[Cite as *New Beginnings Residential Treatment Ctr. v. Steel Town, L.L.C.*, 2018-Ohio-2779.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

NEW BEGINNINGS RESIDENTIAL

TREATMENT CENTER, LLC, ET AL.,

Plaintiffs-Appellees,

v.

STEEL TOWN, LLC ET AL.,

Defendants-Appellants.

OPINION AND JUDGMENT ENTRY
Case No. 17 MA 0074

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 13 CV 3422

BEFORE:
Carol Ann Robb, Gene Donofrio, Kathleen Bartlett, Judges.

JUDGMENT:
Affirmed.

Atty. Thomas C. Loepp, Thomas C. Loepp, Law Offices, Co., LPA, 1865 Arndale Road, Suite B, Stow, Ohio 44224 for Appellees and

Atty. Percy Squire, 341 S. Third Street, Suite 10, Columbus, Ohio 43215 for Appellants

Dated: June 13, 2018

Robb, P.J.

{¶1} Defendants-Appellants Steel Town LLC et al. appeal the decision of the Mahoning County Common Pleas Court denying a Civ.R. 60(B) motion for relief from judgment. Defendants contend their motion sufficiently demonstrated a meritorious defense or claim to present if relief was granted, they were entitled to relief under division (4) or (5), and relief was timely sought. Plaintiffs-Appellees New Beginnings Residential Treatment Center LLC et al. contend the motion failed to set forth operative facts with specificity to support the three prongs of the test for vacating a judgment under Civ.R. 60(B). For the following reasons, the trial court's judgment is affirmed.

STATEMENT OF CASE

{¶2} This case has a convoluted history. On December 4, 2013, Plaintiffs (New Beginnings Residential Treatment Center LLC and Dr. Vanessa Jones) filed a five-count complaint against Defendants (Steel Town LLC, Sterling A. Williams, and Tax Master Accounting and Tax Service). They set forth claims for a statutory whistleblower violation, wrongful eviction, breach of lease (covenant of quiet enjoyment), accounting malpractice, and intentional misrepresentation. On the same day, they submitted discovery requests, including a request for admissions. In February 2014, Defendants filed a counterclaim alleging breach of lease.

{¶3} On September 23, 2014, Plaintiffs filed a motion for summary judgment as to their claims and the counterclaim. Plaintiffs complained their request for admissions was not timely answered and cited a magistrate's order warning sanctions would be imposed for the failure to respond to outstanding discovery requests by June 29, 2014. Plaintiffs construed the lack of timely response as an admission. Defendants responded to the summary judgment motion and sought additional time to complete discovery, citing Civ.R. 56(F).

{¶4} Defendants also filed a motion to dismiss counts two and three due to an arbitration clause in the lease. Plaintiffs responded the defense should have filed a motion to stay pending arbitration but waived arbitration by filing a counterclaim on the

lease and waiting over ten months to mention the arbitration clause. Defendants replied by requesting a stay pending arbitration on counts two and three. On January 14, 2015, the magistrate found Defendants waived the right to raise the arbitration clause. However, on February 4, 2015, the trial court sustained Defendants' objection and issued a stay pending arbitration on counts two and three.

{¶5} In the meantime, a magistrate's decision of January 28, 2015 granted partial summary judgment to Plaintiffs on counts four and five but reserved for trial the issues of proximate cause and damages. The magistrate also granted summary judgment to Plaintiffs on Defendants' counterclaim, noting their failure to address, explain, or support the bare allegation of breach of lease. In objecting to the decision, Defendants asked the court to include their counterclaim in the arbitration order since it dealt with the same commercial lease and also complained they needed additional time for discovery. Plaintiffs responded the defense had the information to support its own breach of lease counterclaim. On February 25, 2015, the trial court overruled Defendants' objection, adopted the magistrate's decision, entered judgment accordingly, and made a finding of no just cause for delay.

