

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Asherton Woods Homeowners' Association, Inc.,	:	
	:	
Plaintiff-Appellee,	:	No. 13AP-84
	:	(M.C. No. 2012 CVI 11673)
v.	:	
	:	(REGULAR CALENDAR)
Ola OluJoba,	:	
	:	
Defendant-Appellant.	:	
	:	

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D E C I S I O N

Rendered on August 15, 2013

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*Dana & Pariser Co., L.P.A., and Allyson Tanenbaum, for appellee.*

*Ola OluJoba, pro se.*

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APPEAL from the Franklin County Municipal Court

DORRIAN, J.

{¶ 1} Defendant-appellant, Ola OluJoba ("appellant"), appeals from the judgment of the Franklin County Municipal Court denying his motion to set aside judgment in favor of plaintiff-appellee, Asherton Woods Homeowners' Association, Inc. ("appellee"). For the following reasons, we affirm.

{¶ 2} Appellee filed suit against appellant on April 12, 2012, claiming that he failed to pay association dues and assessments, late fees, attorney fees, and assigned interest in the amount of \$1,632.47. The case was assigned to a magistrate. The magistrate conducted a trial on July 16, 2012. Appellant was present and participated at trial. On October 23, 2012, the magistrate entered judgment in favor of appellant in the amount of \$1,182.47, plus court costs and interest. The decision contained a notice at the end stating:

A party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law contained in this decision (whether or not specifically designated as such under Civ.R. 53(D)(3)(a)(ii)) unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(D)(3)(b).

On October 25, 2012, the trial court adopted the magistrate's decision. It appears from the docket that the judgment was mailed to appellant the same day.<sup>1</sup>

{¶ 3} On December 11, 2012, appellant filed a motion for relief from judgment. The trial court construed the motion as being filed pursuant to Civ.R. 60(B). The court considered whether appellant's evidence in Exhibit B attached to his motion constituted newly discovered evidence pursuant to Civ. R. 60(B)(2). Noting that "it is the information included in [appellee's] trial Exhibit B that forms the basis for [appellant's] 'new evidence,' " the court concluded that "[f]ailure to produce evidence at trial or properly challenge the evidence produced by the opposing party does not support a claim for setting aside a judgment and granting a new trial." (Jan. 17, 2013 Entry.) Therefore, the trial court found that appellant failed to prove that judgment should be reversed pursuant to Civ.R. 60(B)(2). Accordingly, the trial court denied appellant's motion on January 17, 2013.

{¶ 4} Appellant timely appealed and asserts the following three assignments of error:

[1.] The trial at the lower Court was partial against the Defendant when the Court admitted into evidence, despite Defendant's objections, unauthenticated document (Exhibit B) that Plaintiff has refused to disclose to Defendant before trial, thereby violating Defendant's right to a fair trial.

[2.] Plaintiff withheld material evidence in Exhibit B until trial, thus undermining Defendant's preparedness for effective representation. This singular action was prejudicial to Defendant's case.

[3.] Magistrate's decision to grant Plaintiff's request for costs, fees and charges especially after Defendant had met and

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<sup>1</sup> It is not clear from the docket when the magistrate's decision was mailed to appellant. In his motion for relief from judgment, appellant asserts that he is raising the following objection, "rather belatedly because [he] did not receive the magistrate's judgment on time." The trial court, without further explanation, noted in her January 17, 2013 entry, "[i]f the court considers defendant's Motion on Objection to the Magistrate's Decision, it was untimely filed." On appeal, appellant did not assign error to this conclusion. Therefore, we will not address the same.

exceeded the obligations in dispute, while not holding Plaintiff responsible for her errors amounted to outright injustice.

{¶ 5} We note that all of appellant's assignments of error complain of alleged error on the part of the magistrate at trial. A party generally may not raise issues in seeking relief from judgment under Civ.R. 60(B) that could have been raised upon appeal, and error that a timely appeal could have corrected cannot form the predicate for a motion under the rule. *Brunner Firm Co., L.P.A. v. Bussard*, 10th Dist. No. 07AP-867, 2008-Ohio-4684, ¶ 10, citing *Daroczy v. Lantz*, 10th Dist. No. 02AP-31, 2002-Ohio-5417, ¶ 34; *State ex rel. Richard v. Cuyahoga Cty. Commrs.*, 89 Ohio St.3d 203 (2000). Likewise, issues that could and should have been raised in objections to a magistrate's decision, and thus are waived for purposes of appeal, generally cannot be raised subsequently in a motion for relief from judgment. *Brunner Firm* at ¶ 10, citing *Mattingly v. Deveaux*, 10th Dist. No. 03AP-793, 2004-Ohio-2506; *Brown v. Zurich US*, 150 Ohio App.3d 105, 2002-Ohio-6099, ¶ 26 (10th Dist.). Here, the trial court found that appellant did not timely object to the magistrate's decision. Civ.R. 53(D)(3)(b)(i) requires a party to file written objections to a magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period. Furthermore, "[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ. R. 53(D)(3)(b)." Civ.R. 53(D)(3)(b)(iv).

{¶ 6} Because appellant could have raised his arguments by timely filing objections to the magistrate's decision and upon further appeal of the subsequent court judgment, we overrule all three of appellant's assignments of error and affirm the judgment of the Franklin County Municipal Court.

*Judgment affirmed.*

TYACK and SADLER, JJ., concur.

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