

**IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO**

MELISSA KIERNAN	)	CASE NO. DR-2016-09-2667
	)	SETS NO. 7105921899
Plaintiff	)	
	)	JUDGE KATARINA COOK
	)	MAGISTRATE DARCI JAY
-vs-	)	
	)	<u>JUDGMENT ENTRY</u>
	)	Vexatious Litigator
JONATHAN WARD	)	Denying Civ R. 60(B) Motion
	)	Denying Additional Motions
Defendant	)	Attorney's Fees

On 6/24/26, Magistrate DARCI JAY made a Magistrate's Decision which is attached and incorporated.

Upon review of the Magistrate's Decision, the Court has determined that there is no error or law or other defect evident on the face of the Magistrate's Decision. Pursuant to Civil Rule 53(D)(4)(e)(i), the Magistrate's Decision is adopted and the following judgment is entered:

1. Based upon the above, and a review of the briefings and the docket, this Court finds that Defendant has failed to establish a prima facie case under Civ. R. 60(B). Accordingly, Defendant's Motion for Relief from Judgment pursuant to Civil Rule 60 is DENIED, as a matter of law.
2. Defendant's Motion for Child Support, Motion to Terminate or Modify Alimony and Motion for Lifetime Alimony filed 12/2/25 and Motion to Pause all Alimony Garnishments filed 3/30/26 are hereby DENIED.
3. Plaintiff's Motion for Attorney's fees is hereby GRANTED. Defendant shall pay Plaintiff \$12,325.00 within 60 days of the docketing of this Decision.

4. Plaintiff's Motion to Declare Defendant a Vexatious Litigator is GRANTED. Defendant shall obtain leave of Court to proceed on any legal proceedings in the Summit County Domestic Relations Court.
5. All pending Motions not addressed herein are dismissed.
6. All prior orders not inconsistent shall remain in effect.
7. Court Costs are to be paid by Defendant.
8. Case shall be docketed as closed.

A PERSON MAY APPEAL THIS ORDER BY FILING OBJECTIONS. OBJECTIONS SHALL BE FILED WITHIN FOURTEEN (14) DAYS AND SHALL STATE THE OBJECTIONS WITH PARTICULARITY. OBJECTIONS STAY THIS ORDER UNLESS THE COURT GRANTS AN INTERIM ORDER. CIV R. 53(D)(4)(e)(i), LOCAL RULE 27.04.

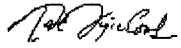
A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV. R. 53(D)(3)(b)(iv), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b).

PLEASE REFER TO THE FULL TEXT OF CIVIL RULE 53 AND LOCAL RULE 27 WHEN PREPARING AND FILING OBJECTIONS.

TO THE CLERK:

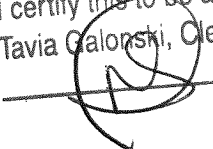
PURSUANT TO CIVIL RULE 58(B), THE CLERK IS DIRECTED TO SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR NOTICE OF THE FILING OF THIS JUDGMENT ENTRY AND OF THE DATE OF ENTRY UPON THE JOURNAL.

IT IS SO ORDERED.



JUDGE KATARINA COOK

cc: FOR PLAINTIFF: NICHOLAS KLYMENKO
FOR DEFENDANT: *Pro Se*

I certify this to be a true copy of the original
Tavia Galonski, Clerk of Courts.
 Deputy Clerk

**IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO**

MELISSA KIERNAN	)	CASE NO. DR-2016-09-2667
	)	SETS NO. 7105921899
Plaintiff	)	
	)	JUDGE KATARINA COOK
	)	MAGISTRATE DARCI JAY
-VS-	)	
	)	<u>MAGISTRATE'S DECISION</u>
JONATHAN WARD	)	Vexatious Litigator
	)	Denying Civ R. 60(B) Motion
	)	Denying Additional Motions
Defendant	)	Attorney's Fees
	)	

This matter came before Magistrate DARCI JAY, to whom it was referred by the Honorable KATARINA COOK, on 04/01/2026, for hearing on Defendant's Motion to Vacate / 60B, Motion for Child Support, Motion to Terminate or Modify Alimony and Motion for Lifetime Alimony filed 12/2/25 and Motion to Pause all Alimony Garnishments filed 3/30/26 and Plaintiff's Motion for Attorney's Fees filed 12/22/25 and Motion to Dismiss filed 12/24/25 and Motion to Declare Defendant a Vexatious Litigator filed 3/18/26. MELISSA KIERNAN was present and represented by Attorney NICHOLAS KLYMENKO. JONATHAN WARD was NOT present. The Court heard testimony from Plaintiff. The Court received and admitted with no objections Plaintiff's exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11. Based upon information produced at the hearing, the magistrate makes the following findings:

MAGISTRATE'S FINDINGS

1. The Court waited until after 9:30 am on 4/1/2026. Defendant did not appear.
2. The Court's Order dated 2/19/26 stated that: *The final evidentiary hearing will be held 4/1/26, at 09:00 AM for up to 7 hr 0 min hours. No additional time will be provided.*
 - a. *Failure to appear and be prepared to proceed for final evidentiary hearing*

may result in dismissal of motion(s) and/or judgment against the non-appearing party. For the purposes of the evidentiary hearing, parties shall have copies of exhibits they intend to use for trial for opposing party and witnesses. Original exhibits should be provided to the court. All exhibits are to be pre-marked for identification. Plaintiff is to use numbers; Defendant is to use letters. DO NOT FILE EXHIBITS.

3. The Order also stated: *No continuances will be granted unless an unavoidable and unpredictable emergency exists or it is otherwise required by the Ohio Rules of Superintendence and proper procedures are followed.*
4. Plaintiff's Motion for Continuance filed 3/30 stated that "he is located 600 miles from Summit County and will be unable to attend any proceedings in person as a result of injuries." The injuries in question occurred in 2021, almost 5 years earlier. This does not constitute an unavoidable emergency.
5. The Court finds that this matter has been the subject of extensive litigation since the filing of Plaintiff's Complaint for Divorce on September 2, 2016.
6. The Court further finds that the parties' Decree of Divorce was issued on August 30, 2018, and that an Amended Decree of Divorce Pursuant to Remand was issued on April 21, 2021.
7. The Court further finds that the Amended Decree of Divorce was subsequently affirmed by the Ninth District Court of Appeals on April 20, 2022.
8. The Court finds that despite the finality of the divorce decree and the appellate affirmance, Defendant has continued to file motions seeking to vacate, reopen, or otherwise challenge the Court's final orders.
9. The Court further finds that Defendant initiated additional litigation in the Commonwealth of Virginia relating to issues that were already the subject of the parties' divorce

proceedings in this Court.

10. The Court finds that Defendant's conduct has required Plaintiff to repeatedly defend against matters that were previously litigated or could have been raised during prior proceedings.
11. The Court further finds that Defendant has previously been found in contempt of this Court's orders and that a *capias* was issued directing the Summit County Sheriff to arrest Defendant and bring him before the Court following his failure to appear and failure to purge the contempt. Despite those outstanding orders, Defendant continues to seek affirmative relief from this Court while failing to comply with prior orders issued in this matter.
12. The Court further finds that the Amended Decree of Divorce issued on April 21, 2021, was appealed by Defendant to the Ninth District Court of Appeals, and the appellate court affirmed the judgment of this Court on April 20, 2022. Accordingly, the issues relating to the parties' divorce, property division, and support obligations have been fully litigated and affirmed on appeal. Despite the finality of those proceedings, Defendant has continued to file motions seeking to vacate or otherwise challenge the Court's prior orders.
13. Based upon the history of this litigation and Defendant's repeated filings, the Court finds that Defendant has habitually and persistently engaged in litigation conduct that serves to relitigate matters already decided and to delay enforcement of this Court's orders.
14. Finally, The Court finds that Defendant did not pursue his additional motions filed when he failed to appear and therefore those shall be denied.

CONCLUSIONS OF LAW

1. To prevail on a Motion for Relief from Judgment pursuant to 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 judgment, order or proceeding was entered or taken. *GTE Automatic v. ARC Industries* 47 Ohio St.2d 146, 351 N.E.2d 113 (1976).

Civ.R. 60(B) states as follows:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding 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 or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation.

“Civ. R. 60(B) relief is improper if any one of the foregoing requirements is not satisfied.”

State ex rel. Richard v. Seidner, 76 Ohio St.3d 149, 151, 666 N.E.2d 1134 (1996). If any of the requirements are not established, “the motion should be overruled.” *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20, 520 N.E.2d 564 (1988).

2. The party requesting relief from judgment bears the burden of asserting operative facts that demonstrate that he or she has a meritorious defense. *Miller v. Miller*, 9th Dist. No. 21770, 2004-Ohio-1989, ¶9.

3. If a party does not present operative facts, a trial court is justified in denying relief. *Youssefi v. Youssefi* (1991), 81 Ohio App.3d 49, 53, 610 N.E.2d 455.