{¶6} The court also noted Defendants' motion to withdraw admissions was awaiting a hearing before the magistrate. On this topic, Defendants filed a February 9, 2015 motion to withdraw admissions, citing Civ.R. 36(B). Defendants explained they responded to the request for admissions on July 10, 2014 but the magistrate deemed the request admitted on Plaintiffs' suggestion. On March 25, 2015, the magistrate overruled Defendants' motion to withdraw admissions, finding its prior decision (deeming admitted the request for admissions) was adopted by the trial court and thus was the law of the case. Defendants objected. On April 20, 2015, the trial court sustained the objection and ordered Defendants' July 10, 2014 answers to the request for admissions to be the answers utilized in the disposition of the case.

{¶7} Thereafter, the trial court issued a judgment entry on May 21, 2015 sua sponte vacating the partial summary judgment on counts four and five and vacating the deeming of admissions within that February 25, 2015 judgment. The court explained the summary judgment on counts four and five was based upon an order deeming

admissions which conflicted with a subsequent order to use Defendants' answers to the request for admissions.

{¶8} On October 20, 2015, the trial court issued a judgment entry sua sponte vacating the February 25, 2015 summary judgment on Defendants' counterclaim and ordering the counterclaim to arbitration. The court explained it ordered counts two and three into arbitration on February 4, 2015 due to the lease's arbitration clause and noted Defendants' February 9, 2015 objection to the magistrate's summary judgment suggested the counterclaim on the same lease should be submitted to arbitration as well. The court said it was using Civ.R. 60(A) to correct an error arising from oversight or omission and found no just reason for delay.

{¶9} Plaintiffs appealed the October 20, 2015 judgment entry vacating summary judgment on the counterclaim and ordering the counterclaim into arbitration, which resulted in 7th Dist. No. 15 MA 0185. On October 23, 2015, the parties jointly filed a notice of dismissal without prejudice to refile "all claims and counterclaims presently pending before" the trial court. The notice added, "It is not the intention to and this dismissal does not affect the jurisdiction of the Court of Appeals, Seventh Appellate District (Mahoning County) to decide the merits of [15 MA 0185]."

{¶10} Nevertheless, Defendants then filed a motion to dismiss the appeal arguing the voluntary dismissal was not necessarily a dismissal of the entire case which dissolved all interlocutory orders including the summary judgment on the counterclaim. This court denied the motion to dismiss. In asking us to reconsider, Defendants claimed the October 20, 2015 decision was interlocutory because it vacated summary judgment on the counterclaim and reinstated the counterclaim, which should be considered the denial of summary judgment, which in turn is not appealable.[1] This court denied the

[1] Defendants' motion also argued the May 21, 2015 order vacating the partial summary judgment on counts four and five was interlocutory. *Citing, e.g.*, Civ.R. 54(B) ("In the absence of a determination that there is no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."). This was based on Plaintiffs' merit brief in *New Beginnings I*, which raised an argument as to the trial court's decision on the admissions. However, as this court subsequently pointed out, the May 21, 2015 order was not before this court. *New Beginnings I*, 7th Dist. No. 15 MA 00185 at ¶ 25. Our decision addressed the October 20, 2015 order, which did not entail a decision on the admissions. *See id.*

motion to reconsider the motion to dismiss.

{¶11} In ruling on the merits of the appeal, this court held the trial court improperly used Civ.R. 60(A) to substantively change and vacate its February 25, 2015 judgment disposing of the counterclaim. *New Beginnings Residential Treatment Ctr., LLC v. Steel Town, LLC*, 7th Dist. No. 15 MA 0185, 2016-Ohio-4814, ¶ 21-23 (*New Beginnings I*). We pointed out: "Civ.R. 60(A) permits a trial court, in its discretion, to correct clerical mistakes which are apparent on the record but does not authorize a trial court to make substantive changes in judgments." *Id.* at ¶ 20, quoting *State ex rel. Litty v. Leskovyansky*, 77 Ohio St.3d 97, 100, 671 N.E.2d 236 (1996). We explained a clerical mistake is mechanical in nature and apparent on the record; it does not involve a legal decision or judgment. *New Beginnings I*, 7th Dist. No. 15 MA 0185 at ¶ 20. We concluded by reversing the trial court's October 20, 2015 order that vacated the summary judgment on the counterclaim, reinstating the entry of summary judgment on the counterclaim, and remanding for further proceedings.

