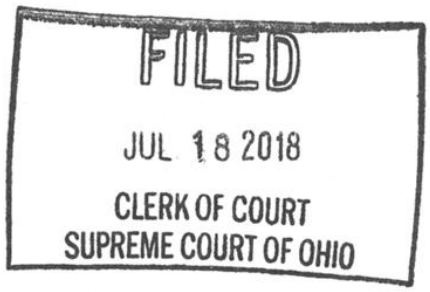
ORIGINAL

IN THE SUPREME COURT OF OHIO

JUDY ROWETON, Executrix of the Estate of Jerry L. Roweton	:	
Plaintiff – Appellee,	:	Appeal from Third District Ohio Court of Appeals
	:	Case No: 2018-0880
v.	:	
JEAN ANN WILLIS	:	
Defendant – Appellee,	:	
and	:	
DANIEL ROWETON, et al.,	:	
Defendants – Appellants.	:	



MEMORANDUM IN RESPONSE TO APPELLANTS' MEMORANDUM IN SUPPORT OF JURISDICTION

David R. Watkins #0013126
1111 Rush Ave., P.O. Box 68
Bellefontaine, Ohio 43311-0068
Telephone: 937-593-6065
Facsimile: 937-593-9978
E-Mail: drwatkins@tdhlaw.com
Attorney for Appellee,
Judy Roweton

Thomas J. Buecker #0020487
Laura E. Waymire #0093484
306 W. High St., P.O. Box 1215
Piqua, Ohio 45356
Telephone: 937-778-8000
Facsimile: 937-778-1111
E-Mail: tbuecker@bdglawoffice.com
lwaymire@bdglaw.com
Attorneys for Appellants

Harry G. Beyoglides, Jr. #0018959
130 W. Second Street, Suite 1900
Dayton, Ohio 45402
Telephone: 937-224-1427
Email: hgbjr@dblhcklaw.com
Attorney for Appellee,
Jean Ann Willis, nka Roweton

Joseph P. Moore #0014362
262 James E. Bohanan Memorial Drive
Vandalia, Ohio 45377
Telephone: 937-898-7068
Facsimile: 937-898-5859
E-Mail: josmoore@aol.com
Attorney for Judy Roweton, Estate
Executrix and Appellee

TABLE OF CONTENTS

NO CONSTITUTIONAL QUESTION, NO CASE OF PUBLIC OR GENERAL INTEREST

The Appellees, Judy Roweton and Jean Ann Willis (nka Roweton), oppose jurisdiction of The Supreme Court of Ohio in this case as this case neither raises a substantial constitutional question, nor is it a case that is of public or great general interest. Neither the Third Appellate District Court of Appeals in case number 8-17-49, from which this appeal is taken, nor the Trial Court in the Judgment Entry in case number 13-CE-128, which was appealed by the Appellants to the Third Appellate District Court of Appeals, addressed Revised Code §2107.52(B) which the Appellants claim changed the law in the state of Ohio, as both cases were determined on the narrow issue of whether the default judgments against the Appellants should be vacated. Nothing in the Trial Court's judgment entry nor the Court of Appeals' judgment entry and opinion changed the law in the state of Ohio or addressed in any fashion Revised Code §2107.52. The Third District Court of Appeals' judgment entry and opinion simply affirmed the Trial Court's refusal to vacate default judgments against the Appellees.

STATEMENT OF THE CASE AND FACTS

This appeal to the Supreme Court of Ohio is an appeal from the second of two appeals to the Third District of Ohio Court of Appeals taken in this case. This appeal is taken from the Third Appellate District Court of Appeals Case Number 8-17-49. The statement of the case and facts herein are taken from the following excerpts from the opinion in Case Number 8-17-49.

"Facts And Procedural History, First Appeal

{¶2} On May 9, 2013, Jerry Roweton ("Jerry") died testate. (Doc. 1). Jerry was the father of five children, Karen Durr, Jerry L. Roweton, Jean Ann (Willis) Roweton, and Robert Roweton. However, only Karen, Jean and Robert survived him. On July 11, 2013, Plaintiff Judy Roweton, as executor of Jerry's estate ("Executor"), filed a "complaint for construction of the will" against Daniel, Mary and other relatives as defendants. Daniel and Mary were served with a summons and a copy of the complaint on July 13 and 23, 2013, respectively. (Docs 5, 7)

{¶3} However, on August 20, 2013, Brenda Roweton, as power of attorney for Daniel, filed a handwritten answer to the complaint on Daniel's behalf in the trial court. (Doc. 11)

{¶4} In motions filed October 21 and 23, 2013, the Executor requested default judgments against Daniel, Mary, and others, arguing that Mary (and others) "failed to file a responsive pleading" and that "a proper responsive pleading has not been filed in this action" by Daniel. (Docs 17, 20).

