

[Cite as *Lampp v. Grimm*, 2009-Ohio-2714.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91437

BEVERLY GRIMM, NKA BEVERLY LAMPP

PLAINTIFF-APPELLEE

vs.

ROBERT L. GRIMM

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Common Pleas Court
Case No. CV-612445

BEFORE: Boyle, J., Rocco, P.J., and Sweeney, J.

RELEASED: June 11, 2009

JOURNALIZED:

FOR APPELLANT

Robert L. Grimm, Pro Se
510 Locklie
Highland Heights, Ohio 44143

ATTORNEY FOR APPELLEE

Thomas M. Horwitz
McIntyre, Kahn, Kruse & Gillombardo
Galleria & Towers at Erieview
1301 East Ninth Street, Suite 2200
Cleveland, Ohio 44114

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Robert Grimm, appeals the trial court's denial of his motion for relief from judgment under Civ.R. 60(B). Grimm argues that the trial court abused its discretion in failing to modify its earlier order entering a judgment lien against him with interest accruing from January 16, 2003, in favor of plaintiff-appellee, Beverly Grimm, nka Beverly Lampp. He disputes the date that the interest should be accrued from. Grimm, however, has already appealed this exact issue and lost. See *Grimm v. Grimm*, 8th Dist. No. 90269, 2008-Ohio-324, discretionary appeal not allowed, 2008-Ohio-3369 ("*Grimm I*"). As discussed below, Grimm's second attempt to attack the trial court's decision also fails because he has no meritorious claim if relief was granted and presents no grounds for relief. We affirm.

Procedural Facts and History

{¶ 2} In *Grimm I*, we discussed the detailed history and underlying facts of this case as follows:

{¶ 3} "On January 16, 2003, the Connecticut Superior Court for the Judicial District of Danbury entered its judgment terminating the marriage between Lampp and Grimm. The judgment ordered Grimm to pay Lampp \$100,000 in lump sum alimony within 90 days of the date of the judgment and \$100,000 attorney's fees within 60 days of the date of the judgment. The judgment also ordered Lampp to convey to Grimm her 'right, title and interest' in a parcel of real property located in

Highland Heights, Ohio.

{¶ 4} “In 2005, the Connecticut Supreme Court affirmed the trial court’s 2003 judgment. Despite the court’s order, Grimm has not paid Lampp the \$200,000. In addition, for reasons known only to him, he has thwarted her attempts to quitclaim her interest in the Highland Heights property to him.

{¶ 5} “On January 10, 2007, Lampp filed the Connecticut trial court’s 2003 judgment with the Cuyahoga County Court of Common Pleas pursuant to R.C. 2329.022, Ohio’s foreign judgment enforcement provision.¹ Subsequently, on February 12, 2007, the trial court entered a judgment lien against Grimm, with interest to run at the statutory rate from January 16, 2003, the date of the judgment.

{¶ 6} “Grimm filed a motion to dismiss, which the court denied for lack of service. Grimm then filed another motion to dismiss and a motion for modification. In both motions, Grimm asserted that, on June 19, 2006, the Danbury Connecticut Superior Court had issued an order which ordered him to pay Lampp lump sum alimony in the amount of \$100,000 and \$100,000 in attorney’s fees by July 1, 2006, and ordered Lampp to convey her interest in the Highland Heights property to Grimm

¹R.C. 2329.022 states: “A copy of any foreign judgment authenticated in accordance with Section 1738 of Title 28 of the United States Code, 62 Stat. 947 (1948), may be filed with the clerk of any court of common pleas. The clerk shall treat the foreign judgment in the same manner as a judgment of a court of common pleas. A foreign judgment filed pursuant to this section has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a court of common pleas and may be enforced or satisfied in the same manner as a judgment of a court of common pleas.”

by July 1, 2006. Grimm argued that this order modified the Superior Court's January 16, 2003 order, extending the time for payment of alimony and attorney's fees until July 1, 2006 and, therefore, the trial court should either dismiss the case or modify its order imposing statutory interest from January 16, 2003. Grimm also argued that counsel for Lampp knew about the June 19, 2006 order prior to filing the foreign judgment in the common pleas court, but withheld that information from the trial court. Grimm attached a certified copy of the order to his motion for modification." Id. at ¶2-5.

{¶ 7} The trial court denied Grimm's motion to dismiss and motion to modify the judgment lien. On appeal, Grimm argued that the June 19, 2006 order modified the January 16, 2003 judgment entry, allowing Grimm until July 1, 2006 to pay Lampp alimony and her attorney's fees, and, therefore, the trial court erred in entering a judgment lien with interest from January 13, 2003. Id. at ¶7. We rejected this argument and found that the January 2003 judgment, which was affirmed by the Connecticut Supreme Court, was a valid, binding judgment. Id. at ¶13. We further noted that there was nothing in the order that indicated that interest on the January 2003 judgment was not accruing as of the date of the judgment. Id.