4. Civ. R. 60(B) sets forth a two part standard for the timely filing of a motion for relief from judgment: “within a reasonable time... and not more than one year after the judgment.” While

the movant may have up to one year from the date of the judgment to file a motion to vacate, the movant is also bound by the “reasonable time” provision. *Waldman Financial v. Digital Color Imaging, Inc.*, 9th Dist. No. 23101, 2006-Ohio-4077, ¶10 quoting *ADOMEIT v. Baltimore, et al.*, 39 Ohio App.2d 97, 106, 316 N.E.2d 469 (8th Dist. 1974). “In other words, a motion may be filed within 1 year under Civil Rule 60(B) but still may not be considered within a ‘reasonable time’ ”. *Id.* It is the movant’s burden of proof to present factual material that on its face establishes the timeliness or justifies delays in filing the motion to vacate. *Haley v. Haley*, 9th Dist. No. 20720, 2002-Ohio-1976, ¶2-3.

5. Defendant filed his Motion to vacate Judgment on 12/2/2025 which is not a reasonable time.

The original divorce decree was filed 8/30/2018. Defendant actively participated with counsel in any remand proceedings. Further, no mention of any of case was presented to this court at any hearings preceding or post the remand hearing dates of 12/11/2019 and 1/14/2020.

6. Based upon the foregoing, Defendant’s Motion for Relief from Judgment must be DENIED. Defendant failed to specifically allege operative facts to establish a meritorious claim. This court does not have jurisdiction to vacate the Decree of Dissolution under the (B)(1), (3) or (5) clause of 60(B).

Defendant has not provided any evidence of fraud. In addition, Defendant has not provided any newly discovered evidence. Although the decree was remanded for several property dispute issues, this is not a critical error that would affect the validity of the final decree. Although Defendant was present, he never filed a responsive pleading that this Court did not have proper Jurisdiction.

7. Plaintiff filed a Motion for Attorney’s fees based on Defendant’s frivolous filings.
In order

to prevail on a Motion for Attorneys fees, the movant must show that one party's conduct caused another to incur unnecessary legal expenses. Under 2323.51, (A) As used in this section:

(1) "Conduct" means any of the following:

(a) The filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action;

(b) The filing by an inmate of a civil action or appeal against a government entity or employee, the assertion of a claim, defense or other position in connection with a civil action of that nature or the assertion of issues of law in an appeal of that nature, or the taking of any other action in connection with a civil action or appeal of that nature.

(2) "Frivolous conduct" means either of the following:

(a) Conduct of an inmate or other party to a civil action, of an inmate who has filed an appeal of the type described in division (A)(1)(b) of this section, or of the inmate's or other party's counsel of record that satisfies any of the following:

(i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.

(ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.

(iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically, so identified, are not likely to have evidentiary support after a

reasonable opportunity for further investigation or discovery.

(iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically, so identified, are not reasonably based on a lack of information or belief.

(4) "Reasonable attorney's fees" or "attorney's fees," when used in relation to a civil action or appeal against a government entity or employee, includes both of the following, as applicable:

(a) The approximate amount of the compensation, and the fringe benefits, if any, of the attorney general, an assistant attorney general, or special counsel appointed by the attorney general that has been or will be paid by the state in connection with the legal services that were rendered by the attorney general, assistant attorney general, or special counsel in the civil action or appeal against the government entity or employee, including, but not limited to, a civil action or appeal commenced pro se by an inmate, and that were necessitated by frivolous conduct of an inmate represented by counsel of record, the counsel of record of an inmate, or a pro se inmate.

(b) The approximate amount of the compensation, and the fringe benefits, if any, of a prosecuting attorney or other chief legal officer of a political subdivision, or an assistant to a chief legal officer of those natures, who has been or will be paid by a political subdivision in connection with the legal services that were rendered by the chief legal officer or assistant in the civil action or appeal against the government entity or employee, including, but not limited to, a civil action or appeal commenced pro se by an inmate, and that were necessitated by frivolous conduct of an inmate represented by counsel of record, the counsel of record of an inmate, or a pro se inmate.

(5) "State" has the same meaning as in section 2743.01 of the Revised Code.

(6) "State correctional institution" has the same meaning as in section 2967.01 of the Revised Code.

(B)(1) Subject to divisions (B)(2) and (3), (C), and (D) of this section and except as otherwise provided in division (E)(2)(b) of section 101.15 or division (I)(2)(b) of section 121.22 of the Revised Code, at any time not more than thirty days after the entry of final judgment in a civil action or appeal, any party adversely affected by frivolous conduct may file a motion for an award of court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with the civil action or appeal. The court may assess and make an award to any party to the civil action or appeal who was adversely affected by frivolous conduct, as provided in division (B)(4) of this section.

