motion with evidentiary materials, the movant must do more than make bare allegations that he or she is entitled to relief under one of the grounds in Civ.R. 60(B). *Kay*, 76 Ohio St.3d at 20 (to convince the court that it is in the interests of justice to set aside the judgment, the movant may decide to submit evidentiary materials in support of the motion). The motion must set forth a prima facie showing that justice will be

served by setting aside the judgment and contain operative facts that a Civ.R. 60(B) ground for relief exists. *Rose Chevrolet*, 36 Ohio St.3d at 21.

{¶25} Regarding the third GTE factor of timeliness, the motion shall be made within a reasonable time. Civ.R. 60(B). And, for the grounds in Civ.R. 60(B) (1), (2), or (3), the maximum time limit is one year after judgment. *Id.* Thus, movants waiting more than one year after judgment often attempt to categorize their motion as falling under Civ.R. 60(B)(5).

{¶26} Ground (5) in Civ.R. 60(B) is a catch-all provision reflecting the inherent power of a court to relieve a person from the unjust operation of a judgment. *Volodkevich v. Volodkevich*, 35 Ohio St.3d 152, 154, 518 N.E. 2d 1208 (1988), citing *Caruso–Ciresi, Inc. v. Lohman*, 5 Ohio St.3d 64, 66, 448 N.E.2d 1365 (1983). The grounds for invoking (B)(5) should be substantial. *Id.* Thus, it is to be used only in extraordinary and unusual cases when the interests of justice warrant it. *Sell v. Brockway*, 7th Dist. No. 11CO30, 2012-Ohio-4552, ¶ 25.

{¶27} And, it is not to be used as a substitute for any of the other more specific provisions of Civ.R. 60(B). *Caruso–Ciresi,* 5 Ohio St.3d at 66. In certain circumstances, fraud upon the court is a way of invoking (B)(5). In distinguishing between the use of (B)(3) versus (B)(5) where there are allegations of fraud, the Staff Note explained that (B)(5) can be used to vacate a judgment vitiated by fraud upon the court which differs from fraud or misrepresentation by an adverse party under (B)(3). *See* 1970 Staff Note to Civ.R. 60(B) (and providing as an example the bribing of a juror by some third person).

{¶28} The Supreme Court noted this and observed that Civ.R. 60(B)(5) fraud upon the court is an "elusive concept" that is not easily distinguished from Civ.R. 60(B)(3) fraud by a party. *Coulson v. Coulson*, 5 Ohio St.3d 12, 15, 448 N.E.2d 809 (1983). The Court quoted a commentator's definition that fraud upon the court includes only the category of fraud "which does or attempts to, defile the court itself, or is a fraud perpetrated by the officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Id.*, citing 7 Moore's Fed. Prac. 515 (2d Ed.1971), paragraph 60.33.

{¶29} The Court stated "in a broad sense" any fraud connected with the presentation of the case to a court is fraud upon the court, *but usually a party must resort to (B)(3) for relief rather than (B)(5)*. *Id.* In other words, a party's fraud in procuring a judgment is a fraud upon the court as well as a fraud by a party, but since it falls under (B)(3) due to the latter observation, resort to (B)(5) cannot be had.

{¶30} The *Coulson* Court then declared: "Where an officer of the court, e.g., an attorney, however, actively participates in defrauding the court, then the court may entertain a Civ.R. 60(B)(5) motion for relief from judgment." *Id.* The Supreme Court thereafter confirmed that its *Coulson* decision had no application where the allegations pertained to fraud by a party, i.e. where the allegations of fraud do not involve an officer of the court committing a fraud upon the court. *Scholler v. Scholler*, 10 Ohio St.3d 98, 106, 462 N.E.2d 158 (1984).

ASSIGNMENT OF ERROR NUMBER ONE

{¶31} Appellants set forth two assignments of error, the first of which provides:

{¶32} "THE PROBATE COURT ERRED IN DENYING APPELLANTS['] MOTION TO SET ASIDE THE AMENDED ENTRY GRANTING SUMMARY RELEASE OF THE ESTATE OF LAWRENCE T. DOMBROSKI SR. BECAUSE MARNA DOMBROSKI COMMITTED FRAUD UPON THE COURT BY UNDERVALUING THE ASSETS IN LAWRENCE T. DOMBROSKI SR.'S ESTATE IN ORDER TO AVOID THE NOTICE REQUIREMENTS OF A FULL ADMINISTRATION."

