

[Cite as *Slivka v. Cleveland Water Dept.*, 2015-Ohio-4378.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102485

CHARLES SLIVKA

PLAINTIFF-APPELLANT

vs.

**CITY OF CLEVELAND
WATER DEPARTMENT**

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from
Cleveland Municipal Court
Case No. 2013 CVI 017397

BEFORE: S. Gallagher, J., McCormack, P.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: October 22, 2015

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SEAN C. GALLAGHER, J.:

{¶1} Charles Slivka appeals the trial court’s decision denying a Civ.R. 60(B) motion for relief from final judgment. For the following reasons, we affirm.

{¶2} In December 2013, Slivka’s allegations of being improperly billed for water services was heard in a small claims trial. The city of Cleveland filed a counterclaim for money owed. The magistrate denied Slivka relief and found in favor of the city of Cleveland on all claims, resulting in a \$660.67 award rendered against Slivka. The trial court adopted the magistrate’s decision on January 15, 2014, the same day it was filed.¹ Slivka timely filed objections to the magistrate’s decision on January 21, 2014. On March 31, 2014, the trial court overruled Slivka’s objections. Instead of appealing the final judgment, Slivka filed a motion for relief from judgment on April 25, 2014 (“Slivka’s Motion”).

{¶3} We are compelled to overrule Slivka’s assigned errors. Slivka failed to appeal the judgment in favor of the city of Cleveland made final in March 2014. “It is well established that a Civ.R. 60(B) motion cannot be used as a substitute for an appeal

¹The local rule of the Cleveland Municipal Court regarding “small claims practice” states that “[t]he party objecting to the magistrate’s decision shall file such objections in accordance with Rule 53 of the Ohio Rules of Civil Procedure and pay the necessary costs.” Loc.R. 13.09. The local rules further specify that “[a]ll objections must be in conformity with Rule 53 of the Ohio Rules of Civil Procedure.” Loc.R. 13.09(D). Slivka timely objected to the magistrate’s decision. Civ.R. 53(D)(3)(b).

and that the doctrine of res judicata applies to such a motion.” *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 16, citing *Harris v. Anderson*, 109 Ohio St.3d 101, 2006-Ohio-1934, 846 N.E.2d 43, ¶ 8-9. “Where a trial court fails to rule on timely objections, there is no final, appealable order.” *In re D.C.*, 8th Dist. Cuyahoga Nos. 102614 and 102631, 2015-Ohio-3038, ¶ 15, citing *In re B.W.*, 8th Dist. Cuyahoga Nos. 96550 and 96551, 2011-Ohio-4513, ¶ 8, and *Peric v. Buccilli*, 8th Dist. Cuyahoga No. 80805, 2002-Ohio-6234, ¶ 8. The converse is equally true: ruling on the timely objections creates a final appealable order. In this case, the trial court granted judgment in favor of the city of Cleveland on all claims and entered judgment against Slivka by way of overruling his objections in March 2014. Slivka never appealed the final judgment.

{¶4} Instead, in April 2014, Slivka filed a motion for relief from judgment challenging the trial court’s January 2014 judgment, claiming the city of Cleveland failed to timely file its answer and counterclaim before the small claims trial. Slivka is precluded from attacking the trial court’s final judgment pursuant to the doctrine of res judicata. ““A final judgment or decree rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction is a complete bar to any subsequent action on the same claim or cause of action between the parties or those in privity with them.”” *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381, 1995-Ohio-331, 653 N.E.2d 226, quoting *Norwood v. McDonald*, 142 Ohio St. 299, 52 N.E.2d 67 (1943), paragraph one of the syllabus.

{¶5} In Slivka's January 2014 objections to the magistrate's decision, Slivka specifically claimed that the magistrate erred in granting judgment in favor of the city of Cleveland because the city failed to properly file its counterclaim, the same issue advanced in the April 2014 motion for relief from judgment. Parties may not use Civ.R. 60(B) as a substitute for an appeal. The trial court overruled Slivka's objections to the magistrate's decision and entered final judgment, and therefore, the appropriate remedy was to appeal that decision. In light of the fact that Slivka failed to timely appeal the trial court's March 2014 order, Slivka's Motion was properly denied. The trial court's decision denying Slivka's Motion is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the municipal 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.

SEAN C. GALLAGHER, JUDGE

TIM McCORMACK, P.J., and
EILEEN T. GALLAGHER, J., CONCUR