[Cite as *K.H. v. A.S.*, 2011-Ohio-547.]

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

K.H.

Appellee/Cross-Appellant

v.

A.S.

Defendant

[State of Ohio and Lucas County CSEA--Appellants/Cross-Appellees]

Court of Appeals No. L-10-1071

Trial Court No. JC89-008606

DECISION AND JUDGMENT

Decided: February 8, 2011

* * * * *

K.H., pro se.

Chris M. Jan, for appellant/cross-appellees.

* * * * *

COSME, J.

{¶1} Appellants state of Ohio and Lucas County Child Support Enforcement Agency ("LCCSEA"), appeal from a judgment of the Lucas County Common Pleas

Court, Juvenile Division, granting in part and denying in part, a Civ.R. 60(B)(5) motion filed by the LCCSEA to vacate a lump-sum award for past support that was part of a 1999 judgment entry. Appellants argue that the juvenile court abused its discretion in failing to set aside the lump-sum award in its entirety. In a cross-appeal, K.H. argues instead that the juvenile court abused its discretion in failing to modify the entire judgment. For the reasons that follow, we conclude that no grounds existed upon which the juvenile court could vacate or modify the judgment. Therefore, we reverse the judgment of the juvenile court.

I. BACKGROUND

{¶2} On December 23, 1988, K.H. gave birth to J.H., who was born with a form of Klippell and Trenaunay Syndrome. On March 30, 1989, K.H. filed a complaint in parentage to establish A.S. as the natural father. In a consent entry dated June 27, 1989, the juvenile court declared A.S. the natural father of J.H. and ordered that he "shall place said child on his medical insurance available through the [military] service as soon as possible so as to cover several outstanding medical bills arising from the birth of said child."

{¶3} On April 18, 1990, LCCSEA filed a motion to set support on behalf of K.H. Specifically, LCCSEA sought "an order for current support in accordance with the Ohio Supreme Court guidelines, and past care and support from the date of birth of the child

including bills incident to the birth of the child." LCCSEA also asked that A.S. be responsible for extraordinary medical expenses.

{¶4} On January 7, 1991, apparently frustrated with the lack of progress on her case and having secured a voluntary military allotment from A.S., K.H. wrote to LCCSEA asking that it cease its efforts on her behalf, stating: "Due to the longevity of the case and my dire need for financial assistance I took it upon myself to handle things. My daughter is now receiving 292.50 monthly, plus all insurance benefits." On January 24, 1991, an entry of dismissal of the April 18, 1990 motion for child support was signed by the juvenile court and approved by LCCSEA on the basis that "Plaintiff no longer wishes to proceed." The dismissal states that "this case is dismissed with/without prejudice," but neither option is circled or otherwise designated.

{¶5} Seven years later, on December 9, 1998, LCCSEA filed a motion on behalf of K.H. to set support. In this motion, LCCSEA sought an order "for current child support in accordance with the Guidelines under the Ohio Revised Code, and past care, support and judgment for birthing expenses." The motion further requested that A.S. "be ordered to provide group related health insurance for the child * * * and extraordinary medical expenses."

{¶6} Following a January 22, 1999 hearing before a magistrate, the juvenile court granted the motion and, among other things, awarded a lump sum judgment against A.S. "in the amount of $12,500 for past support through [January 22, 1999]," ordered him

to pay $164.72 per month in child support commencing February 1, 1999, and held him responsible for the child's extraordinary medical expenses. This judgment entry containing the lump-sum award and award for current child support was filed March 23, 1999.

{¶7} On July 11, 2007, the juvenile court issued an order terminating child support effective July 6, 2007, because J.H. had reached the age of 18 on December 23, 2006, and was scheduled to graduate from Shaw High School, Cleveland, Ohio, on July 6, 2007. Neither K.H. nor A.S. contested this order.

{¶8} On July 21, 2008, LCCSEA filed a motion to show cause as to why A.S. should not be held in contempt for failing to pay support as ordered in the juvenile court's judgment of March 23, 1999. On April 2, 2009, however, LCCSEA, joined by the state of Ohio, moved to vacate, pursuant to Civ.R. 60(B)(5), the juvenile court's judgment of March 23, 1999, to the extent that it awarded $12,500 for past support. The motion alleged: (1) that K.H. had "waived an Ohio Child Support Guideline Order by virtue of her request for a dismissal of her case on January 24, 1991"; and (2) that K.H. "failed to appraise the then Assisting Prosecuting Attorney [during the course of the 1998-1999 proceedings] that she had been receiving [A.S.'s] Basic Allowance for Living Quarters * * * from 1990 through January 31, 1998 in the aggregate amount of $28,200.00."