{¶33} Below, appellants emphasized the mineral valuation, although they admitted that the law required the value on the date of death. *See* R.C. 2115.02 ("The inventory shall set forth values as of the date of death of the decedent."). They do not appear to maintain their argument regarding the mineral valuation on appeal. Their brief focuses on Marna's deposition testimony concerning the valuation of the decedent's personalty, which was said to be a few pieces of furniture, four guns, a punch bowl, a tractor, one working riding lawnmower, a car trailer, and some vehicles.

{¶34} Appellants urge that the value of these items would have pushed the value of the estate (which Marna valued at $2,625 representing $1,000 for a mobile home, $1,000 in personalty, and $625 for mineral rights) past the summary release threshold of $45,000 ($40,000+$5,000 for burial expenses). They label this conduct

fraud upon the court under Civ.R. 60(B(5) and ask us not to apply the one-year maximum time for fraud, misrepresentation, or misconduct of an adverse party under (B)(3).

{¶35} Appellants read the *Coulson* Court's statement that "Any fraud connected with the presentation of a case to a court is fraud upon the court, in a broad sense" as meaning that anytime there is fraud in the presentation of a case to the court, Civ.R. 60(B)(5) can be used. However, after making this statement, the Court warned: "Thus, in the usual case, a party must resort to a motion under Civ.R. 60(B)(3)." *Coulson*, 5 Ohio St.3d at 15 (but where an attorney or other officer of the court actively participates, (B)(5) can be utilized). Appellant's argument is therefore based upon a misreading of *Coulson*. *See id.* *See also Scholler*, 10 Ohio St.3d 98.

{¶36} Fraud upon the court for purposes of Civ.R. 60(B)(5) has been narrowly defined by the Supreme Court. It cannot be utilized where another more specific ground applies. *Caruso-Ciresi*, 5 Ohio St.3d 64 at ¶ 1 of syllabus. Here, the estate's attorney was not implicated in the failure to list the aforementioned items, and the motion did not make allegations against him. Rather, the motion relied upon allegations against a party, Marna, as the surviving spouse and applicant for summary release. The allegations that Marna intentionally undervalued or omitted items in order to ensure the summary release dealt with fraud, misrepresentation, or misconduct of an adverse party and thus fell under Civ.R. 60(B)(3). As such, the allegations were barred by the one-year maximum time limit applying to that ground. Civ.R. 60(B)(5) could not be used as a substitute to extend the time limit.

{¶37} We also point out that there was no explanation as to the delay in filing the motion for relief from judgment. In order to establish that a motion was filed within a reasonable time, the movant must explain the timing. Even a motion filed within one year can be considered untimely depending upon the circumstances as the reasonableness requirement applies to all five grounds. *See* Civ.R. 60(B). Appellants knew about the vehicles and other household items prior to the decedent's death in 2009, and never sought to open an estate. They may not have learned of the mineral interest until later, but they do not assert the mineral valuation as an issue in this appeal. And, they filed suit in the general division back in October of 2012 based upon

Marna's alleged fraud and negligence in procuring the summary release from administration. Yet, they did not seek relief from that August of 2011 summary release until December of 2013. This is almost twenty-eight months after that summary release was entered. And, it is more than one year after they filed the general division action. Thus, even if resort to (B)(5) were possible, timeliness was not demonstrated as there was no indication the timing of the motion was reasonable. This assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER TWO

{¶38} Appellants' second assignment of error contends:

{¶39} "THE PROBATE COURT ERRED IN DETERMINING THAT APPELLANTS COULD NOT ESTABLISH A COMMON LAW MARRIAGE BETWEEN LAWRENCE T. DOMBROSKI SR. AND PAMELA DOMBROSKI AS TO RENDER THE SUPPOSED MARRIAGE BETWEEN LAWRENCE T. DOMBROSKI AND MARNA DOMBROSKI NULL AND VOID."

{¶40} Common law marriages were abolished beginning October 10, 1991. R.C. 3105.12(B)(1). Those existing before that date of enactment remained valid. R.C. 3105.12(B)(3). Even before they were abolished, they were not favored in the law. *Nestor v. Nestor*, 15 Ohio St.3d 143, 145, 472 N.E.2d 1091 (1984). All of the essential elements to a common law marriage had to be established by clear and convincing evidence. *Id.* at 146. A common law marriage requires "[a]n agreement of marriage in praesenti," "accompanied and followed by cohabitation as husband and wife," and treatment and reputation in the community as husband and wife wherein they hold themselves out as married. *Id.* at 145-147.

