

[Cite as *In re J.A.G.*, 2010-Ohio-1216.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94179

IN RE: J.A.G.

A Minor Child

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. SU 08741589

BEFORE: Boyle, J., Gallagher, A.J., and Dyke, J.

RELEASED: March 25, 2010

**JOURNALIZED:
ATTORNEYS FOR APPELLANT**

CUYAHOGA SUPPORT ENFORCEMENT AGENCY

William D. Mason
Cuyahoga County Prosecutor
BY: Joseph C. Young
Assistant Prosecuting Attorney
Cuyahoga Support Enforcement Agency
1910 Carnegie Avenue, 2nd Floor
Cleveland, Ohio 44115

FOR APPELLEE

Harvey Lewis, pro se
5262 Thomas Street
Maple Heights, Ohio 44137

Luciana Gilmore, et al., pro se
27399 Harvard Road
Orange Village, Ohio 44122

MARY J. BOYLE, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶ 2} Appellant Cuyahoga Support Enforcement Agency (“CSEA”) appeals the trial court’s denial of its motion for relief from judgment under Civ.R. 60(B), raising a single assignment of error:

{¶ 3} “The trial court erred and abused its discretion by overruling appellant’s motion for relief from judgment without hearing where said

motion contained operative facts demonstrating a basis for relief as requested.”

{¶ 4} Because the record reveals that the grounds for CSEA’s motion for relief from judgment could and should have been raised as objections to the magistrate’s decision (or in a direct appeal if the objections were overruled), we cannot say that the trial court abused its discretion in denying its Civ.R. 60(B) motion. We therefore affirm the decision of the trial court.

Procedural History and Facts

{¶ 5} In December 2008, CSEA filed a complaint against defendant Harvey Lewis, seeking contempt and payment for the arrears under his child support order. On June 2, 2009, a hearing was held on the matter before a magistrate. That same day, the magistrate issued a decision, finding inter alia that Lewis had been previously ordered by CSEA “to pay \$459.98 per month, which sum includes a 2% processing fee, for current child support”; (2) that “there are child support arrears as of May 31, 2009 due obligee Luciana Gilmore totaling \$4,490.78, which sum includes a 2% processing fee”; and (3) “[n]o complete or adequate information was submitted to this court at this time regarding the availability of health insurance coverage at a reasonable cost to either the father or mother of the child who is subject to the proceeding.” The magistrate then adopted the administrative child support order as an order of the court and ordered Lewis to continue to pay “\$459.98

per month, which sum includes a 2% processing fee” and to pay an additional “\$50 per month, which sum includes a 2% processing fee,” to be applied to the child support arrears.

{¶ 6} Following the issuance of the magistrate’s decision, none of the parties filed any objections. On July 17, 2009, the trial court subsequently approved and adopted the magistrate’s decision as its final order.

{¶ 7} Approximately two months later, CSEA filed a Civ.R. 60(B) motion for relief from judgment, arguing that the court’s order erroneously omitted the separate monetary figures for “(1) child support to be paid when health insurance is available; (2) child support to be paid when health insurance is not available; and (3) the amount of cash [for] medical [expenses] to be paid when insurance is not available.” CSEA further argued that the court’s order incorrectly stated that the monthly payment of \$459.98 “included the 2% processing fee,” when in fact the two percent processing fee should have been ordered in addition to \$459.98, for a total monthly payment of \$469.17. In support of its motion, CSEA attached a child support computation worksheet prepared on April 22, 2009 and its modified order of July 22, 2009, which it claimed was “then in the process of finalization and which modification had an effective date of May 1, 2009.”

{¶ 8} On September 18, 2009, the court denied CSEA’s motion for relief from judgment without holding a hearing.

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

{¶ 9} In its sole assignment of error, CSEA argues that the trial court erred and abused its discretion by denying its motion without holding a hearing when the motion set forth operative facts entitling it to relief. We disagree.

{¶ 10} To prevail on a Civ.R. 60(B) motion for relief from judgment, the movant must submit operative facts that demonstrate that (1) the motion is timely made; (2) the party is entitled to relief under Civ.R. 60(B)(1)-(5); and (3) the party has a meritorious claim or defense. See *GTE Auto. Elec., Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, 351 N.E.2d 113. The trial court has discretion in determining whether the motion will be granted, and in the absence of a clear showing of abuse of discretion, the decision of the trial court will not be reversed. *Griffey v. Rajan* (1987), 33 Ohio St.3d 75, 514 N.E.2d 1122.

{¶ 11} Here, CSEA's motion for relief from judgment directly attacks the findings and order of the magistrate's decision, which the court ultimately approved and adopted. Relying on Civ.R. 60(B)(1) ("excusable neglect"), (B)(2) ("newly discovered evidence"), and (B)(5) ("interests of justice"), CSEA argued that the court's order should be amended to correctly reflect the amount of support calculated in the child support guidelines prepared on April 22, 2009 and later incorporated in its July 22, 2009 modified

administrative order. These purported deficiencies would have been known to CSEA at the time that the magistrate issued his decision on June 2, 2009. CSEA, however, never filed objections to the magistrate's decision. Nor did CSEA file a direct appeal of the trial court's order.

{¶ 12} Civ.R. 53(D)(3)(b)(iv) provides that “a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion * * * unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b).” A motion for relief from judgment is not intended to provide a substitute for a party's failure to file objections to a magistrate's opinion. See *Postel v. Koksai*, 5th Dist. No. 08-COA-0002, 2009-Ohio-252, ¶25; *Wilson v. Wilson*, 8th Dist. No. 86817, 2006-Ohio-4261, ¶25. Indeed, “issues that could and should have been raised by way of Civ.R. 53(D)(3) objections to a magistrate's decision, and are thus waived for purposes of appeal, cannot be raised subsequently as the sole basis for a motion for relief from judgment.” *Postel* at ¶25, quoting *Brunner Firm Co., L.P.A. v. Bussard*, 10th Dist. No. 07AP-867, 2008-Ohio-4684, ¶28. Moreover, it is well settled that Civ.R. 60(B) “is not available as a substitute for a timely appeal * * nor can the rule be used to circumvent or extend the time requirements for an appeal.” *Blasco v. Mislik* (1982), 69 Ohio St.2d 684, 686, 433 N.E.2d 612.

{¶ 13} Based on the record before us, it is apparent that the grounds for CSEA's motion for relief from judgment could have been addressed by filing timely objections to the magistrate's decision under Civ.R. 53 and, if necessary, a direct appeal of the trial court's adoption of same. Because a Civ.R. 60(B) motion is not intended to circumvent these established procedures for review, we cannot say that the trial court abused its discretion in denying CSEA's motion. We likewise cannot say that the trial court abused its discretion in not holding a hearing when CSEA specifically indicated that one was not necessary.

{¶ 14} The sole assignment of error is overruled.

Judgment affirmed.

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

SEAN C. GALLAGHER, A.J., and
ANN DYKE, J., CONCUR