{¶12} Defendants appealed to the Ohio Supreme Court, arguing this court should have dismissed the appeal because the voluntary dismissal in the trial court dissolved prior trial court orders, which Defendants described as all interlocutory. The Supreme Court refused to accept the appeal for review. *New Beginnings Residential Treatment Ctr., L.L.C. v. Steel Town, L.L.C.*, 147 Ohio St.3d 1475, 2016-Ohio-8438, 65 N.E.3d 778.

{¶13} Meanwhile, upon our June 30, 2016 reversal and remand, the trial court entered a judgment on July 20, 2016. The trial court acknowledged that our decision reinstated the grant of summary judgment in favor of Plaintiffs on Defendants' counterclaim. The trial court noted it previously referred counts two and three to arbitration (retaining jurisdiction solely as to any post-arbitration issues under R.C. 2711.01). The court then concluded no other claims remained pending as a result of the October 23, 2015 notice of dismissal without prejudice. Defendants appealed, but this court dismissed the appeal for lack of a final, appealable order, finding the order merely entered judgment in aid of our decision in *New Beginnings I*. *See New Beginnings Residential Treatment Ctr., LLC v. Steel Town, LLC*, 7th Dist. No. 16 MA 0122 (Sep. 28, 2016 J.E.) (*New Beginnings II*).

{¶14} On September 2, 2016, Defendants filed a Civ.R. 60(B) motion for relief from judgment asking the trial court to vacate the February 25, 2015 judgment (and the July 20, 2016 judgment). Defendants pointed out that the prohibition on the trial court making a substantive change to the February 25, 2015 judgment under Civ.R. 60(A) did not prohibit the trial court from making a substantive change to its judgment under Civ.R. 60(B). As for timeliness, Defendants urged their Civ.R. 60(B) motion was timely filed on September 2, 2016 because the appellate court issued its decision on June 30, 2016 and the trial court issued a decision effectuating the appellate decision on July 20, 2016. They reasoned that until our decision was issued, the February 25, 2015 order was not in existence (as it had been vacated by the trial court).

{¶15} Defendants claimed entitlement to relief under divisions (4) and (5) of Civ.R. 60(B), contending "it is no longer equitable that the February 2015 order should have prospective application because the appellate court opinion reinstating it merely determined that the wrong provisions of Rule 60 was cited * * *." In alleging "a meritorious defense," Defendants pointed to the trial court's April 20, 2015 decision withdrawing the deemed admissions and cited Civ.R. 36(B) in support of that decision. They observed the trial court already voiced an opinion that this decision eliminated the basis for granting summary judgment to Plaintiffs in the February 25, 2015 order.[2]

{¶16} In response, Plaintiffs urged the Civ.R. 60(B) motion failed to sufficiently state the grounds for relief or explain how Defendants might be successful in the event the counterclaim was reinstated. Plaintiffs noted the decision in *New Beginnings I* held the trial court erred in vacating a portion of the February 25, 2015 order granting summary judgment on the counterclaim. They pointed out: Defendants offered no argument on the counterclaim; Defendants' response to summary judgment did not respond to the request for summary judgment on the counterclaim in any manner; when objecting to summary judgment on the counterclaim, Defendant merely claimed to need more time; and Defendants did not explain why they would not have the information to show Plaintiffs allegedly breached the lease (such as by failing to pay rent or taxes).

[2] In discussing the pertinent facts and the effect of our appellate decision, Defendants' motion referred to the trial court's May 21, 2015 order three times, without referring to the October 20, 2015 order (which was the only order reviewed on appeal). Correspondingly, the motion alleged the existence of substantive defenses to counts four and five of Plaintiffs' complaint and alleged the lack of testimony by a qualified expert for these claims, but these counts were not addressed in the prior appeal.

Plaintiffs also suggested the motion was not timely as it sought to vacate a February 2015 entry.

{¶17} Defendants were granted leave to file a reply and the matter was set for non-oral hearing. Defendants did not file a reply; nor did they request an evidentiary hearing. On April 7, 2017, the trial court overruled Defendants' Civ.R. 60(B) motion for relief from judgment. The court found Defendants failed to adequately establish they are entitled to relief as requested under Civ.R. 60(B)(4) or (5) and otherwise failed to satisfy all requirements in *G.T.E.* "including, but not necessarily limited to, that they have a meritorious claim to present if relief is granted." The within timely appeal followed.

