[Cite as *Morgan v. Sheffield Enterprises, Ltd.*, 2004-Ohio-960.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

MICHAEL MORGAN

Appellant

v.

SHEFFIELD ENTERPRISES, LTD., et al.

Appellees

C.A. No. 03CA008302

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 02CV130489

DECISION AND JOURNAL ENTRY

Dated: March 3, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

Baird, Presiding Judge.

{¶1} Appellant, Michael Morgan, appeals from the decision of the Lorain County Court of Common Pleas which denied his motion for relief from judgment under Civ.R. 60(B). We affirm.

I.

{¶2} Appellant, who suffers from minor stage cerebral palsy, drove to Sheffield Shopping Center, owned by Appellee Sheffield Enterprises, Ltd. ("Appellee Sheffield"), on April 18, 2000 around 10 p.m. Appellant legally parked in the only open handicapped space in front of Appellee Tops Supermarket. The parking lot had been plowed so that piles of snow up to six feet high adorned the islands in the lot. Appellant alleges that he remained unaware of the proximity of the snow pile to his vehicle, clearance of merely a foot, until he exited his vehicle. He exited his vehicle without incident, closed his vehicle door, and proceeded toward Appellee Tops Supermarket. After taking two steps, he fell for no apparent reason, injuring himself on the curb of the island. Appellant stated that he did not, at any time, touch or strike the pile of snow, nor did he slip on any ice or snow.

{¶3} Appellant filed suit against Appellees, Sheffield and Tops Supermarket, alleging that "the manner in which the snow was piled made it difficult for him to freely exit his automobile, and that as a result he was unable to maneuver in the tight space between the car and the snow bank, causing him to lose his balance and fall." Appellees, he insisted, should have allowed more room

for handicapped individuals to exit their vehicles, and not pile the snow in that manner in the handicapped parking area.

{¶4} Appellee Tops Supermarket filed a Motion for Summary Judgment on January 16, 2003. Appellant responded in opposition on February 25, 2003. The trial court granted Appellee Tops Supermarket's Motion for Summary Judgment, and Appellant did not appeal from that judgment.

{¶5} Appellee Sheffield filed a Motion for Summary Judgment Instanter on February 26, 2003. The trial court granted permission for Appellee Sheffield to file the motion, and mailed notice to all parties indicating that any response must be filed no later than March 10, 2003. Upon receipt of the notice, Appellant allegedly sent a letter to the trial court and Appellee Sheffield indicating that he never received a copy of the motion, and could not respond. The letter does not appear on the court's docket, though it is the practice of the court to time stamp and enter on the docket such letters. While the proffered letter also states that Appellant's counsel would file for an extension of time if the motion was not received, Appellant never filed a motion for any extension, and failed to file any response to the motion prior to the March 10, 2003 deadline. The trial court granted Appellee Sheffield's Motion for Summary Judgment on April 4, 2003. Appellant did not appeal from this judgment of the trial court.

{¶6} On April 11, 2003, Appellant filed a Motion for Relief from Judgment under Civ.R. 60(B). Appellant attached an affidavit from his counsel reiterating that counsel never received a copy of Appellee Sheffield's Motion for

Summary Judgment. Appellant, however, did not attach any brief in support of his motion. The trial court denied Appellant's motion on May 28, 2003. Appellant timely appealed that decision, and now raises one assignment of error for our review.

II.

Assignment of Error

"THE LOWER COURT ABUSED ITS DISCRETION WHEN IT DENIED APELLANT'S MOTION FOR RELIEF FROM JUDGMENT."

{¶7} In his only assignment of error, Appellant argues that he has met the three prong test under *GTE Automatic Electric, Inc. v. ARC Industries* (1976), 47 Ohio St.2d 146, paragraph two of the syllabus, necessary to grant relief from judgment under Civ.R. 60(B). He specifically asserts that his failure to file a brief in support with his Motion for Relief from Judgment should be excused because he could not address the merits of a brief he had yet to receive from Appellee Sheffield. Appellant indicated that he was "ready, willing, and able to respond to the motion when it was received[,]" and that his actions amounted to excusable neglect under Civ.R. 60(B)(1). We disagree.

{¶8} Civ.R. 60(B) permits relief from judgment for multiple reasons, including "mistake, inadvertence, surprise or excusable neglect." In order to prevail on a Civ.R. 60(B) motion, Appellant must show that (1) he has a meritorious claim or defense, (2) he is entitled to relief under one of the grounds enumerated in Civ.R. 60(B), including excusable neglect, and (3) that he filed his

motion within a reasonable time, no more than a year after the filing of the original decision under a claim of excusable neglect. See *GTE Automatic Electric*, 47 Ohio St.2d 146, at paragraph two of the syllabus. Appellant must meet all three elements for a court to grant relief from judgment. *GTE Automatic Electric*, 47 Ohio St.2d at 151. This court reviews a trial court's denial of a motion for relief from judgment for an abuse of discretion. *State ex rel. Russo v. Deters*, 80 Ohio St.3d 152, 153, 1997-Ohio-351. An abuse of discretion implies that the trial court's decision was unreasonable, arbitrary or unconscionable, and not a mere error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶9} Excusable neglect remains a somewhat amorphous concept under the law, and is often referred to in the negative. *Turowski v. Apple Vacations, Inc.*, 9th Dist. No. 21074, 2002-Ohio-6988, at ¶9, citing *Kay v. Marc Glassman, Inc.*, 76 Ohio St.3d 18, 20, 1996-Ohio-430. "Neglect is not excusable if it represents a complete disregard for the judicial system." *Turowski*, at ¶9, citing *Kay*, 76 Ohio St.3d at 20. A court must take into account the surrounding facts and circumstances in determining whether a party's actions amount to excusable neglect. *Turowski*, at ¶9, citing *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 21.

{¶10} In this case, Appellant admits that he was completely aware of the March 10, 2003 deadline for responding to Appellee Sheffield's Motion for Summary Judgment. Appellant, however, insists that he could not respond to the motion before that time because he did not receive a copy of the motion.

Appellant has offered little evidence to show that he attempted to get a copy of that motion, or that he notified the court of his predicament. The court indicated that any letter received like the one proffered by Appellant would have been time stamped and filed on the docket. The docket does not reflect receipt of such a letter. In addition, the record reflects that Appellant never filed a motion for an extension of time to respond to Appellee Sheffield's Motion for Summary Judgment.

{¶11} Appellant's acts simply do not amount to excusable neglect. While we understand that Appellant did not receive service of the original motion as required under Civ.R. 5, he may not idly sit on his hands and rely upon that error when he knows the court has imposed a deadline for his response to that motion. Ignoring a known deadline, doing nothing to extend that deadline, and expecting a court to later relieve one from any ensuing judgment under Civ.R. 60(B) for that failure is a complete disregard of the judicial system. See *Woodson v. Carlson* (May 9, 2001), 9th Dist. No. 20296.

{¶12} We find that Appellant failed to show excusable neglect under Civ.R. 60(B). Accordingly, Appellant's sole assignment of error is overruled.

III.

{¶13} We overrule Appellant's assignment of error and affirm the decision of the Lorain County Court of Common Pleas.

Judgment affirmed.

WILLIAM R. BAIRD
FOR THE COURT

SLABY, J.
BATCHELDER, J.
CONCUR

APPEARANCES:

ALAN I. GOODMAN, Attorney at Law, 55 Public Square, Suite 1300, Cleveland, Ohio 44113, for Appellant.

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