{¶9} The motion to vacate was heard before a magistrate on May 26, 2009. At the hearing, testimony was elicited from K.H., A.S., and Lawrence Mull, the assistant

prosecuting attorney for LCCSEA who had been involved in obtaining the lump-sum award. Following the hearing, recently secured counsel for K.H. was permitted to file supplementary evidentiary material for consideration.

{¶10} On October 9, 2009, the magistrate's decision was filed and it held that "[t]he lump sum judgment in the amount of $12,500 for past child support was made in error and should be vacated." The magistrate also found that A.S. "should have been ordered to pay child support in the amount of $164.72/month effective December 9, 1998, the date the Motion to Set Support was filed the second time by [LCCSEA]." The amount of child support calculated by the magistrate is identical to the amount of child support set forth in the March 23, 1999 judgment entry.

{¶11} On February 10, 2010, after considering the objections of appellants and K.H., the juvenile court adopted the magistrate's decision in part and rejected it in part. The juvenile court disagreed with the magistrate's decision to "vacate the $6,000 portion of the $12,500 lump-sum judgment awarded to [K.H.] for unpaid medical expenses" finding that it was "not supported by the evidence and contrary to law." Thus, the juvenile court reinstated the "award of $6,000 for unpaid medical expenses contained in the Court's March 23, 1999 lump sum judgment." However, the juvenile court agreed with the magistrate's decision to vacate the remaining $6,500 portion of that judgment for past child support.

{¶12} It is from this judgment that the parties have filed their respective appeals. Appellants set forth the following six assignments of error:

{¶13} "I. The Trial Court abused its discretion by deciding to modify the Magistrate's Decision to vacate and set aside the Lump Sum Judgment awarded [K.H.] for **past support** in the Judgment Entry dated March 23, 1999.

{¶14} "II. The Trial Court abused its discretion under Civil Rule 53 by modifying the Magistrate's Decision so profoundly without an objections hearing with both parties present to produce additional evidence.

{¶15} "III. It was plain error for the court to pretend that there were portions of the $12,500.00 Lump Sum Judgment contained in the March 23, 1999 Judgment Entry.

{¶16} "IV. The Trial Court abused its discretion and committed reversible error by modifying the Magistrates [Sic] Decision in a way inconsistent with the plain language contained in the Judgment Entry dated March 23, 1999.

{¶17} "V. The Trial Court abused its discretion by modifying the Magistrate's Decision regarding the Judgment of March 23, 1999 where the Trial Court is fully aware that a CSEA attorney has only the express authority to take a judgment for the State of Ohio for birthing expenses paid by Ohio or for past support due to [K.H.] subject to distribution to Ohio for ADC cash assistance received by [K.H.].

{¶18} "VI. It was an extreme abuse of discretion if not plain error for the Trial Court to order a non-existent Judgment be paid through the Child Support Enforcement Agency as a 'non-child support obligation.'"

{¶19} K.H.'s cross-appeal sets forth ten assignments of error:

{¶20} "1. The 3/23/1999 judgment as a WHOLE (back support, medical support, and the determination of the 'current' support obligation) was calculated in error.

{¶21} "2. Financial Actuals were not used to set the support obligations. State and Federal law mandates that accurate and verifiable employment information is required from BOTH parents to legally determine an Obligor's child support obligation.

{¶22} "3. Employment verification and validation of all financial records over a year's period of time is required to lawfully calculate support obligation.

{¶23} "4. The CSEA was aware of [A.S.]'s military status at the time of the hearing (1/22/1999); yet Leave and Earnings Statements were not obtained per the Department of Health and Humans Services Military Support Enforcement Procedures.

{¶24} "5. Child Support Computation Worksheet in effect 1/22/99 was not properly used to calculate the support obligation.

{¶25} "6. State law requires that the Child Support Computation Worksheet be attached to the original judgment and be provided to both parties for review.

{¶26} "7. Ohio R.C. 3113.215 § 3119 Calculation of Child Support Obligations states that support should not be set lower than the Basic Child Support Schedule in place at the time of the hearing.

