[Cite as *Haslam v. Mutigli*, 2010-Ohio-4633.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SUSAN HASLAM, FKA MUTIGLI	JUDGES:
Plaintiff-Appellee	Hon. William B. Hoffman, P.J. Hon. Sheila G. Farmer, J. Hon. Patricia A. Delaney, J.
-vs-	
	Case No. 2010CA00014
JOSEPH MUTIGLI	
Defendant-Appellant	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Common Pleas, Family Court Division, Case No. 1998DR00787
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	September 27, 2010

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
DAVID B. FERRELL 220 Market Avenue, S. Suite 600 Canton, Ohio 44702	JOSEPH MUTIGLI, PRO SE 320 Maple Street Waynesburg, Ohio 44688

Hoffman, P.J.

{¶1} Defendant–appellant Joseph Mutigli appeals the December 29, 2009 Judgment Entry entered by the Stark County Court of Common Pleas, Family Court Division, which overruled his motion to vacate spousal support. Plaintiff-appellee is Susan Haslam fka Susan Mutigli.

STATEMENT OF THE CASE[1]

{¶2} On May 22, 1998, Appellee filed a Complaint for Divorce in the Stark County Court of Common Pleas, Family Court Division. The trial court granted Appellee a divorce from Appellant via Decree of Divorce filed June 23, 1999. The divorce decree incorporated the parties' separation agreement. Pursuant thereto, Appellant was to pay Appellee the sum of $740/month for spousal support for a period of seventy-two months. The trial court retained jurisdiction to modify spousal support.

{¶3} Within six months of the issuance of the divorce decree, Appellee was forced to file a motion to show cause as Appellant had failed to comply with the child and spousal support orders. Via Judgment Entry filed January 13, 2000, the trial court found Appellant guilty of willful contempt and sentenced Appellant to thirty days in the Stark County Jail. Appellant did not report to the Stark County Jail to commence his sentence; therefore, the trial court issued a warrant for his arrest. Appellant ultimately appeared at an August 16, 2006 Hearing on the Stark County Child Support Enforcement Agency's Motion to Impose the January 13, 2000 sentence. The trial court sentenced Appellant to sixty days in the Stark County Jail and imposed a fine of

[1] A Statement of the Facts underlying the parties' divorce is not necessary for our disposition of this appeal.

$500.00 plus costs. The trial court deferred the sentence as Appellant had made a good faith effort to reduce the arrearage. CSEA filed a second motion to impose sentence on November 29, 2007, as Appellant had failed to comply with the conditions of the August 16, 2006 suspended sentence. The trial court re-imposed the sixty days sentence via Judgment Entry filed January 14, 2008. Appellant was ordered to report to the Stark County Jail on April 1, 2008, but failed to do so. After a capias was issued, Appellant voluntarily turned himself in on June 2, 2008. Appellant served eight days and was released. Due to Appellant's noncompliance, CSEA asked the trial court to re-impose the fifty-two days suspended. Appellant failed to appear at the scheduled hearing and the trial court again issued a warrant for his arrest.

{¶4} On July 21, 2009, Appellant filed a Motion to Vacate the Spousal Support Award. Appellant asserted the trial court retained jurisdiction over the issue of spousal support, and the award should have been terminated upon Appellee's remarriage which had occurred several years earlier, but which she had never reported. Appellant filed his motion pursuant to Civ.R. 60(B)(4)(5). The trial court conducted a hearing on the motion on November 16, 2009. The parties filed their respective final arguments as ordered by the trial court. Via Judgment Entry filed December 29, 2009, the trial court overruled Appellant's motion to vacate. The trial court, agreeing with the reasons set forth in Appellee's final argument, found Appellant's motion to be untimely.

{¶5} It is from this judgment entry Appellant appeals, raising the following assignments of error:

{¶6} "I. THE LOWER COURT COMMITTED REVERSIBLE ERROR WHEN IT DID NOT TERMINATE THE APPELLANTS' SPOUSAL SUPPORT, RETROACTIVE TO AUGUST 3RD, 2002 THE DATE THE PLAINTIFF REMARRIED.

{¶7} "II. THE LOWER COURT COMMITTED ERROR WHEN IT DID NOT WHEN IT DID NOT LIFT THE BENCH WARRANT ISSUED JUNE 1ST, 2009 FOR NON PAYMENT OF CHILD SUPPORT.

{¶8} "III. THE LOWER COURT COMMITTED REVERSIBLE ERROR WHEN IT DID NOT WHEN DID NOT INSIST SCCESA PRODUCE A COMPLETE ACCURATE AUDIT WITH BREAK DOWN OF THE DEFENDANTS PAYMENTS SO CHILD SUPPORT AND SPOUSAL SUPPORT.

{¶9} "IV. THE LOWER COURT COMMITTED REVERSIBLE ERROR WHEN IT ALLOWED STATEMENTS OF A FALSE, LIBELOUS AND OF SLANDEROUS NATURE TO BE ENTERED IN TO THE RECORD.

{¶10} "V. THE LOWER COURT COMMITTED ERROR WHEN IT ALLOWED SCCSEA ATTORNEY HOPWOOD TO INTRODUCE THE FACT THAT PLAINTIFF HAD A STATEMENT FROM WEST VIRGINIA CHILD SUPPORT ENFORCEMENT THAT PLAINTIFF INFORMED THAT AGENCY THAT SHE HAD REMARRIED.

{¶11} "VI. THE LOWER COURT COMMITTED REVERSIBLE ERROR WHEN IT DID NOT WHEN IT DID NOT ADVISE THE DEFENDANT OF HIS LEGAL RIGHTS UNDER THE LAW WHEN IT WAS APPARENT HE HAD NO LEGAL REPRESENTATION OR INEFFECTIVE COUNCIL."