8. Plaintiff credibly testified that she has paid out nearly \$200,000.00 of attorneys fees defending

herself against Defendant. It is evident by Defendant's own filings that he had no intention of returning to Ohio to litigate his motions filed 12/2/2025 and 3/30/26. The affidavit for attorney's fees on the docket as of 1/5/2026 is found to be reasonable and Plaintiff shall be entitled to the attorney's fees of \$2,325.00 as those fees are reasonable for the work being done in Northeast Ohio. Further, Plaintiff testified regarding her attorney's fees regarding the hiring of her current counsel, Attorney Klymenko. Plaintiff is awarded and additional Attorney's fees of \$10,000.00. The Court finds that these fees are reasonable as counsel had to prepare motions in response to Defendant's motions as well as exhibits. Further counsel had to prepare for an evidentiary hearing. It must be stated again that it is evident by Defendant's own filings that he had no intention of returning to Ohio to litigate his motions filed 12/2/2025 and 3/30/26.

9. The court finds that Defendant's filing of the most recent motions were done with frivolous intent and will be considered frivolous conduct. Therefore, the court will GRANT the Motion for Attorney Fees.

10. To prevail on a Motion to Declare a party a Vexatious Litigator, the movant must show the conduct of a party meets the statutory requirements listed in 2323.52.

11. Ohio law authorizes courts to restrict litigants who habitually abuse the judicial process through frivolous or harassing filings. A "vexatious litigator" is defined as a person who habitually, persistently, and without reasonable grounds engages in vexatious conduct in civil actions. R.C. 2323.52(A)(3). "Vexatious conduct" includes conduct that serves merely to harass or maliciously injure another party, is not warranted under existing law, or is imposed solely for delay. R.C. 2323.52(A)(2).

12. R.C. 2323.52 authorizes courts to impose filing restrictions on litigants who habitually engage in vexatious conduct in civil proceedings. A "vexatious litigator" is defined as a person who habitually, persistently, and without reasonable grounds engages in vexatious conduct in civil actions. R.C. 2323.52(A)(3). The statute further defines "vexatious conduct" as conduct that: 1. serves merely to harass or maliciously injure another party; 2. is not warranted under existing law and cannot be supported by a good faith argument for an extension or modification of the law; or 3. is imposed solely for delay. R.C. 2323.52(A)(2).

13. Defendant has repeatedly attempted to relitigate matters that have already been

adjudicated by

this Court and affirmed on appeal. Despite the finality of the parties' divorce decree and the subsequent affirmance of the Amended Decree of Divorce by the Ninth District Court of Appeals on April 20, 2022, Defendant has continued to file motions seeking to reopen or modify the decree years after the time for appeal has expired.

14. Defendant filed a Motion to Vacate the Divorce Decree on December 2, 2025, more than four years after the Amended Decree of Divorce and more than seven years after the original Decree of Divorce. Through that motion, Defendant seeks to raise jurisdictional arguments that were either previously litigated or could have been raised during his prior appeals.

15. Defendant's conduct constitutes vexatious conduct within the meaning of R.C. 2323.52 and warrants the imposition of filing restrictions to prevent further abuse of the judicial process. And therefore, Plaintiff's Motion to Declare Defendant a Vexatious Litigator is GRANTED.

16. With regard to Defendant's remaining motions, no evidence was presented by Defendant as to why the court should grant the motions. Defendant did not appear and further, no exhibit or witness lists were ever filed with this Court or provided to opposing counsel. Defendant's Motion for Child Support, Motion to Terminate or Modify Alimony and Motion for Lifetime Alimony filed 12/2/25 and Motion to Pause all Alimony Garnishments filed 3/30/26 are hereby DENIED.

MAGISTRATE'S DECISION

1. Based upon the above, and a review of the briefings and the docket, this Court finds

that Defendant has failed to establish a prima facie case under Civ. R. 60(B). Accordingly, Defendant's Motion for Relief from Judgment pursuant to Civil Rule 60 is DENIED, as a matter of law.

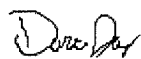
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5. All pending Motions not addressed herein are dismissed.
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7. Court Costs are to be paid by Defendant.
8. Case shall be docketed as closed.

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UNDER CIV. R. 53(D)(3)(b)(iv), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b).

PLEASE REFER TO THE FULL TEXT OF CIVIL RULE 53 AND LOCAL RULE 27 WHEN PREPARING AND FILING OBJECTIONS.



MAGISTRATE DARCI JAY