{¶27} "8. Wage withholding was not established with the judgment. Ohio R.C. § 2151.23 and § 2151.231 requires that documentation must be correctly calculated and the results presented to 'ensure that withholding or deduction from the income or assets of the Obligor is available from the commencement of the support order for collection of the support and any of the arrearages that occur.'

{¶28} "9. Back support obligations are calculated from the date that the CSEA application was received in cases where paternity has been established for initial support (and not modification) orders.

{¶29} "10. The CSEA did not follow-up on or review this case as defined in the Department of Health and Human Services guidelines."

II. APPEAL OF APPELLANTS

{¶30} Appellants, the state of Ohio and LCCSEA, set forth six assignments of error, all of which are premised upon whether K.H.'s alleged failure to disclose that she was receiving A.S.'s military allotment is adequate grounds for Civ.R. 60(B)(5) relief.[1] Appellants contend that the alleged omission constituted fraud upon the court and that

[1]The "allotment" referred to in this case is also referenced by the parties as the "military allotment," "voluntary allotment," "voluntary dependent allotment," or "Basic Allowance for Living Quarters." They are the same.

LCCSEA's subsequent participation in obtaining a lump-sum judgment on K.H.'s behalf is sufficient to bring this action within the ambit of Civ.R. 60(B)(5).

{¶31} We disagree.

{¶32} Because appellants' assignments of error are intertwined and resolved by a finding of whether appellants are entitled to relief from judgment, we consider appellants' assignments of error together.

{¶33} Before we begin our analysis, however, we are compelled to note that this case is before us because LCCSEA believes that K.H. deliberately withheld from them (and the court) the fact that she was receiving A.S.'s military allotment. According to LCCSEA, because K.H. was receiving those payments from A.S., she was not entitled to a lump-sum award for past support encompassing the same period of time during which she was receiving payments from A.S. According to LCCSEA, it is irrelevant whether the payments from A.S. were for current child support or medical expenses since a lump-sum award for past child support or medical expenses covering that same time period would cover the same things and amounts to double-dipping. LCCSEA insists that K.H. was entitled only to A.S.'s allotment or a Child Support Guideline Order, not both.

{¶34} We note that A.S.'s voluntary military allotment is just that. It is voluntary. Thus, it would have been in the child's best interest to secure an order from the court setting forth the appropriate amount of support. However, K.H. alleges that she had no choice but to pursue A.S.'s military allotment because of LCCSEA's alleged

incompetence and negligence in timely obtaining a child support order. She also claims that LCCSEA failed to make her aware that she could have received a greater amount from A.S. if she had pursued a Child Support Guideline Order instead of settling for A.S.'s military allotment.

{¶35} Whether K.H. was entitled to both the military allotment and the lump-sum award for support during the same period of time, however, is not relevant to our analysis of whether appellants are entitled to relief from judgment under Civ.R. 60(B). Instead, the pertinent issue is whether any grounds exist upon which relief can be granted.

{¶36} In applying Civ.R. 60(B), the Supreme Court of Ohio has developed a three-pronged test for determining whether a motion for relief from judgment should be granted. This test was first delineated in *GTE Automatic Elec., Inc. v. ARC Industries* (1976), 47 Ohio St.2d 146, paragraph two of the syllabus, which states:

{¶37} "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." See *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 20. See, also, *Buckeye Fed. S. & L. Assn. v. Guirlinger* (1991), 62 Ohio St.3d 312, 314.

{¶38} Since the forgoing test is stated in the conjunctive, the Supreme Court of Ohio has held that the moving party must satisfy all three prongs in order to prevail. *Argo Plastic Products Co. v. Cleveland* (1984), 15 Ohio St.3d 389, 391. See *Rose Chevrolet, Inc.* at 20, citing *Svoboda v. City of Brunswick* (1983), 6 Ohio St .3d 348, 351; *Hopkins v. Quality Chevrolet, Inc.* (1992), 79 Ohio App.3d 578.

{¶39} Although appellants fail to set forth any meritorious defense or claim to present if relief is granted in their motion to vacate, we presume that the assignments of error asserted within appellants' briefs are intended to satisfy the first prong of the test delineated in *GTE Automatic Elec., Inc*. In their six assignments of error, appellants argue generally that the juvenile court abused its discretion in vacating only a portion of the lump sum award, by doing so without a hearing, reading into the order something that is not plainly stated, modifying the lump-sum judgment, awarding judgment for birthing expenses, and ordering that the judgment be paid as a non-child support obligation. For purposes of our analysis, however, we need consider only the second and third prong of the test delineated in *GTE Automatic Elec., Inc*.

