

[Cite as *In re Monogudis*, 2010-Ohio-2087.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92988

IN RE: MARY MONOGUDIS, DECEASED

PLAINTIFF-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-1999 EST 27258

BEFORE: Dyke, J., Kilbane, P.J., and Stewart, J.

RELEASED: May 13, 2010

JOURNALIZED:

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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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

ANN DYKE, J.:

{¶ 1} Plaintiff George Linte appeals from the order of the probate court that denied his motion to vacate various probate orders. For the reasons set forth below, we affirm.

{¶ 2} This matter arises from the probate of Mary Monogudis's estate. As explained in *Wozniak v. Corrigan* (May 12, 2006), United States District Court, Northern District of Ohio, Eastern Division, Case No. 105 CV 2259, the relevant facts are as follows:

{¶ 3} “Ms. Monogudis's will was admitted to probate on 8 November 1999. (Docket No. 18, Appendix A). On 8 September 2000, the probate court held a hearing on Mr. Linte's motion to vacate his election to take under his deceased wife's will, which left him nothing. *Id.* Mr. Wozniak made his initial appearance on behalf of Mr. Linte on 18 January 2001 and subsequently filed a number of motions, which the probate court considered at a hearing on 23 April 2001, and overruled on 26 April 2001. On 29 May 2001, Mr. Wozniak appealed the probate court's determinations to the Court of Appeals for the Eighth District, Case No. 79726. (‘First Appeal’).

{¶ 4} “On 27 June 2001, a Settlement Agreement (“Agreement”) was signed by Messrs. Linte, Graham, Curran, and Wozniak in an effort to place Mr. Linte's claims against the Estate in repose. (Docket No. 8, Exhibit A). The Agreement provided for the Monogudis Estate to deposit \$60,000 into an interest-bearing escrow account payable to Mr. Linte and Mr. Wozniak in full settlement of all claims by Mr. Linte against the Estate. The Agreement was

contingent upon Mr. Linte and Mr. Wozniak dismissing, with prejudice, all pending claims and appeals against the Estate. (“Probate Case” records). Mr. Wozniak was also to produce evidence of his current admission in good standing with the Supreme Court of Ohio as an attorney licensed to practice in the state. (Docket No. 8, Exh. A; Docket No. 18; Docket No. 3, ¶ 258). Finally, the Agreement was conditioned on the approval of the probate court presiding over the Estate. (Docket No. 8, Exh. A).

{¶ 5} “The Agreement was filed with the probate court, which, on 10 July 2001, returned a Judgment Entry memorializing the terms of the Agreement. (Docket No. 18, Attachment 1; Probate Case records). In accord with the Agreement, Judge Corrigan granted Mr. Linte's ‘motion to vacate election to take under the will’ and directed Mr. Wozniak to dismiss a separately filed action against the Estate in Cuyahoga County Common Pleas Court, Case No. 436258. (Docket No. 3, ¶ 250). That matter, filed on 19 April 2001 by Mr. Wozniak, acting for Mr. Linte, against Mr. Graham as executor of the Estate set forth claims identical to those forwarded in the Probate Case.

{¶ 6} “According to the dockets and papers before the Court, post-Agreement omissions and commissions by Mr. Wozniak and Mr. Linte eventually led to the probate court's abrogation of the Agreement on 24 September 2001. First, on 3 July 2001 just prior to the filing of the parties' Agreement, Mr. Linte, represented by Mr. Wozniak, filed another appeal to the Eighth District, Case No. 79904. (“Second Appeal”). Second, on 10 August

2001, Mr. Wozniak, on behalf of Mr. Linte, filed an appeal to the Eighth District of the probate court's 10 July 2001, Judgment Entry ordered in response to the parties' Agreement, Case No. 80077 ("Third Appeal"). Mr. Wozniak neither voluntarily dismissed these appeals nor filed appellate briefs in either appeal. Nor, according to the uncontested papers before the Court, did Mr. Wozniak provide the probate court proof of his good standing to practice law in Ohio. (Docket No. 18). The Agreement's express conditions were not satisfied * * *. (Docket No. 3, ¶ 281; Docket No. 8, p. 2). Accordingly, upon motion from Mr. Curran, the probate court vacated the Agreement by way of a further Judgment Entry on 24 September 2001. (Docket No. 18, Attachment 1).

{¶ 7} "Subsequently, on 4 October 2001, Mr. Wozniak filed an appeal of the probate court's 24 September 2001 Judgment Entry with the Eighth District, Case No. 80335 ("Fourth Appeal"). The Eighth District consolidated the three appeals, Cases No. 79726, 79904 & 80335, on 29 January 2002, ultimately dismissing the consolidated case on 19 February 2002 for failure on the part of Mr. Wozniak to submit any briefing in the matter." See *Wozniak v. Corrigan*, *supra*.