{¶ 8} While Grimm's first appeal was pending before this court, Lampp contemporaneously pursued contempt charges against Grimm in the Connecticut court. On November 30, 2007, the Connecticut court issued an order entitled "Plaintiff's Post-Judgment Motion for Contempt, coded 277," wherein it ordered

Grimm to pay Lampp \$200,000 by December 31, 2007, “[i]nterest on the total of \$200,000 is to run at the rate of 10 percent per annum commencing January 2, 2008.” The Connecticut court further ordered Grimm to pay \$1,000 in attorney fees.

{¶ 9} On March 6, 2008, Grimm filed a motion for relief from judgment and attached an exemplified copy of the November 30, 2007 order of the Connecticut court, alleging that the November 2007 order modified both the 2003 and 2006 Connecticut judgments and therefore required the trial court to modify its judgment lien. The trial court denied Grimm’s motion. It is from this order that Grimm appeals, raising the following two assignments of error:

{¶ 10} “[1.] The trial court erred in denying the defendant’s motion for relief of judgment.

{¶ 11} “[2.] The trial court erred in not considering the November 30, 2007 originating Connecticut Superior Court modifying court order which conflicts with the foreign judgment order from the Ohio common pleas court.”

{¶ 12} Because they are related, we will address the two assignments of error together.

Civ.R. 60(B) Motion for Relief from Judgment

{¶ 13} The trial court has discretion in deciding a motion for relief from judgment under Civ.R. 60(B); therefore, its decision will not be disturbed on appeal absent an abuse of discretion. *Griffey v. Rajan* (1987), 33 Ohio St.3d 75.

An abuse of discretion is more than an error in judgment or a mistake of law; it connotes that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 14} To prevail on a motion for relief from judgment under Civ.R. 60(B), the movant must demonstrate: (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 for 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 Electric, Inc., v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, paragraph two of the syllabus. If a movant fails to satisfy any one of these requirements, the trial court should deny a Civ.R. 60(B) motion. *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 20; *Svoboda v. Brunswick* (1983), 6 Ohio St.3d 348, 351.

{¶ 15} Here, Grimm fails to satisfy the first and second prong of the *GTE* test. The crux of Grimm's entire argument is that the November 2007 Connecticut order conflicts with the Ohio judgment lien, which included the court's order of interest accruing from January 16, 2003. Based on this conflict, he contends that the lower court's order here must be vacated or modified to reflect that interest should not run until January 2, 2008. Contrary to Grimm's

assertion, he has no meritorious claim or defense if relief was granted. Applying R.C. 1343.03(B), this court has already held in *Grimm I* that the interest on the 2003 judgment began to accrue on January 16, 2003. *Id.* at ¶16. This holding is binding on Grimm and the trial court is without authority to enforce any order contrary to this Ohio judgment. See *Stauber v. Stauber*, 5th Dist. No. 2006-CA-71, 2007-Ohio-6296, ¶39 (recognizing that a subsequent California order cannot overrule a prior valid Ohio judgment).

{¶ 16} Grimm likewise fails the second prong of the *GTE* test. Grimm sought relief from judgment under Civ.R. 60(B)(2), (4), and (5), which allow a court to relieve a party from final judgment for any of the following reasons: “(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); *** (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.”

{¶ 17} Although Grimm broadly identified each of these provisions in his motion, he failed to set forth operative facts that would provide relief under any one of these grounds. Although Grimm characterizes the November 2007 order of the Connecticut court as a “modification” of the correct date for the statutory

interest to run, the order itself contains no language indicating that it was modifying previous orders. Conversely, the subject matter of the order is captioned: "Plaintiff's Post-Judgment Motion for Contempt, coded 277." Indeed, the order was issued in response to Lampp's motion to hold Grimm in contempt. Moreover, as discussed above, we fail to see how a Connecticut court could now modify a final judgment of this court.

{¶ 18} Suffice it to say, this appeal further evidences Grimm's commitment to prolong litigation with his former wife and prevent her from collecting on the judgment entered against him in connection with the parties' divorce proceedings in Connecticut. It is simply time for the litigation to be over.

{¶ 19} Accordingly, we find that the trial court did not abuse its discretion in denying Grimm's motion for relief from judgment. The first and second assignments of error are overruled.

Judgment affirmed.

The court finds this appeal is not well taken. It is, therefore, ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, JUDGE

KENNETH A. ROCCO, P.J., and
JAMES J. SWEENEY, J., CONCUR