{¶40} Under the second prong, appellants must demonstrate that they are entitled to relief under one of the grounds stated in the five subsections of the pertinent rule. See *GTE Automatic Elec., Inc*., supra.

{¶41} Civ.R. 60(B) provides in pertinent part:

{¶42} "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken."

{¶43} Granting a motion for relief from judgment under Civ.R. 60(B) is a matter within the sound discretion of the trial court. That court's ruling will not be reversed absent a showing of abuse of discretion. *Griffey v. Rajan* (1987), 33 Ohio St.3d 75, 77. See *Rose Chevrolet, Inc.*, 36 Ohio St.3d at 20.

{¶44} Appellants' motion is based upon a claim of fraud upon the court, which would fall under the grounds set forth in Civ.R. 60(B)(5). LCCSEA claims that K.H. perpetuated fraud on the court because she failed to inform the LCCSEA attorney or the juvenile court that she had been receiving payments from A.S. before or during the January 22, 1999 hearing on the December 9, 1998 motion to set support. LCCSEA also

claims that it became an unwitting, but active participant in defrauding the court. LCCSEA attorney Mull testified that had he known that K.H. was receiving A.S.'s military allotment he would have never sought the lump-sum judgment.

{¶45} "Civ.R. 60(B)(5) is intended as a catch-all provision reflecting the inherent power of a court to relieve a person from the unjust operation of a judgment, but it is not to be used as a substitute for any of the other more specific provisions of Civ.R. 60(B)." *Caruso-Ciresi, Inc. v. Lohman* (1983), 5 Ohio St.3d 64, paragraph one of the syllabus. See *Young v. Young* (Dec. 22, 1988), 10th Dist. No. 88AP-50. Civ.R. 60(B)(5) invokes the inherent power of the court to prevent the unfair application of a judgment. *Swad v. Swad* (Apr. 8, 1982), 10th Dist. No. 81AP-975.

{¶46} We must consider whether this situation involved fraud by a party instead of fraud upon the court which, therefore, would fall under Civ.R. 60(B)(3). In *Coulson v. Coulson* (1983), 5 Ohio St.3d 12, 15, the Supreme Court of Ohio distinguished "fraud" from "fraud on the court[,]" stating:

{¶47} "'Fraud upon the court' is an elusive concept. 'The distinction between "fraud" on the one hand and "fraud on the court" on the other is by no means clear, and most attempts to state it seem to us to be merely compilations of words that do not clarify.' *Toscano v. Commr. of Internal Revenue* (C.A. 9, 1971), 441 F.2d 930, 933.

{¶48} "One commentator, however, had provided this definition: '"Fraud upon the court" should, we believe, embrace only that species of fraud which does or attempts to,

defile the court itself, or is a fraud perpetrated by the officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. Fraud, inter partes, without more, should not be a fraud upon the court, but redress should be left to a motion under 60(B)(3) or to the independent action.'" 7 Moore's Federal Practice (2 Ed.1971) 515, Paragraph 60.33. See *Serzysko v. Chase Manhattan Bank* (C.A. 2, 1972), 461 F.2d 699; *Kupferman v. Consolidated Research & Mfg. Corp.* (C.A. 2, 1972), 459 F.2d 1072, 1078; *Kenner v. Commr. of Internal Revenue* (C.A. 7, 1968), 387 F.2d 689, 691. Accord *Hartford v. Hartford* (1977), 53 Ohio App.2d 79, at pages 83-84.

{¶49} "It is generally agreed that ' * * * [a]ny fraud connected with the presentation of a case to a court is a fraud upon the court, in a broad sense.' 11 Wright & Miller, Federal Practice and Procedure (1973) 253, Section 2870. Thus, in the usual case, a party must resort to a motion under Civ. R. 60(B)(3). Where an officer of the court, e.g., an attorney, however, actively participates in defrauding the court, then the court may entertain a Civ. R. 60(B)(5) motion for relief from judgment. See *Toscano*, supra."

{¶50} As construed, appellants' motion is predicated on two separate arguments. First, appellants argue that K.H.'s failure to disclose that she was receiving payments from A.S. constituted fraud upon LCCSEA. Second, appellants argue that K.H.'s failure to disclose also constituted a fraud upon the juvenile court.

{¶51} The distinction between the foregoing arguments is critical for purposes of a Civ.R. 60(B) analysis. In *Coulson*, supra, the Supreme Court of Ohio expressly held that when the alleged fraud occurred between the parties, Civ.R. 60(B)(3) is the only ground by which a party can seek relief from a prior judgment. However, in relation to a fraud perpetrated upon the trial court, the *Coulson* court held that such a fraud can be a proper basis for seeking relief from judgment under Civ.R. 60(B)(5).

{¶52} The distinction is relevant because Civ.R. 60(B) expressly provides that a motion based upon (B)(3) must be made within one year of the entry of the judgment from which relief is sought. However, this one-year limitation does not apply to a motion made under (B)(5); instead, a motion made under that provision is allowable if it is made within a reasonable time.

{¶53} Here, appellants cannot rely upon Civ.R. 60(B)(3) because the basis for the alleged fraud between LCCSEA and K.H., took place before or during the hearing on January 22, 1999, more than ten years before LCCSEA filed its motion. *Caruso-Ciresi, Inc.*, supra.

{¶54} As to the allegation of fraud upon the court, K.H. counters that both LCCSEA and the juvenile court were made aware before and at the January 22, 1999 hearing that she was receiving A.S.'s military allotment. K.H. points to several documents included in state's Exhibit 1 as evidence that LCCSEA and the juvenile court were aware that she was receiving A.S.'s military allotment. The first document is a

January 7, 1991 letter from her to LCCSEA requesting that it close her case because J.H. "is now receiving 292.50 monthly, plus all insurance benefits." The second document is a July 30, 1990 letter from the Navy reflecting that J.H. will receive a monthly allotment of $292.50 effective August 1990. The third document is a letter from Defense Finance and Accounting Service reflecting "a dependent allotment authorized by [A.S.], USN, payable to [K.H.]" in the amount of $292.50 from January 1993 - April 1995 and $370 from May 1995 to November 1995.

{¶55} K.H. also points to state's Exhibit 2, a form entitled "Parentage and/or support Establishment Information Sheet," which reflects that A.S. was in the military and that "an allotment of 292.50 (ending in 370.00) was sent monthly[]" to K.H.. The form is stamped as being received by LCCSEA on July 10, 1998.

{¶56} Although appellants concede that LCCSEA received the materials contained in state's Exhibits 1 and 2, they insist that K.H. "failed to divulge her receipt of [A.S.'s Basic Allowance for Quarters] in the amount of $28,200.00." According to appellants, K.H. was untruthful by "commission" and by "omission."

{¶57} We conclude that there is no evidence of fraud upon the court. K.H. did inform LCCSEA and the court that she was receiving an allotment from A.S. at the time the December 9, 1998 motion to set support was filed. State's Exhibit 2 establishes with certainty that LCCSEA had in its possession information that K.H. was receiving A.S.'s

military allotment. The magistrate specifically addressed LCCSEA's claim that it was unaware of the allotment payments to K.H. noting in her October 9, 2009 decision that:

{¶58} "It does appear LCCSEA has miscategorized the information provided to them by [K.H.] It is clear to the Court that [K.H.] did not at any time withhold information relative to her receipt of dependent allotment information funding through the U.S. Military on behalf of her then minor child. It does appear, however that LCCSEA and the Court may have been confused and/or not considered her receipt of those benefits in making its prior orders."

{¶59} The juvenile court, however, ignored the magistrate's finding that K.H. had not committed fraud upon LCCSEA or the court. The juvenile court agreed with the magistrate that the portion of the award for past support was not supported by the evidence and must be vacated.

{¶60} Again, we emphasize that there is no evidence that K.H. committed fraud upon LCCSEA or the court. K.H. did disclose to LCCSEA her receipt of A.S.'s military allotment. The record reflects that the trial court was aware that A.S. was serving in the military. Absent fraud upon the court, no grounds existed upon which the juvenile court could have vacated judgment under the catchall provisions of Civ.R. 60(B)(5). Appellants do not set forth "any other reason justifying relief" other than fraud upon the court.

