

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

Cecil Weatherspoon, et al.

Court of Appeals No. OT-08-007

Appellant

Trial Court No. 03-CVH-035

v.

Lester Kuhlman, et al.

DECISION AND JUDGMENT

Appellees

Decided: June 19, 2009

* * * * *

Loretta Riddle, for appellant.

Brian M. Fallon, for appellees.

* * * * *

HANDWORK, J.

{¶ 1} Appellant, Cecil Weatherspoon, appeals the judgment of the Ottawa County Court of Common Pleas, which denied his motion for relief from judgment made pursuant to Civ.R. 60(B)(4) and (5). Pursuant to 6th Dist.Loc.App.R. 12(A), we sua sponte place this matter on the accelerated docket and render our decision forthwith.

{¶ 2} The judgment from which Weatherspoon seeks relief was first ordered by the trial court in October 2005, after a bench trial. The judgment found in favor of appellees, Lester and Judith Kuhlman, on their claims of breach of contract and fraud.

The trial court ordered Weatherspoon to pay, inter alia, compensatory damages to appellees in the amount of \$920,602.21. Weatherspoon appealed the judgment to this court.

{¶ 3} On November 9, 2006, in *Weatherspoon v. Kuhlman*, 6th Dist. No. OT-05-057, 2006-Ohio-5903, we affirmed the findings of breach of contract and fraud. However, we found error with respect to the amount of damages, and recalculated damages owed by Weatherspoon to the amount of \$926,601.61. On March 28, 2007, the Ohio Supreme Court declined discretionary review. *Weatherspoon v. Kuhlman*, 113 Ohio St.3d 1443, 2007-Ohio-1266.

{¶ 4} On October 9, 2007, Weatherspoon filed the instant motion for relief from that judgment, arguing, pursuant to Civ.R. 60(B)(4) and (5), that it was no longer equitable that the judgment have prospective application. The trial court denied the motion, finding that Weatherspoon had knowledge of the issue he raised as early as October 2004. The trial court concluded that the motion constituted "a filing far beyond any reasonable period."

{¶ 5} From the judgment denying his motion for relief, Weatherspoon assigns one error for review:

{¶ 6} "The trial court errs and abuses its discretion by denying a motion for relief from judgment made pursuant to Ohio Civil Rule 60(B)(4) & (5) when the trial court bases its decision on movant not filing said motion in a reasonable time when the movant files within weeks of the act upon which the motion for relief is filed."

{¶ 7} "In order for a party to prevail on a motion for relief from judgment under Civ.R. 60(B), the movant must demonstrate the following:

{¶ 8} "'(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. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, paragraph two of the syllabus.

{¶ 9} "These requirements are independent and in the conjunctive; thus the test is not fulfilled if any one of the requirements is not met. *Id.* at 151. The standard by which we review a decision on a Civ.R. 60(B) motion is abuse of discretion. See *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 20." *Strack v. Pelton* (1994), 70 Ohio St.3d 172, 174.

{¶ 10} A determination of what constitutes a "reasonable time" is a matter of discretion for the trial court. *Wells v. Spirit Fabricating, Inc.* (1996), 113 Ohio App.3d 282, 290. Weatherspoon's motion for relief was filed almost two years after the initial motion for relief. Upon review of the matter, we conclude that the trial court did not abuse its discretion in denying Weatherspoon's motion for relief from judgment and appellant's assignment of error is found not well-taken.

{¶ 11} On consideration whereof, the judgment of the Ottawa County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