{¶12} We begin by noting Appellant has failed to comply with App. R. 16.

{¶13} App. R. 16(A) provides:

{¶14} "The appellant shall include in its brief, under the headings and in the order indicated, *all* of the following:

{¶15} "(1) A table of contents, with page references.

{¶16} "(2) A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where cited.

{¶17} "(3) A statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected.

{¶18} "(4) A statement of the issues presented for review, with references to the assignments of error to which each issue relates.

{¶19} "(5) A statement of the case briefly describing the nature of the case, the course of proceedings, and the disposition in the court below.

{¶20} "(6) A statement of the facts relevant to the assignments of error presented for review, with appropriate references to the record * * *

{¶21} "(7) An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.

{¶22} "(8) A conclusion briefly stating the precise relief sought."

{¶23} Appellant's brief does not satisfy the requirements of subsections (3) – (7); therefore, is noncompliant. Absent minimal compliance with App. R. 16(A), this Court cannot reasonably respond to Appellant's claims, and may, in its discretion, disregard those claims. See, *Foster v. Board of Elections* (1977), 53 Ohio App.2d 213, 228, 373 N.E.2d 1274. Such deficiencies are tantamount to failure to file a brief. Although this

Court has the authority under App. R. 18(C) to dismiss an appeal for failure to file a brief, we elect not do so here.

I

{¶24} In his first assignment of error, Appellant maintains the trial court erred in failing to terminate his spousal support obligation, retroactive to August 3, 2002, the date of Appellee's remarriage.

{¶25} "Pursuant to R.C. 3105.18(E), a trial court has the authority to modify or terminate an order for alimony or spousal support only if the divorce decree contains an express reservation of jurisdiction." *Kimble v. Kimble,* 97 Ohio St.3d 424, 2002 -Ohio-6667.

{¶26} It is undisputed, the original divorce decree between the parties expressly provided for the trial court to retain jurisdiction over the issue of spousal support. Accordingly, when Appellant learned of Appellee's remarriage, Appellant could have filed a motion to modify or terminate his spousal support obligation. However, Appellant waited until four years after his obligation had been fulfilled, and approximately six years after Appellee's remarriage to file a Civ.R. 60(B) Motion for Relief from Judgment.

{¶27} To prevail on a motion to vacate a judgment pursuant to Civ. R. 60(B), the movant must demonstrate that: (1) the party has a meritorious defense 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. *GTE Automatic Electric Company, Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, 351 N.E.2d 113, paragraph two of the syllabus. Where timely relief is

sought from a default judgment, and the movant has a meritorious defense, doubt should be resolved in favor of the motion to set aside the judgment so that cases may be decided on their merits. Id. at paragraph three of the syllabus. Our standard of review of a court's decision as to whether to grant a Civ. R. 60(B) motion is abuse of discretion. Id. at 148, 351 N.E.2d 113.

{¶28} Upon review of the entire record in this matter, we find the trial court did not abuse its discretion in overruling Appellant's Civ.R. 60(B) Motion. Appellant has failed to establish surprise, inadvertence, or excusable neglect. Appellant was aware of Appellee's remarriage well before his filing of his 60(B) Motion.

{¶29} Appellant's first assignment of error is overruled.

II

{¶30} In his second assignment of error, Appellant asserts the trial court erred in failing to lift the bench warrant issued June 1, 2009, for non-payment of child support. We disagree.

{¶31} A review of the record reveals the trial court repeatedly suspended Appellant's jail time and provided him with numerous opportunities to purge his contempt. We find no error in the trial court's decision not to lift the bench warrant on this occasion.

{¶32} Appellant's second assignment of error is overruled.

III

{¶33} In his third assignment of error, Appellant submits the trial court erred in failing to insist CSEA produce a complete accurate audit of Appellant's child support and spousal support payments.

{¶34} Appellant does not cite to where in the record he objected to the trial court's admission of the inaccurate audit. Accordingly, we overrule Appellant's third assignment of error.

IV

{¶35} In his fourth assignment of error, Appellant contends the trial court erred in admitting certain statements, as such were false, libelous, and slanderous.

{¶36} Again, Appellant does not cite to where in the record he objected to such testimony. Based upon such failure, we overrule Appellant's fourth assignment of error.

V

{¶37} In his fifth assignment of error, Appellant argues the trial court erred in permitting testimony by Attorney Hopwood of CSEA referencing a letter Appellee sent to the West Virginia Child Support Enforcement Agency informing such agency she had remarried.

{¶38} As he failed to do so in his third and fourth assignments of error, Appellant has also failed herein to reference the place in the record where he objected to the alleged error. Accordingly, we overrule Appellant's fifth assignment of error.

VI

{¶39} In his sixth assignment of error, Appellant argues the trial court erred in failing to advise him of his right to effective assistance of counsel.

{¶40} Unlike a criminal defendant, a civil litigant has no constitutional right to the effective assistance of counsel. *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 126, 1997-Ohio-401.

{¶41} Appellant's sixth assignment of error is overruled.

{¶42} The judgment of the Stark County Court of Common Pleas, Family Court Division, is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SUSAN HASLAM, FKA MUTIGLI	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
JOSEPH MUTIGLI	:	
Defendant-Appellant	:	Case No. 2010CA00014

For the reasons stated in our accompanying Opinion, the judgment of the Stark County Court of Common Pleas, Family Court Division, is affirmed. Costs assessed to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY