

[Cite as *Ohio Dept. of Job & Family Servs. v. State Line Plumbing & Heating, Inc.*, 2016-Ohio-3421.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE OF OHIO, DEPARTMENT OF)
JOB AND FAMILY SERVICES,)

PLAINTIFF-APPELLANT,)

V.)

STATE LINE PLUMBING & HEATING,)
INC.,)

DEFENDANT-APPELLEE.)

CASE NO. 15 MA 0067

OPINION

CHARACTER OF PROCEEDINGS:

Civil Appeal from Court of Common
Pleas of Mahoning County, Ohio
Case No. 2103 CV 138

JUDGMENT:

Reversed

JUDGES:

Hon. Gene Donofrio
Hon. Mary DeGenaro
Hon. Carol Ann Robb

Dated: June 10, 2016

APPEARANCES:

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DONOFRIO, P.J.

{¶1} Plaintiff-appellant, the Ohio Department of Job and Family Services, appeals from a Mahoning County Common Pleas Court judgment vacating an agreed judgment entry upon granting a Civ.R. 60(B) motion filed by defendant-appellee, State Line Plumbing.

{¶2} On January 27, 2013, appellant filed a complaint against appellee asserting that appellee failed to pay unemployment compensation contributions as required by R.C. Chapter 4141. It alleged that appellee owed \$38,015.13.

{¶3} Approximately two weeks later, appellant and appellee entered into an agreed judgment entry (AJE). Per the terms of the AJE, judgment was rendered against appellee in the amount of \$38,015.13, plus 14 percent interest compounded monthly, court costs, and collection costs. Additionally, appellant agreed that it would forebear from execution on the judgment as long as appellee made monthly payments as scheduled in the AJE. The AJE was signed by appellant's counsel, appellee's president acting pro se, and the court.

{¶4} On July 3, 2014, appellant filed a motion for garnishment against appellee to attach funds to satisfy the judgment.

{¶5} On September 8, 2014, appellee filed a Civ.R. 60(B) motion to vacate the AJE. It alleged that the AJE was the result of "fraud and misrepresentation." Appellee asserted that appellant's counsel coerced appellee's president, who was acting pro se at the time, to sign the AJE. Appellee alleged that it signed the AJE without benefit of counsel and without a clear understanding of what the alleged debt was or how the monthly compounding interest operated. It went on to assert that the AJE was substantively unconscionable. It asserted that the maximum interest rate allowed was 8 percent, citing R.C. 1343.01 and R.C. 1343.02.

{¶6} Appellant filed a memorandum in opposition to the motion to vacate asserting (1) the motion was untimely, (2) R.C. 4141.23(B)(2) expressly allows the interest rate and method of calculation used in the AJE, and (3) appellee did not have a meritorious defense to present.

{¶7} The trial court held a hearing on the motion to vacate. It granted the motion without stating the basis for its decision. Appellant filed a timely notice of

appeal on May 1, 2015.

{¶8} Appellant now raises a single assignment of error that states:

THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION BY VACATING THE AGREED JUDGMENT ENTRY.

{¶9} Appellant first argues that R.C. 4141.23(B)(2) sets the interest rate for delinquent unemployment compensation contributions. R.C. 4141.23 is titled “Unemployment compensation contributions; lien upon property; unemployment compensation lien record.” R.C. 4141.23(B)(2) provides:

Any contribution, payment in lieu of contribution, interest, forfeiture, or fine due from an employer on or after January 1, 1993, shall, if not paid when due, *bear interest at the annual rate of fourteen per cent compounded monthly* on the aggregate receivable balance due. In such computation any fraction of a month shall be considered as a full month.

(Emphasis added.)

{¶10} Appellant asserts that although the AJE did not include the words “per annum,” this was a clerical error. It further asserts that this clerical error has not affected the interest rate charged to appellee. Appellant argues that because the omission of the words “per annum” was simply a clerical error, the trial court should have utilized Civ.R. 60(A) to correct the AJE.

{¶11} Next, appellant argues appellee’s motion to vacate does not meet any of Civ.R. 60(B)’s requirements. It asserts the motion is time-barred because appellee filed it more than one year after the AJE was filed. It further alleges appellee failed to assert a meritorious defense to the underlying claim, noting that the interest rate in the AJE is specifically authorized by R.C. 4141.23(B)(2), which prevails in this case. Finally, appellant argues appellee failed to demonstrate with specificity that it was defrauded as it relied only on vague allegations of fraud and the fact that it

proceeded pro se. Therefore, it argues the trial court abused its discretion in granting the motion to vacate.

{¶12} The standard of review used to evaluate the trial court's decision to grant or deny a Civ.R. 60(B) motion is abuse of discretion. *Capital, Inc. v. Rock N Horse, Inc.*, 9th Dist. No. 21703, 2004-Ohio-2122, ¶ 9. Abuse of discretion connotes more than an error in judgment; it implies that the trial court's judgment is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶13} The Ohio Supreme Court set out the controlling test for Civ.R 60(B) motions in *GTE Automatic Elec., Inc. v. Arc Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus:

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.

{¶14} If the movant fails to satisfy any of the above elements, the court shall deny relief. *Argo Plastic Products Co. v. Cleveland*, 15 Ohio St.3d 389, 391, 474 N.E.2d 328 (1984), citing *GTE*, at 151.

{¶15} The first *GTE* requirement is that appellee must have a meritorious defense to present on appellant's claim against it. Under this requirement, the movant need only allege a meritorious defense and need not prove that he will prevail on that defense. *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20, 520 N.E.2d 564 (1998). "A meritorious defense is one which '[goes] to the merits, substance, or essentials of the case.'" *Wells Fargo Bank, N.A. v. Stevens*, 7th Dist. No. 12 MA 219, 2014-Ohio-1399, ¶ 14, quoting *USB Real Estate Secs., Inc. v. Teague*, 191 Ohio App.3d 189, 2010-Ohio-5634, N.E.2d 5733, ¶ 23 (2d Dist.).

{¶16} In its motion to vacate, appellee failed to allege a meritorious defense in any way. Its entire motion focuses on arguing that the interest rate charged in the AJE is unconscionable, illegal, and against public policy. But it never once asserts that it does not owe the underlying debt. Nor does it assert that it has some type of defense to paying the debt.

{¶17} Appellee claims that at the motion hearing its counsel challenged that it owed the amount appellant stated it owed and that this was sufficient to constitute a meritorious defense. Specifically, appellee points to pages six through eight of the motion hearing transcript. Here, appellee's counsel stated that appellee had no information as to how appellant calculated that appellee owed \$38,015.13 or whether any of that amount was interest. (Tr. 6-8).

{¶18} This court has found a defendant must "allege operative facts with enough specificity to allow the trial court to decide whether a meritorious defense exists." *Masters Tuxedo Charleston, Inc. v. Krainock*, 7th Dist. No. 02 CA 80, 2002-Ohio-5235, ¶ 13. In this case, appellee did not assert any type of defense in its motion to vacate. Moreover, at the hearing on the motion, it never asserted it did not owe the debt. It only stated that it was unaware of how appellant calculated the debt and if any of the debt was interest. Appellee did not offer any operative or specific facts that would allow the trial court to decide whether a meritorious defense existed. Thus, appellee did not meet the first *GTE* requirement.

{¶19} Under the second *GTE* requirement, appellee had to show that it was entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5).

{¶20} In its motion, appellee alleged it was entitled to relief based on Civ.R. 60(B)(3), which is fraud, and Civ.R. 60(B)(5), which is any other reason justifying relief. It asserted the AJE was the result of fraud and misrepresentation and claimed that the 14 percent interest rate set out in the AJE was unconscionable, illegal, and against public policy.

{¶21} Appellee's motion, however, did not take into account R.C. 4141.23, which is titled "Unemployment compensation contributions; lien upon property; unemployment compensation lien record." R.C. 4141.23(B)(2) provides:

Any contribution, payment in lieu of contribution, interest, forfeiture, or fine due from an employer on or after January 1, 1993, shall, if not paid when due, *bear interest at the annual rate of fourteen per cent compounded monthly* on the aggregate receivable balance due. In such computation any fraction of a month shall be considered as a full month.

(Emphasis added.) Pursuant to R.C. 4141.23(B)(2), an annual interest rate of 14 percent compounded monthly on unemployment compensation contributions is the statutorily required interest rate on overdue unemployment compensation contributions.

{¶22} The AJE failed to include the words “annual rate” or “per annum” or some similar language that would indicate that the 14 percent interest was per year and not per month. This was a clerical error, however. To its memorandum in opposition to the motion to vacate, appellant attached the affidavit of Unemployment Compensation Revenue Recovery Supervisor for the Ohio Department of Job and Family Services, Diana Mingus. Mingus averred that pursuant to R.C. 4141.23(B)(2), the interest rate that accrues on the unemployment compensation accounts is set at 14 percent per annum, which is compounded monthly. (Mingus Aff. ¶ 4). She further averred that this interest rate was the amount being charged on appellee’s account. (Mingus Aff. ¶ 5). Appellee has not disputed this.

{¶23} Given the above, the 14 percent per annum interest rate, compounded monthly is expressly set by statute. Moreover, appellant has been charging appellee this interest rate per annum, and not per month. Thus, appellee has not demonstrated fraud, misrepresentation, or other misconduct or any other ground justifying relief from the AJE. Appellee did not meet the second *GTE* requirement.

{¶24} Under the third *GTE* requirement, appellee’s motion had to be timely filed. The AJE was filed on February 13, 2013. Appellee filed its motion to vacate the AJE on September 8, 2014. This means that appellee waited nearly 19 months to file its motion.

{¶25} Appellee's motion was untimely as to its allegation of fraud and misconduct of appellant. When the grounds for relief in a motion to vacate are based on Civ.R. 60(B)(1), (2), or (3), the motion must not be filed more than one year after the judgment was entered. *GTE*, 47 Ohio St.2d at paragraph two of the syllabus. Here appellee's motion was filed more than one year after the AJE was entered. Thus, it was untimely.

{¶26} Appellee also alleged it was entitled to relief under Civ.R. 60(B)(5). When Civ.R. 60(B)(5) is the basis for relief, the motion must be filed within a reasonable time. *GTE*, 47 Ohio St.2d at paragraph two of the syllabus. Under the facts of this case, 19 months was an unreasonable time to wait to file a motion to vacate. This was a case involving an agreed judgment entry. It was not the case of a default judgment where the moving party did not learn of the judgment until some later time. Therefore, appellee did not meet the third *GTE* requirement.

{¶27} In sum, appellee failed to meet the *GTE* requirements. Therefore, the trial court abused its discretion in granting appellee's motion to vacate the AJE.

{¶28} Accordingly, appellant's assignment of error has merit.

{¶29} For the reasons stated above, the trial court's judgment vacating the AJE is hereby reversed and the AJE is reinstated with instructions to the trial court to enter a nunc pro tunc judgment adding the statutory interest rate language, "interest at the annual rate of fourteen per cent compounded monthly on the aggregate receivable balance due" to the AJE.

DeGenaro, J., concurs.

Robb, J., concurs.