{¶5} In orders filed October 23 and November 6, 2013, the trial court issued default judgments against Daniel and Mary. (Docs 19, 21). In its October 23, 2013 entry, the trial court found that service was perfected upon Daniel. Nevertheless, on December 9, 2013, the trial court *sua sponte* vacated its default judgment against Daniel, finding his answer filed by Brenda (as Daniel's Power of Attorney) was proper. (Doc. 22). Thereafter, on April 29, 2014, Daniel filed a motion for extension to file an answer to the complaint because he was incarcerated at the Noble Correctional institution and had been incarcerated since August, 2013. (Doc. 27).

{¶6} On May 19, 2014, Mary, through counsel, filed a motion for leave to file an answer. (Doc. 35). The trial court, over the Executor's objections, granted Mary's motion on July 30, 2014 and her answer was filed that same day in the trial court. (Docs. 36, 38, 39).

{¶7} Thereafter, on August 19, 2014, both Daniel and Mary filed a motion for summary judgment. (Docs. 41, 43). On September 19, 2014, following an August 22, 2014 pretrial hearing, the trial court ordered the parties to file any motions for summary judgment by September 30, 2014. (Doc. 49). On September 24, 2014, Daniel and Mary filed a supplemental motion for summary judgment. (Doc. 51). On September 30, 2014, the Executor, Judy (individually) and Jean filed a motion for summary judgment. (Doc. 52). Daniel and Mary filed a "reply to motions for summary judgment" on November 3, 2014 and on November 4, 2014, the Executor, Judy (individually) and Jean filed a memorandum in opposition to Daniel and Mary's motion and supplemental motion for summary judgment. (Docs. 57, 58).

{¶8} On January 30, 2015 the trial court filed its judgment entry granting Daniel and Mary's motion for summary judgment and denied the Executor, Judy (individually) and Jean's motion for summary judgment. (Doc. 60). An appeal of this order was filed (by Judy and Jean) on February 26, 2015.

{¶9} On July 6, 2015, we dismissed Judy's (individual) appeal and, as to Daniel, found that he was properly served with the complaint on July 13, 2013; that he failed to file a motion for leave to file an answer timely; that the trial court abused its discretion by accepting Daniel's August 20, 2013 pleading; and that the trial court erred when it *sua sponte* vacated the default judgment against Daniel. (Doc. 80). And, as to Mary, we found that the trial court never set aside the default judgment against Mary and erred by entering a conflicting final judgment in Mary's favor. (Docs. 21, 60).

{¶10} Ultimatel y, we reversed and remanded the case to the trial court for further proceedings, *reinstating the cases to the point where the default judgments against Daniel and Mary were in effect.*

Facts and Procedural History, Current Appeal

{¶11} After the filin g of our decision, Daniel and Mary, through counsel, filed motions in the trial court on July 9, 2015 to vacate default judgments (under Rule 60(B)) and for leave to file an answer to the plaintiff's complaint. (Doc. 82). Ultimately, the trial court conducted a hearing on August 25, 2015, wherein it received testimony from Daniel (in person) and Mary (by way of Affidavit) as to their motions to vacate filed under Civ.R. 60(B).

{12} On October 24, 2017 the trial court entered its judgment entry reinstating the October 23, 2013 default judgment against Daniel and finding the November 6, 2013 default judgment against Mary should remain in effect. Further, the trial court overruled the requests of Daniel and Mary to vacate their default judgments. (Doc. 111). It is from this entry that Daniel and Mary appeal, raising the following common assignment of error for our review.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN DENYING DEFENDANTS/APPELLANTS' MOTION TO VACATE THE DEFAULT JUDGMENTS AGAINST THEM WHICH IS CONTRARY TO LAW.

{¶13} I n their sole assignment of error, Daniel and Mary claim that the trial court erred in denying their motion to vacate their default judgments asserting that such default judgments are contrary to law. For the reasons set forth below, we disagree."

The Third Appellate District Court of Appeals of Ohio in case number 8-17-49 affirmed the judgment of the trial court and found that the trial court did not abuse its discretion in denying Daniel Roweton and Mary Lewis' motion to vacate their default judgments (see ¶22 and ¶23 of the Third District Court of Appels Opinion in Case 8-17-49).

