

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

Dennis Smith

Court of Appeals No. L-09-1085

Appellee

Trial Court No. CVG-08-25627

v.

Monique Rivers

DECISION AND JUDGMENT

Appellant

Decided: December 11, 2009

* * * * *

Christopher Hensien, for appellee.

George Royer, for appellant.

* * * * *

HANDWORK, P.J.

{¶ 1} Appellant, Monique Rivers, brings this appeal from the Toledo Municipal Court, which denied her motion for relief from judgment. 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} On December 26, 2008, appellee, Dennis Smith, filed an action in forcible entry and detainer to evict appellant from rental premises for alleged non-payment of rent monies owed. Attached to the complaint were copies of communication between

appellee's and appellant's counsel regarding the payment of rent, and notices of non-payment of rent.

{¶ 3} On January 15, 2009, a hearing was held before a magistrate in the Housing Division. Appellant was represented by counsel at that hearing. The trial court adopted the magistrate's decision and entered an order for appellee to regain possession of the premises. A writ of restitution of the premises was issued.

{¶ 4} On March 2, 2009, appellant filed a motion to vacate the judgment, pursuant to Civ.R. 60(B)(1) and (3). Appellee filed a response and a motion for sanctions pursuant to Civ.R. 11, requesting costs and attorney fees. Appellant continued to reside in the premises.

{¶ 5} On March 23, 2009, the trial court denied appellant's motion to vacate, stating in its judgment entry: "The record is clear that all defendants were properly notified and were represented by counsel." The trial court also denied appellee's motion for sanctions.

{¶ 6} Appellant sought and was granted a stay of eviction by the trial court pending this appeal. Appellant has filed one assignment of error for review:

{¶ 7} "The trial court should have granted appellant's motion to vacate judgment."

{¶ 8} We review the denial of a motion to vacate a judgment for an abuse of discretion. *Strack v. Pelton* (1994), 70 Ohio St.3d 172, 174, citing *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 20.

{¶ 9} "To prevail on a motion brought under Civ.R. 60(B), the movant must demonstrate that: (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., Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, paragraph two of the syllabus.

{¶ 10} Appellant argues, as she did in the trial court, that she is entitled to relief pursuant to Civ.R. 60(B)(1) or (3). Pursuant to those sections, appellant must show either "mistake, inadvertence, surprise or excusable neglect," or "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party." In her brief, however, appellant merely renews arguments which go to the merits of the matter. Specifically, she argues that she did not have a rental agreement and that the complaint's allegations regarding the existence of a rental agreement and the non-payment of rent were false.

{¶ 11} These arguments are not properly raised in a motion for relief from judgment. Rather, they are arguments which should have been raised during the hearing on the complaint. The trial court correctly noted that appellant is not entitled to relief from judgment, as she was present and represented by counsel at that hearing. Appellant has not raised any new matters occurring after judgment which justify relief from

judgment. As we find no abuse of discretion occurred in denying the motion for relief, the assignment of error, therefore, is not well-taken.

{¶ 12} The judgment of the Toledo Municipal Court 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, P.J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

CONCUR.

JUDGE

<p>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.</p>