ASSIGNMENT OF ERROR

{¶18} Defendants' sole assignment of error provides:

"The trial court erred and abused i[t]s discretion when it held that Appellant failed to satisfy all requirements set forth in G.T.E. Automatic Electric, Inc. (1976) 47 Ohio St.2d 146, 'including, but not limited to, that they have a meritorious claim to present if relief is granted'."

{¶19} In framing the issue presented on appeal, Defendants set forth the following query: "Whether having previously determined, albeit under the incorrect provision of Ohio R. Civ. P. 60, sua sponte, that Appellant's responses to Requests for Admission provided a proper basis to grant relief from summary judgment in favor of Appellees on Appellees' accounting malpractice and misrepresentation claims, the trial Court's April 7, 2017 denial of Appellants' motion for relief from judgment was an abuse of discretion." The remainder of the brief tracks the motion for relief from judgment filed in the trial court.

{¶20} First, we must address Defendants' references to counts four and five (Plaintiff's accounting malpractice and intentional misrepresentation claims). As aforementioned, Defendants' motion for relief from judgment repeatedly referred to the May 21, 2015 entry and never referred to the October 20, 2015 entry. The impetus for their motion was our decision in *New Beginnings I* which reversed the trial court's October 20, 2015 decision and prompted the trial court to issue the July 20, 2016 memorialization order. Our decision in *New Beginnings I* dealt solely with the trial

court's October 20, 2015 entry, which purported to vacate summary judgment on the counterclaim under Civ.R. 60(A).

{¶21} Although we also stated the February 25, 2015 entry was reinstated, our ruling was limited to the trial court's October 20, 2015 vacation of the prior summary judgment entered on the counterclaim in the February 25, 2015 entry. We specifically stated the May 21, 2015 entry was not before us. *New Beginnings I*, 7th Dist. No. 15 MA 0185 at ¶ 25. As the trial court observed in the July 20, 2016 entry, *New Beginnings I* reinstated the grant of summary judgment in favor of Plaintiffs and against Defendants *upon its counterclaim* and no other claims remained pending (with the exception of counts two and three which were in arbitration).

{¶22} The summary judgment on counts four and five in the February 25, 2015 entry was partial with a decision on proximate cause and damages reserved by the trial court for further adjudication. In other words, the summary judgment decision on half a claim was not final; nor was the decision to vacate summary judgment on half a claim. *See* Civ.R. 54(B); R.C. 2505.02. Under the joint voluntary dismissal, the interlocutory orders granting partial summary judgment on parts of counts four and five and then vacating partial summary judgment on those parts of counts four and five were eliminated. Defendants made this very point in *New Beginnings I* when they believed we would be reviewing the May 21, 2015 order due to statements made in the Plaintiffs' brief in that case. However, we refused to review the May 21, 2015 order, and we did not agree with their premise *as applied to the summary judgment on the counterclaim and the corresponding vacation of such*.[3]

{¶23} In any event, there exists no judgment against Defendants on counts four and five. The trial court's July 20, 2016 order does not suggest otherwise. Plaintiffs'

[3] No just reason for delay language in a summary judgment can make summary judgment on a counterclaim final under the proper circumstances. *Finality is the law of the case here.* This is contrasted with a partial summary judgment on half a claim (where proximate cause and damages were unresolved), which cannot be made final by no just reason for delay language. *See, e.g., Kooyman v. Staffco Constr., Inc.*, 2d Dist. No. 07CA38, 2008-Ohio-2890, ¶ 7 (summary judgment is not final where proximate cause and damages remain pending). *See also State ex rel. White v. Cuyahoga Metro. Hous. Auth.*, 79 Ohio St.3d 543, 546, 684 N.E.2d 72 (1997) (generally, orders determining liability but deferring the issue of damages are not final appealable orders, with a limited exception "where the computation of damages is mechanical and unlikely to produce a second appeal because only a ministerial task similar to assessing costs remains."). We also note Defendants' objection to the magistrate's summary judgment alternatively asked for arbitration on the counterclaim. By granting summary judgment against Defendants' on their counterclaim, the trial court refused this request.

response to the motion for relief from judgment therefore dealt wholly with the counterclaim, urging the trial court was not required to grant Defendants' relief from the reinstated summary judgment on their counterclaim. Defendants did not reply, even though the court granted leave to do so. Their appellate brief tracks their motion for relief from judgment and does not contain further enlightenment on the reasoning behind their arguments.

