

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

Pioneer State Mut. Ins. Co.

Court of Appeals No. OT-10-026

Appellee

Trial Court No. 08CV328C

v.

Scott Gorsuch

DECISION AND JUDGMENT

Appellant

Decided: November 19, 2010

* * * * *

Scott Gorsuch, pro se.

* * * * *

SINGER, J.

{¶ 1} Appellant, Scott Gorsuch, appeals from a denial of a motion to grant reconsideration of a judgment denying a motion for relief from judgment pursuant to Civ.R. 60(B). For the reasons that follow, we dismiss for a lack of jurisdiction.

{¶ 2} Appellee, Pioneer State Mutual Insurance Company, filed a complaint against appellant in the Ottawa County Court of Common Pleas in June 2008 for subrogated medical costs related to an insurance claim. On June 18, 2006, appellant's motor vehicle collided with a vehicle in which the insured, Lavonne Mechan, was a

passenger, causing her extensive personal injury. Appellee sought a judgment in the amount of \$2,129.03 plus costs against appellant.

{¶ 3} Appellee tried to serve a summons and complaint on appellant by certified mail on three separate occasions. The first attempt failed because appellant had moved. A new address was provided. A second attempt failed when the new address was deemed insufficient for delivery. The third attempt went unclaimed. Appellant then filed a request with the clerk for ordinary mail service upon appellant, which was properly evidenced by a certificate of mailing filed by the clerk on December 2, 2008.

{¶ 4} Appellant never filed an answer to appellee's complaint. On February 17, 2009, appellee filed a motion for default judgment, which was granted that same day. In January 2010, appellant requested a copy of that judgment be mailed to him.

{¶ 5} On March 4, 2010, appellant filed a Civ.R. 60(B) request for relief from judgment in the Ottawa County Court of Common Pleas. On May 18, 2010, the court denied the motion on the basis that appellant presented no evidence that he had a meritorious defense to the complaint.

{¶ 6} On May 28, 2010, appellant filed a motion for reconsideration, which was denied by the court on June 10, 2010. It is from that decision that appellant now appeals.

{¶ 7} Appellant sets forth one assignment of error:

{¶ 8} "The trial court erred and abused its discretion by refusing to grant a reconsideration and permit appellant to amend his motion for relief from judgment to conform to a procedural requirement, depriving appellant of due process of law."

{¶ 9} "To prevail on a motion brought under Civ.R. 60(B), the movant 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, and, where the grounds of relief are Civ.R. 60(B)(1),(2) or (3), not more than one year after the judgment, order or proceeding was entered or taken." *GTE Automatic Electric, Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, at paragraph two of the syllabus. In this case, the court found that appellant had arguably met the second and third prongs of this test, but that he failed to present any evidence of a meritorious defense.

{¶ 10} Rather than appeal the denial of his Civ.R. 60(B) motion to this court, appellant chose to file a motion for reconsideration with the trial court. Appellant included a meritorious defense in his motion for reconsideration, stating that his motor vehicle had been stolen on or around the date of the accident from which the complaint had arisen and that there was a police report on record to that effect.

{¶ 11} "[M]otions for reconsideration are not allowable either expressly or impliedly in the trial court after a final judgment." *Pitts v. Dept. of Transp.* (1981), 67 Ohio St.2d 378, 379. The Rules of Civil Procedure limit relief from judgments to motions expressly provided for within those rules, and a motion for reconsideration is absent from those rules. *Id.* at 380. "Without a specific prescription in the Civil Rules for a motion for reconsideration, it must be considered a nullity. Furthermore, App.R.

4(A) expressly provides that a notice of appeal must be filed within 30 days of the filing of the entry of judgment appealed from." *Id.* at 381.

{¶ 12} A motion for reconsideration does not toll the time for the appeal of the denial of a Civ.R. 60(B) motion, and the denial of the motion for reconsideration is a nullity and cannot be properly appealed. *Karnofel v. Girard Police Dept.*, 11th Dist. Nos. 2008-T-0043 and 2008-T-0048, 2008-Ohio-4414, ¶ 8. An appellant can only properly appeal the final judgment entry denying the Civ.R. 60(B) motion, and must timely do so pursuant to App.R. 4(A). *Ham v. Ham*, 3d Dist. No. 16-07-04, 2008-Ohio-828, ¶ 18.

{¶ 13} Accordingly, we find that the trial court's June 10, 2010 ruling on appellant's motion to reconsider is a nullity. As such, appellant could only have appealed the court's May 18, 2010 denial of his Civ.R. 60(B) motion. Under App.R. 4(A), appellant failed to do so in a timely manner.

{¶ 14} The court's judgment denying the Civ.R. 60(B) motion was dated May 18, 2010, and appellant did not file his appeal until July 2, 2010. Since appellant failed to file a timely appeal from the May 18, 2010 judgment, we lack jurisdiction to consider his appeal. Accordingly, the appeal is hereby dismissed, sua sponte, for appellant's failure to comply with App.R. 4(A). Appellant is ordered to pay all costs associated with this appeal. It is so ordered.

APPEAL DISMISSED.

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A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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