

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Mabel Anderson,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-339
Consumer Portfolio Services, Inc.,	:	(M.C. No. 2011 CVH 015653)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on September 25, 2012

*McGlinchey Stafford, PLLC, James S. Wertheim and
Candice L. Musiek*, for appellant.

APPEAL from the Franklin County Municipal Court

CONNOR, J.

{¶ 1} Defendant-appellant, Consumer Portfolio Services, Inc. ("CPS"), appeals from a judgment of the Franklin County Municipal Court granting relief from judgment pursuant to Civ.R. 60(B) to defendant-appellee, Mabel Anderson.

{¶ 2} Ms. Anderson purchased an automobile in 2007 with an associated loan contract. The initial lender later assigned the loan to CPS. In April 2011, Ms. Anderson sued CPS in Franklin County Municipal Court, Small Claims Division, asserting that she was not obligated to pay the final two years of monthly payments under the 60-month contract. CPS answered, counter claimed for the balance due, and obtained transfer of the case out of the small claims division. The Franklin County Municipal Court then granted summary judgment in favor of CPS based upon the loan contract and account history. This judgment disposed of all pending claims, and Ms. Anderson took no appeal from it.

{¶ 3} On September 21, 2011, Ms. Anderson filed a document of indeterminate description with the trial court. In this document Ms. Anderson did not address the specifics of the court's prior judgment or the underlying consumer loan transaction, but made a vague reference to identity theft and asserted the injustice of amounts owed and paid under the contract, in reference to the value of the underlying vehicle: "Replacement S.S. cards came up missing. That's when I found out I been I.D. thief. Protect my name because it's on apartments, he's keeping it under his own business. He's kept my name from 2000 and on. I feel it's unjust what he's doing to me. Now he's charging me [\$]22,000 for a 2007 car which I only paid [\$]10,000 for." (R. 19.)

{¶ 4} The record reflects that this filing by Ms. Anderson was served by mail upon counsel for CPS.

{¶ 5} On March 19, 2012, the trial court filed the following entry: "For good cause shown, this matter shall come on for oral hearing on the Defendant's Motion for Summary Judgment. The Entry granting summary judgment and dated September 2, 2011, is hereby Vacated." (R. 21.) CPS has timely appealed and brings the following two assignments of error:

1. The trial court abused its discretion by vacating the final judgment as Plaintiff/Appellee Mabel Anderson failed to make the requisite showing under Civil Rule 60(B).
2. The trial court erred when it sua sponte vacated its prior entry of summary judgment in favor of Defendant-Appellant Consumer Portfolio Services, Inc.

{¶ 6} We will discuss appellant's two assignments of error together. The trial court's initial grant of summary judgment in this case disposed of all claims against all parties and was a final appealable order. R.C. 2505.02; Civ.R. 54(B); *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St.3d 86 (1989), syllabus.

{¶ 7} Other than a judgment that is void ab initio for lack of jurisdiction, a court has no authority to vacate or modify its final orders other than as set forth under Civ.R. 60(B). *Deutsche Bank Trust Co. v. Pearlman*, 162 Ohio App.3d 164, 2005-Ohio-3545 (9th Dist.), ¶ 13-15; *Kemper Securities, Inc. v. Schultz*, 111 Ohio App.3d 621, 625 (10th Dist.1996). There is no allegation in either Ms. Anderson's filing or the trial court's entry setting aside its prior judgment that the initial judgment was void. The only mechanism

by which the trial court could set aside that judgment, therefore, was through proper application of Civ.R. 60(B).

{¶ 8} In order to prevail on a motion for relief from judgment under Civ.R. 60(B), a movant must demonstrate that (1) the movant has a meritorious defense or claim to present if relief is granted, (2) the movant 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. *Perry v. Gen. Motors Corp.*, 113 Ohio App.3d 318 (10th Dist.1996), citing *GTE Automatic Elec. v. ARC Industries*, 47 Ohio St.2d 146 (1976). If Civ.R. 60(B)(1), (2) or (3) are the grounds for relief, the motion must be made within one year after the judgment, order, or proceeding was entered or taken; otherwise, the motion must be made within a reasonable time. *Id.*

{¶ 9} The enumerated grounds in Civ.R. 60(B) include mistake, inadvertence, surprise or excusable neglect; newly discovered evidence; fraud; misrepresentation or other misconduct of an adverse party; satisfaction of judgment; and "any other reason justifying relief from the judgment," the catch-all provision under Civ.R. 60(B)(5).

{¶ 10} The decision to grant or deny a Civ.R. 60(B) motion is left to the sound discretion of the trial court and will not be reversed on appeal unless the trial court abused that discretion. *Moore v. Emmanuel Family Training Ctr.*, 18 Ohio St.3d 64, 66 (1985). The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the court's attitude was arbitrary, unreasonable, or unconscionable. *State ex rel. Lindenschmidt v. Butler Cty. Bd. of Commrs.*, 72 Ohio St.3d 464 (1995).

{¶ 11} The record in the present case reveals no articulated application of any of the Civ.R. 60(B) factors either in Ms. Anderson's filing with the court or the trial court's brief entry setting aside judgment. Although Ms. Anderson's filing indicates that identity theft is somehow at issue, she does not allege that she did not herself enter into the loan agreement. A bare description of the amounts due under the loan in relation to the value of the car does not create, of itself, a meritorious defense to contractual obligation under the loan agreement. Nothing in the pleadings, in fact, establishes any inference that the loan was invalid, that Ms. Anderson was not in default or that CPS does not hold rights under the loan agreement.

{¶ 12} The failure to present operative facts that support relief from judgment will preclude such relief. Similarly, the failure to invoke one of the grounds set forth under the rule mandates denial of a Civ.R. 60(B) motion. *Herlihy Moving and Storage, Inc. v. Nickison*, 10th Dist. No. 09AP-831, 2010-Ohio-6525. Given the state of the pleadings, it was an abuse of discretion on the part of the trial court to grant relief from judgment in this case. The judgment of the Franklin County Municipal Court must be reversed.

{¶ 13} In accordance with the foregoing, appellant's two assignments of error are sustained and the judgment of the Franklin County Municipal Court granting relief from judgment to Ms. Anderson is reversed. The initial judgment of the court granting summary judgment in favor of Consumer Portfolio Services, Inc. stands as the final judgment in the case.

Judgment reversed.

SADLER and TYACK, JJ., concur.