{¶61} Further, appellants failed to show that their motion was made within a reasonable time; they waited ten years before filing their motion for relief from judgment under Civ.R. 60(B)(5). A motion for relief from judgment pursuant to Civ.R. 60(B) may not be used as a substitute for a timely appeal. *National Amusements, Inc. v. City of Springdale* (1990), 53 Ohio St.3d 60, 63; *Doe v. Trumbull County Children Services Bd.* (1986), 28 Ohio St.3d 128, 129; *Justice v. Lutheran Social Serv. of Cent. Ohio* (1992), 79 Ohio App.3d 439, 442.

{¶62} In addition, the juvenile court's decision to vacate "the $6,000.00 portion of the $12,500.00 lump sum judgment awarded to [K.H.] on March 23, 1999 for unpaid medical expenses" was an abuse of discretion. The transcript for the January 22, 1999 hearing on the December 9, 1998 motion to set support is no longer available. Other than the testimony presented at the May 26, 2009 hearing, there was no evidence in the record that the juvenile court intended that the lump sum award be apportioned between past support and past medical support.

{¶63} The Supreme Court of Ohio has repeatedly made clear that a "court speaks through its journal." *Petition for Inquiry Into Certain Practices* (1948), 150 Ohio St. 393, 398. See *In re Adoption of Gibson* (1986), 23 Ohio St.3d 170, 173; *Schenley v. Kuth* (1953), 160 Ohio St. 109, paragraph one of the syllabus.

{¶64} The juvenile court's March 23, 1999 judgment entry provides for a "lump sum judgment" to K.H. for "past support" only through January 22, 1999. The lump sum

award was not apportioned between past support and past medical expenses. The magistrate conceded that the judgment entry of March 23, 1999 "does not include any notation that any portion of that amount was attributable to unpaid birthing expenses[,] * * *" and that "the Court is bound by its records not those of other agencies or individuals[,]" but nevertheless concluded that based on the parties' testimony, there was no evidence to support an award in the amount of $12,500 and vacated the lump sum award.

{¶65} The juvenile court disagreed with the magistrate, concluding that sufficient evidence had been presented at the hearing to support an award of $6,000 for unpaid medical expenses. However, relying on the same evidence, the juvenile court concluded that there was no evidence supporting an award of past due child support. Again, a court speaks only through its journal, and in the absence of a transcript or any affirmative evidence to the contrary, the regularity of the proceedings must be presumed. *Derrit v. Derrit*, 163 Ohio App.3d 52, 2005-Ohio-4777, ¶ 46. See *Fields v. Stange*, 10th Dist. No. 01AP-125, 2004-Ohio-1134, ¶ 14, citing *Sadi v. Alkhatib* (Aug. 28, 2001), 10th Dist. No. 01AP-125, and *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. See, e.g., *Flynn v. Flynn*, 10th Dist. No. 03AP-612, 2004-Ohio-3881, ¶ 13.

{¶66} We conclude that the trial court abused its discretion in vacating the lump sum award in the absence of any of the evidence that the juvenile court originally relied upon.

{¶67} However, it was plain error to vacate the judgment. None of appellants' assignments of error address this issue and we find them moot.

III. CROSS-APPEAL OF K.H.

{¶68} In her cross-appeal, K.H. maintains that the March 23, 1999 "judgment as a whole should be recalibrated based on the State of Ohio Child Support Guidelines that [was] in effect on [January 22, 1999]" because the juvenile court did not comply with Ohio law "for income validation, calculation of support obligations and the presentation of these results." K.H. claims that the juvenile court in 1999 abused its discretion in calculating the amount of past support, past medical support, and the current support obligation.

{¶69} A Civ.R. 60(B) motion may not be used as a substitute for a timely appeal and it is too late to appeal the 1999 judgment. *National Amusements, Inc.*, 53 Ohio St.3d at 63; *Trumbull County Children Services Bd.*, 28 Ohio St.3d at 129; *Lutheran Social Serv. of Cent. Ohio*, 79 Ohio App.3d at 442. All of K.H.'s assignments of error challenge the 1999 judgment and are not well-taken.

IV. CONCLUSION

{¶70} The juvenile court committed plain error in determining that there were grounds for relief under Civ.R. 60(B) upon which to disturb the March 23, 1999 judgment. We conclude that neither appellants nor K.H. are entitled to relief under Civ.R. 60(B).

{¶71} Wherefore, based on the foregoing, the judgment of the Lucas County Common Pleas Court, Juvenile Division is reversed. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED

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

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Keila D. Cosme, J. _____
CONCUR.
JUDGE