{¶ 8} The record further reflects that on February 9, 2009, Linte, through his next friend Mr. E. Rios, filed a motion to vacate "all rulings of [J]udge Corrigan as they relate to the administration of the estate of Mary [Monogudis]." In essence, Linte asserted that the probate judge's rulings were "based not on the rule of law but rather on a systemic fraudulent manipulation of the judicial proces

that fraudulently excluded controlling evidence, motivated and premised upon political favoritism and despotic personal rule seeking to ‘white wash’ the Executor’s initial fraud.” In support of the motion, Linte extensively cited portions of the transcript of a hearing held before Judge Corrigan on April 20, 2001. On February 12, 2009, the trial court concluded that Linte had failed to establish the requisite elements for relief from judgment. The trial court held:

{¶ 9} “This case has been the subject of two separate appeals over the years. This Motion, replete with scurrilous attacks on this Court and one of its former judges, is a third attempt at appeal brought well beyond any reasonable time frame.”

{¶ 10} Linte now appeals and assigns the following three related errors for our review:

{¶ 11} “The movant has demonstrated sufficient facts to support the proposition that through a pattern of fraudulent and void judgments the judicial system of the Court of Common Pleas Probate Division of Cuyahoga County, Ohio was corrupted.”

{¶ 12} “The trial court’s failure to hold an evidentiary hearing given the flagrant denials of due process was an abuse of discretion.”

{¶ 13} “The motion to vacate judgment under Civ.R. 60(B)(5) was timely filed.”

{¶ 14} A motion for relief from judgment under Civ.R. 60(B) lies within the trial court's sound discretion. *Griffey v. Rajan* (1987), 33 Ohio St.3d 75, 514

N.E.2d 1122. In order to find abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶ 15} Civ.R. 60(B) states in pertinent part:

{¶ 16} “On motion and upon such terms as are just, the court may relieve a party * * * from a final judgment, order or proceedings 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 to taken. * * *.”

{¶ 17} Pursuant to this rule, a party seeking relief from judgment pursuant to Civ.R. 60(B) must show: “(1) a meritorious defense or claim to present if relief is granted; (2) entitlement to relief under one of the grounds set forth in Civ.R. 60(B)(1)-(5); and (3) the motion must be timely filed.” *GTE Automatic Electric, Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, 351 N.E.2d 113, paragraph two of the syllabus. A failure to establish any one of these three

requirements will cause the motion to be overruled. *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 20, 520 N.E.2d 564; *Argo Plastic Prod. Co. v. Cleveland* (1984), 15 Ohio St.3d 389, 391, 474 N.E.2d 328.

{¶ 18} A movant is not entitled to a hearing on a motion for relief from judgment if the motion or supportive affidavits do not contain allegations of operative facts which would warrant relief under Civ.R. 60(B). *Hrabak v. Collins* (1995), 108 Ohio App.3d 117, 121, 670 N.E.2d 281; *Boster v. C & M Serv., Inc.* (1994), 93 Ohio App.3d 523, 526, 639 N.E.2d 136.

{¶ 19} With regard to the requirement that the motion must be timely filed, we note that all five grounds for relief require the motion to be made within a reasonable time; the first three grounds for entitlement to relief have a maximum time limit of one year from the entry of judgment, while the last two grounds have no maximum limit if the time can otherwise be characterized as reasonable under the circumstances of the case. *Yancey v. Yancey*, Mahoning App. No. 07 MA 33, 2007-Ohio-5045. Moreover, a three-year delay in filing a Civ.R. 60(B) motion was untimely. *Marchel v. Marchel*, 160 Ohio App.3d 240, 2005-Ohio-1499, 826 N.E.2d 887. Likewise, a motion filed over seven years after the order has been deemed untimely. *In re Holman* (Sep. 3, 1998), Cuyahoga App. No. 73233; *In re Taaffe* (Dec. 26, 1997), Trumbull App. No. 96-T-5616.

{¶ 20} In this matter, the motion to vacate was filed over seven years after the entry of the challenged probate orders. This is not a reasonable time under Civ.R. 60(B) and the trial court acted well within its discretion in concluding that

the motion was untimely. The third assignment of error is therefore without merit.

{¶ 21} In addition, where the asserted claim or defense is barred by res judicata, the movant cannot establish the “meritorious claim or defense” element of the Civ.R. 60(B) motion. *Mid American Ventures, Inc. v. Image Concepts, Inc.*, Cuyahoga App. No. 90310, 2008-Ohio-457. Under the doctrine of res judicata “[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *Grava v. Parkman* (1995), 73 Ohio St.3d 379, 653 N.E.2d 226, syllabus.

{¶ 22} In this matter, the record indicates that upon motion from Mr. Curran, the probate court vacated the Agreement in a judgment entry dated September 24, 2001. Thereafter, on October 4, 2001, Linte appealed that order to this court Case No. 80335 (“Fourth Appeal”), and this court consolidated it with his three other appeals which were then pending. See *Wozniak v. Corrigan*, supra. On February 19, 2002, this court dismissed the consolidated appeals due to the appellant’s failure to file a brief. As such, Linte’s 2009 attack on the probate court’s September 24, 2001 order is now barred by res judicata. *Koly v. Nassif*, Cuyahoga App. No. 88399, 2007-Ohio-2505. Therefore, Linte is unable to establish a meritorious claim or defense in support of his motion to vacate.

{¶ 23} The trial court did not abuse its discretion in concluding that Linte was not entitled to an evidentiary hearing, and in denying the motion for relief from judgment.

{¶ 24} The first and second assignments of error are without merit.

Affirmed.

It is 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.

ANN DYKE, JUDGE

MARY EILEEN KILBANE, P.J., and MELODY J. STEWART, J., CONCUR.