{¶41} The fundamental requirement of an agreement involves a meeting of the minds between the parties who enter into a mutual contract to presently take each other as man and wife. *Id.* at 146. This contract of marriage in praesenti may be proven either by way of direct evidence which establishes the agreement, or by way of proof of cohabitation, acts, declarations, and the conduct of the parties and their recognized status in the community in which they reside. *Id.* (inferences can strengthen based upon the length of time and the circumstances of each case).

{¶42} There is no common law divorce from a common law marriage. *See In re Newton*, 65 Ohio App.3d 286, 583 N.E.2d 1026 (5th Dist.1990). Yet, laches has been considered a defense to a common law marriage claim. *See Faison v. Faison*, 8th Dist. No. 84942, 2005-Ohio-2733, ¶21, 35 (where woman waited eight years after separation to bring divorce action claiming a common law marriage).

{¶43} Appellants' claim regarding their mother's common law remarriage to their father was brought under the Civ.R. 60(B)(5) ground of any other reason justifying relief from judgment. The probate court rejected this position on multiple grounds. We uphold the court's threshold findings and need not reach the final "purely for arguments sake" finding.

{¶44} Firstly, although she was not the one who was said to be still married to another, appellants portrayed Marna as a bigamist, citing the criminal statute defining bigamy. They were either accusing her of fraud, misrepresentation, or misconduct in claiming to be the surviving spouse, which would fall under (B)(3), or that they were asserting that the claim was the result of mistake, which would fall under (B)(1). Both are subject to the one-year maximum time limit. Again, resort to the catch-all is not permissible where a more specific ground applies; one cannot categorize a motion as (B)(5) merely to avoid the time limit.

{¶45} Moreover, the catch-all ground in Civ.R. 60(B)(5) is to be used only in extraordinary and unusual cases when the interests of justice warrant it). *Sell v. Brockway*, 7th Dist. No. 11CO30, 2012-Ohio-4552, ¶ 25. The probate court did not abuse its discretion in alternatively ruling that appellant's claim would not fall under Civ.R. 60(B)(5) because the ground asserted was not "substantial" as required for invoking the catch-all provision. *See Volodkevich v. Volodkevich*, 35 Ohio St.3d 152, 154, 518 N.E. 2d 1208 (1988), citing *Caruso-Ciresi, Inc. v. Lohman*, 5 Ohio St.3d 64, 66, 448 N.E.2d 1365 (1983) (grounds for invoking (B)(5) should be substantial).

{¶46} Some of the factors showing the circumstances were not extraordinary also indicate that the motion was not filed within a reasonable time, a requirement of all five of the Civ.R. 60(B) categories. For instance, Pamela and the decedent divorced in 1979, after entering a common law marriage in 1963. They lived together after the divorce, but she left the state in 1984 and never lived with the decedent

again. Pamela never sought a divorce; her prior divorce from the decedent showed that she knew divorce existed from a common law marriage.

{¶47} She did not challenge her ex-husband's 2007 marriage to Marna. At no time before she died in 2011 did Pamela ever assert marital rights based upon 1979-1984 occurrences. As she did not seek to assert her marital status while her ex-husband was alive and she filed no proceedings in probate court upon her ex-husband's death in 2009, the children's 2013 claim of a common law marriage lacks the substantiality required for Civ.R. 60(B). And, they knew of their father's death on the day he died in 2009; Marna allowed them to take or buy various items, and none of them sought to open an estate to complain about the items such as the Ford Model A, which they now assert could push the estate over the limit.

{¶48} Nearly twenty-eight months elapsed from the release and the motion for relief from judgment; and more years before that had elapsed from when a reasonable person would have asserted a surviving spouse claim. More than four years after their father's death, the children wish to declare their deceased mother (who was never said to have expressed or desired such a position) as the surviving spouse. Contrary to appellants' suggestion, the claim of a common law marriage between their deceased and divorced parents does not become extraordinary merely because they did not realize their father owned a 1/6 mineral interest, which increased in value years *after* his death.

{¶49} In addition, the delay in filing must be *explained* to show the motion was filed within a reasonable time of the summary release. As stated above, appellants filed a lawsuit in October of 2012 in the general division against Marna based upon the procurement of the summary release. (And, the affidavit relied upon to show a common law marriage was filed by one of those plaintiffs.) Yet, the motion for relief from the summary release was not filed until December of 2013. Under all of the facts and circumstances of this case, there is no indication that the motion for relief from judgment asserting a prior common law marriage was filed within a reasonable time.

{¶50} For the foregoing reasons, the judgment of the trial court denying the motion for relief from judgment is affirmed.

Donofrio, J., concurs.
DeGenaro, P.J., concurs.