It is from the Judgment by the Third District Court of Appeals in case number 8-17-49 that this appeal is taken to the Supreme Court of Ohio. At no time in the appeal to the Third District of Ohio Court of Appeals or in the judgment entry in the trial court which was appealed to the Third District Court of Appeals did either of the Court of Appeals or the trial court address Revised Code §2107.52. This case was decided solely on procedural grounds as a result of Appellees' failing to timely file answers.

ARGUMENT IN OPPOSITION TO APPELLANTS' PROPOSITION OF LAW

The Appellants offer one proposition of law as follows: " **Proposition of Law No, I: Rule 60(B)5 of the Ohio Rules of Civil Procedure allows a court to relieve a party from final judgment for any reason justifying relief even after one year from date of judgment."**

Proposition of Law I and Appellants' arguments in support do not address the pertinent issue which, at {¶ 14}, page 6, of the Court of Appeals' opinion states "when reviewing a trial courts' determination of a Civil Rule 60(B) motion for relief, they must apply an abuse of discretion standard" *In re: Whitman*, 81 Ohio State 3d 239 (1998). The Court of Appeals, following *In re Whitman, supra,* and *Blakemore v. Blakemore,* 5 Ohio St. 3d 217, 219 (1983), found that the trial court did not abuse its discretion in denying Daniel Roweton and Mary Lewis' motion to vacate their default judgments. The Appellants in their jurisdictional brief to this court have not argued that the trial court abused its discretion in failing to vacate the default judgments or that the Court of Appeals erred in finding that the trial court did not abuse its discretion in denying Daniel Roweton's and Mary Lewis' motion to vacate their default judgments. The Court of Appeals cogently analyzed Civil Rule 60(B) and two leading Ohio Supreme Court cases construing Rule 60(B), *GTE Automatic Electric, Inc. v. Arc Industries, Inc.,* 47 Ohio St. 2d 146 (1976) and *Rose Chevrolet, Inc. v. Adams,* 36 Ohio St. 3d 17, 20 (1988), and determined that the Appellants did not carry their burden of proof for relief under Ohio Rule of Civil Procedure 60(B).

Neither the Court of Appeals' opinion nor the judgment entry from which the Appellants appealed to the Court of Appeals considered or reviewed Revised Code §2107.52. Interestingly, Appellants proposition of law made no reference to Revised Code §2107.52 and no argument is presented by the Appellants in relation to Revised Code §2107.52. The very foundation claimed by the Appellants for the assertion that this case is a case of public or great general interest because, Appellants asserted, the Judgment Entry of the Court of Appeals resulted in a change of the law in relation to Revised Code §2107.52(B), was abandoned in Appellants' proposition of law and argument. The judgment entry from which the Appellants appeal did not analyze or even mention Revised Code §2107.52(B) and has no precedential effect relative to Revised Code §2107.52(B). Further, the Court of Appeals' analysis of abuse of discretion by the trial court and Civil Rule 60(B), as well as the trial court's analysis of Civil Rule 60(B) is squarely within the precedent established in *In re Whitman, supra,* and *Blakemore v. Blakemore, supra,* and *GTE Automatic Electric, Inc. v. Arc Industries, Inc., supra, and Rose Chevrolet, Inc. v. Rose Chevrolet, Inc. v. Adams, supra*, and jurisdiction of the Supreme Court of Ohio in this case should be denied.

Conclusion

For the reasons set forth in this Memorandum in Opposition to Jurisdiction, the Supreme Court of Ohio should deny jurisdiction in this case.

Respectfully submitted

David R. Watkins #0013126
1111 Rush Ave., P.O. Box 68
Bellefontaine, Ohio 43311-0068
Telephone: 937-593-6065
Facsimile: 937-593-9978
E-Mail: drwatkins@tdhlaw.com

ATTORNEY FOR APPELLEE, JUDY ROWETON

Joseph P. Moore #0014362
262 James E. Bohanan Memorial Drive
Vandalia, Ohio 45377
Telephone 937-898-7.68
Facsimile 937-898-5859
E-Mail josmoore@aol.com

ATTORNEY FOR APPELLEE, JUDY ROWETON

Harry G. Beyoglides, Jr. #0018959
130 W. Second Street, Suite 1900
Dayton, Ohio 45402
Telephone 937-224-1427
Email hgbjr@dblhcklaw.com

ATTORNEY FOR APPELLEE, JEAN ANN WILLIS
(NKA ROWETON)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on Thomas J. Buecker and Laura E. Waymire, Attorneys for Defendants Daniel Roweton and Mary Lewis by Regular First Class U.S. Mail at 306 W. High Street, P.O. Box 1215, Piqua, OH 45356, on this 18th day of July, 2018.

DAVID R. WATKINS
Attorney for Judy Roweton, Appellee