{¶24} As there is a brief reference to the trial court's summary judgment on the counterclaim in Defendants' motion for relief from judgment and in their brief in this appeal, we will attempt to review the denial of Defendants' motion for relief from judgment as far as the motion can be read as applying to the summary judgment on the counterclaim, which was the enduring judgment in the case at the time.

{¶25} We review the denial of a Civ.R. 60(B) motion under an abuse of discretion standard of review. *Griffey v. Rajan*, 33 Ohio St.3d 75, 77, 514 N.E.2d 1122 (1987). An abuse of discretion connotes that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). To prevail on a Civ.R. 60(B) motion, the movant must demonstrate:

> (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 Elec., Inc. v. ARC Industries, Inc., 47 Ohio St.2d 146, 150-151, 351 N.E.2d 113 (1976). If any of the three requirements are not met, the motion must be denied. *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20, 520 N.E.2d 564 (1988). Only if "operative facts" supporting the requirements are presented in the motion must the court hold a hearing before denying said motion. *See Coulson v. Coulson*, 5 Ohio St.3d 12, 15, 448 N.E.2d 809 (1983).

{¶26} Defendants claim entitlement to relief under the following two divisions of Civ.R. 60(B): "(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)(4)-(5). Division (5) is a catch-all provision providing the court with the ability to relieve a person from the unjust operation of a judgment. *Caruso-Ciresi, Inc. v. Lohman*, 5 Ohio St.3d 64, 448 N.E.2d 1365 (1983), ¶ 1 of syllabus. However, the grounds for invoking Civ.R. 60(B)(5) should be substantial. *Id.* at ¶ 2 of syllabus. In addition, division (5) is not to be used as a substitute for any of the other more specific provisions of the rule. *Id.* at ¶ 1 of syllabus.

{¶27} Defendants employ the more specific provision of (B)(4) as they suggest it is no longer equitable for the February 25, 2015 judgment entry to have prospective application because the admissions are no longer deemed admitted due to the trial court's April 20, 2015 entry. Defendants suggest the trial court abused its discretion by changing its mind on the effect the April 20, 2015 entry had on the case. In other words, they argue the trial court abused its discretion in refusing to grant Civ.R. 60(B) relief from summary judgment where the trial court previously attempted to grant Civ.R. 60(A) relief on the same issue.

{¶28} However, we initially point out a trial court who may believe it was merely sua sponte reconsidering an interlocutory order may exercise its discretion differently upon realizing the implications of an appellate court's reversal which held the trial court improperly made substantive changes to a prior summary judgment order disposing of a counterclaim. Upon the realization a prior order was final and not subject to reconsideration or Civ.R. 60(A) correction, a trial court can rationally come to a different decision if the issue arises in a motion for relief from judgment. The breadth of the trial court's discretion is different in the two scenarios.

{¶29} Contrary to Defendants' suggestion, we need not bind the trial court by a prior opinion expressed in its May 21, 2015 judgment entry, which dealt with counts unrelated to the counterclaim. As the trial court's prior decision was issued sua sponte, the court lacked both a motion with arguments on the elements required before granting relief and a response with arguments against the action contemplated. The decision

was not based on a Civ.R. 60(B) analysis. We review the denial of Civ.R. 60(B) relief for an abuse of discretion. *Griffey*, 33 Ohio St.3d at 77. In doing so, we do not substitute our judgment for that of the trial court. *Home Fed. S. & L. Assn. of Niles v. Keck*, 7th Dist. No. 15 MA 0041, 2016-Ohio-651, 59 N.E.3d 706, ¶ 17.

{¶30} We note the Civ.R. 60(B) motion was made nearly a year after the trial court's sua sponte vacation of summary judgment. This is not an observation on the issue of Defendants' timeliness. Rather, this is an observation on the importance of the contents of the Civ.R. 60(B) motion. The trial court has many cases and has no obligation to review all prior filings over the years in a case to scour for items that could support a movant's Civ.R. 60(B) motion. The motion must set forth the pertinent operative facts to meet the elements supporting relief from judgment.

