

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
TRUMBULL COUNTY, OHIO**

LAUREN M. LATIMER,	:	<b>O P I N I O N</b>
Plaintiff-Appellee,	:	
- VS -	:	<b>CASE NO. 2014-T-0116</b>
MATTHEW PALDINO,	:	
Defendant-Appellant.	:	

Civil Appeal from the Trumbull County Court of Common Pleas.  
Case No. 2010 CV 01229.

Judgment: Affirmed.

*Albert A. Palombaro*, 4822 Market Street, Boardman, OH 44512 (For Plaintiff-Appellee).

*Charles E. McFarland*, 338 Jackson Road, New Castle, KY 40050 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Matthew Paldino, appeals the judgment of the Trumbull County Court of Common Pleas, denying his Civ.R. 60(B) motion for relief from judgment. The underlying judgment ordered appellant to pay the sum of \$41,450 to appellee, Lauren M. Latimer, on appellee's claim for unjust enrichment. For the reasons that follow, we affirm the judgment of the trial court.

{¶2} The parties began dating in 1998 and moved in together in 1999. In 2000, they found another home together, and Paldino purchased it solely in his name.

Paldino made a down payment in the amount of \$40,000 with funds from the sale of his first house and his personal investments. The parties lived together in this home until 2010.

{¶3} From 2000 until 2005, they maintained separate bank accounts. Paldino paid the mortgage; Latimer paid the utility bills, gas for the parties' vehicles, and groceries for the household. Latimer also gave Paldino any money left over from her paycheck. In 2005, Paldino withdrew \$9,250 from his checking account and then added Latimer to the account. Both parties' paychecks were directly deposited into this account, and all expenditures were paid from this account. In December 2009, the parties became engaged. In February 2010 the relationship deteriorated, and Paldino evicted Latimer from the property.

{¶4} Thereafter, Latimer filed a complaint alleging unjust enrichment. She also sought compensation for her equitable interest in personal assets and real estate, and an order restraining Paldino from disposing of the same. Latimer alleged that Paldino had been unjustly enriched to her detriment by keeping the benefit of the equity earned in the real estate during the period of their cohabitation. A trial was held before the magistrate on December 7, 2012.

{¶5} The March 1, 2013 magistrate's decision found in favor of Latimer's unjust enrichment claim and found Latimer was entitled to one-half of the equity accumulated while the parties were cohabitating. The magistrate calculated the equity as follows:

The parties stipulated the appraised value of the subject real estate was \$122,900 at the time of their split and Latimer's vacation/eviction of the premises. The mortgage has been paid in full. Subtracting the down payment of Paldino's \$40,000 from the appraised value of \$122,900, equals \$82,900 in equity subject to division.

It therefore found Latimer was entitled to equity in the amount of \$41,450.

{¶6} Paldino did not file objections to the decision. The trial court adopted the magistrate's decision on March 19, 2013. Paldino did not file a direct appeal. On February 4, 2014, Paldino filed a motion for relief from judgment, which the trial court denied. Paldino filed a motion to reconsider his motion for relief from judgment on March 24, 2014, which the trial court also denied. Paldino filed a timely notice of appeal from this denial, which was dismissed for failure to prosecute.

{¶7} After obtaining new representation, Paldino filed a second motion for relief from judgment. This motion was denied on November 5, 2014. Paldino filed a timely notice of appeal and asserts one assignment of error for our review:

{¶8} "The Trumbull County Court of Common Pleas erred in denying Appellant's Rule 60(B) Motion to Vacate Judgment."

{¶9} "An appellate court reviews a judgment entered on a Civ.R. 60(B) motion for an abuse of discretion." *Am. Express Bank, FSB v. Waller*, 11th Dist. Lake No. 2011-L-047, 2012-Ohio-3117, ¶11. We hold the trial court did not abuse its discretion by denying Paldino's Civ.R. 60(B) motion, as his arguments are all barred by the doctrine of res judicata. See *Harris v. Anderson*, 109 Ohio St.3d 101, 2006-Ohio-1934, ¶8.

{¶10} Paldino does not argue that he is entitled to relief under the appropriate three-pronged standard of Civ.R. 60(B). See *GTE Automatic Elec., Inc. v. ARC Indus., Inc.*, 47 Ohio St.2d 146 (1976), paragraph two of the syllabus (stating a party must prove a meritorious defense, entitlement to relief, and timeliness). Rather, he attacks the trial court's judgment entry with arguments that should have been, and could have

been, raised in objections to the magistrate's decision and, if necessary, on direct appeal. Paldino has used his Civ.R. 60(B) motion improperly—both times. See *Waller, supra*, ¶14 (“[an appellant] cannot, however, after the opportunity for direct appellate review has passed, use Civ.R. 60(B) as a means of indirect entry into appellate review”).

{¶11} Paldino raises three issues within his assignment of error. With his first issue, Paldino attempts to evade the res judicata doctrine by arguing the trial court did not have jurisdiction to enter the judgment against him. See *Byard v. Byler*, 74 Ohio St.3d 294, 296 (1996), citing Civ.R. 12(H)(3) (“The issue of subject matter jurisdiction cannot be waived and therefore can be raised at any time during the proceedings.”). Paldino states the trial court lacked authority “to render a judgment for a distribution of property between unmarried, cohabitating persons,” and the judgment is void “because of the absence of a marriage contract.” The trial court did not, however, distribute property between unmarried persons; it awarded a judgment to Latimer in favor of her unjust enrichment claim. The trial court patently and unambiguously had jurisdiction over the subject matter of this claim and properly exercised that jurisdiction over the parties. See Ohio Const. Art. IV, Section 4; R.C. 2305.01. Paldino's argument is not well taken: it could have been raised previously, and is now barred by res judicata.

{¶12} Paldino's second and third issues were specifically raised in his first motion for relief from judgment. He argues, essentially, that the magistrate's findings were against the weight of the evidence and that the trial court improperly calculated the equity in the home. Because Paldino did not file objections to the magistrate's decision

or a direct appeal, these substantive arguments were barred by res judicata under his first motion for relief. *See Harris, supra*, at ¶8. They remain barred by res judicata now.

{¶13} Even assuming the doctrine of res judicata did not apply, this court would be unable to review the merits of these two arguments, as Paldino has failed to file a transcript of the trial court proceedings. Pursuant to App.R. 9, it is the appellant's duty to provide a transcript for appellate review. *Maybaum v. LaMarca*, 11th Dist. Geauga No. 2009-G-2902, 2010-Ohio-708, ¶23. "When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980).

{¶14} Paldino's sole assignment of error is without merit.

{¶15} The judgment of the Trumbull County Court of Common Pleas is affirmed.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.