{¶31} Defendants' claim of entitlement to relief under Civ.R. 60(B)(4) is based upon the trial court's decision on admissions. As Plaintiffs' response pointed out, the decision granting summary judgment on the counterclaim was not focused on the admissions; this portion of the decision emphasized how Defendants' response to summary judgment did not address or explain why summary judgment should not be granted on their counterclaim. In fact, although Defendants suggest the trial court should be bound by its prior rationale on vacation of summary judgment (expressed prior to this court's reversal), the trial court's October 20, 2015 decision vacating the summary judgment on the counterclaim was not said to be based upon the vacated admissions decision (as was the May 21, 2015 decision). Rather, the October 20, 2015 decision was based on the arbitration clause of the lease and a prior decision to send counts two and three of the complaint to arbitration. The Civ.R. 60(B) motion did not even mention this arbitration aspect of the counterclaim or acknowledge this was the reason expressed by the trial court's prior entry relating to the counterclaim. Defendants' theory of entitlement to relief expressed in the Civ.R. 60(B) motion was thus different than the rationale expressed in the pertinent prior trial court entry, which Defendants suggest the trial court should have re-adopted in these proceedings.

{¶32} "Although a movant is not required to support its motion with evidentiary materials, the movant must do more than make bare allegations that he or she is entitled to relief." *Kay v. Marc Glassman, Inc.*, 76 Ohio St.3d 18, 20, 665 N.E.2d 1102

(1996) ("Thus, in order to convince the court that it is in the best interests of justice to set aside the judgment or to grant a hearing, the movant may decide to submit evidentiary materials in support of its motion."). The surrounding facts and circumstances contained in the Civ.R. 60(B) motion as to why continued enforcement of the judgment was inequitable were not clearly associated with the counterclaim. "If the movant fails to apprise the court of those surrounding facts and circumstances and the court subsequently overrules the motion, that judgment cannot be characterized as an abuse of discretion." *Rose Chevrolet*, 36 Ohio St.3d at 20. "A reviewing court in such a case has no alternative but to presume that the trial court, in overruling appellant's motion, acted within the bounds of its discretionary authority." *Id.*

{¶33} There is also the issue with the lack of operative facts in the motion demonstrating a meritorious claim or defense to present if relief is granted. Although the movant need not prove he will prevail if relief is granted, the movant must allege the meritorious claim or defense to be presented if relief is granted. *See Rose Chevrolet*, 36 Ohio St.3d at 20. We note the counterclaim itself merely disclosed, "Plaintiffs breached the lease Agreement." Plaintiffs point out even if we looked to the objections to the magistrate's summary judgment, Defendants simply claimed they needed more time for discovery, but at no time then or after did they explain why they needed more time to collect evidence related to their own breach of lease counterclaim or what that evidence entailed. Regardless, the Civ.R. 60(B) motion did not specifically or even generally disclose what the counterclaim involved. Nor did the motion mention the October 20, 2015 judgment entry, which contained the trial court's previous findings on the propriety of vacating the summary judgment on the counterclaim. This court finds the Civ.R. 60(B) motion failed to outline a meritorious claim to present if relief from judgment was granted on the counterclaim.

{¶34} For the foregoing reasons, we conclude the trial court did not abuse its discretion in refusing to utilize Civ.R. 60(B) to vacate its February 25, 2015 judgment entry which granted summary judgment in favor of Plaintiffs on Defendants' counterclaim. The Civ.R. 60(B) motion referred to counts other than the one involved in this court's June 30, 2016 decision in *New Beginnings I*, and it referred to counts that had been voluntarily dismissed by joint agreement. The conflicting and lacking

information in the Civ.R. 60(B) motion failed to clearly connect how the reconsideration of an order on admissions made it inequitable to continue to enforce the pertinent portion of the February 25, 2015 judgment entry. In addition, Defendants' Civ.R. 60(B) motion failed to set out the meritorious claim they would present on the counterclaim if relief from judgment was granted. Judgment affirmed.

Donofrio, J., concurs.

Bartlett, J., concurs

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.