[Cite as *In re Guardianship of Foust*, 2026-Ohio-4615.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: GUARDIANSHIP OF DIXIE L. FOUST :	APPEAL NO.	C-260142
	TRIAL NO.	2024001815
:		
:	*JUDGMENT ENTRY*	

This cause was heard upon the appeal, the record, and the briefs.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is affirmed.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 11/20/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By:_____
Administrative Judge

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IN RE: GUARDIANSHIP OF DIXIE L. FOUST	:	APPEAL NO. C-260142 TRIAL NO. 2024001815
	:	
	:	*O P I N I O N*

Appeal From: Hamilton County Court of Common Pleas, Probate Division

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: November 20, 2026

Gregory J. Vincent Law LLC and *Gregory J. Vincent*, for Appellant Kristian Guntzelman,

Kevin J. Dinkelacker, Appellee Guardian of the Estate of Dixie L. Foust.

MOORE, Judge.

{¶1} Appellant Kristian Guntzelman appeals the probate court's denial of his Civ.R. 60(B) motion for relief from judgment. We hold that Guntzelman was not entitled to a hearing on his motion because he failed to demonstrate that he was entitled to relief under one of the five grounds set forth in Civ.R. 60(B) or that he had a meritorious claim if relief were granted. Additionally, we reject Guntzelman's argument that the probate court misinterpreted the specificity and particularity requirements of Civ.R. 53(D)(3)(b)(ii) when it denied his motion. Because neither assignment of error has merit, we affirm the probate court's judgment.

I. Factual and Procedural History

{¶2} Kristian Guntzelman is the stepson of Dixie Foust. Foust suffered a stroke in 2015 and lives at a medical facility. On April 24, 2024, Guntzelman applied to be his stepmother's guardian. A short time later, on May 6, 2024, Randy Foust, Dixie's brother, filed a competing guardianship application.

{¶3} On July 29, 2024, a magistrate heard testimony from both parties and their witnesses regarding the applications. The magistrate held a second hearing on August 9, 2024. There, a Blue Ash police officer testified that he had learned of suspicious financial transactions made by Guntzelman with his stepmother's funds. Guntzelman had access to the funds because he was appointed as an agent under her 2020 durable power of attorney. Specifically, Guntzelman used Dixie Foust's money to purchase two large parcels of land in Colorado. One parcel was to be used by him and his wife to build a house. Guntzelman testified that he borrowed the trust funds so that he could quickly close the deal. The other parcel was an investment property for the trust. As compensation for his work managing his stepmother's trust, Guntzelman purchased himself a $154,000 car with trust assets.

{¶4} On August 20, 2024, the magistrate denied Guntzelman's guardianship application, in large part due to his "messy and suspicious" use of Dixie Foust's trust money. Guntzelman filed written objections to the magistrate's decision, alleging that the decision was contrary to law though he made no objections concerning the financial transactions. The probate court denied these objections without a hearing on November 20, 2024.

{¶5} On March 12, 2025, after the probate court appointed independent guardians of Dixie Foust's person and estate, Guntzelman filed a notice of appeal. This court affirmed the probate court's denial of Guntzelman's guardianship application. *See In re Guardianship of Foust*, 2025-Ohio-5833 (1st Dist.). Following his failed appeal, Guntzelman filed a Civ.R. 60(B) motion for relief from judgment on March 2, 2026. In the motion, Guntzelman identified several documents relating to his financial transactions with Dixie Foust's funds that he wanted the probate court to consider. On March 4, 2026, the probate court denied the motion without a hearing. Guntzelman now appeals.

II. Analysis

{¶6} On appeal, Guntzelman raises two assignments of error. First, Guntzelman argues that the probate court abused its discretion by denying his Civ.R. 60(B) motion without first holding an evidentiary hearing. Second, Guntzelman argues that the probate court misinterpreted Civ.R. 53(D)(3)(b)(ii) by requiring him to pre-identify his evidence in his objections to the magistrate's decision.

A. Probate Court's Denial of Guntzelman's Motion Without a Hearing

{¶7} We review a trial court's denial of a Civ.R. 60(B) motion for an abuse of discretion. *Griffey v. Rajan*, 33 Ohio St.3d 75, 77 (1987). An abuse of discretion requires more than an error of judgment; it requires that the court's attitude be

unreasonable, arbitrary, or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157 (1980).

{¶8} Under Civ.R. 60(B), the trial court may relieve a party from a final judgment on the following grounds: "(1) [m]istake, inadvertence, surprise or excusable neglect; (2) [n]ewly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) [f]raud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) [t]he 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) [a]ny other reason justifying relief from the judgment." Though all motions must be made within a reasonable time, motions filed under subsections (1), (2), and (3) must be made not more than one year after judgment. *Id.*

{¶9} To succeed on a motion under this rule, the moving party must demonstrate (1) a meritorious claim or defense if relief is granted, (2) entitlement to relief under one of the five grounds in Civ.R. 60(B), and (3) that the motion was timely made. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 150-151 (1976).

{¶10} Nothing in the text of Civ.R. 60(B) requires the trial court to hold an evidentiary hearing before ruling on a motion for relief from judgment. Even so, the Ohio Supreme Court has imposed such a requirement in certain cases: "'If the movant files a motion for relief from judgment and it contains allegations of operative facts which would warrant relief under Civil Rule 60(B), the trial court should grant a hearing to take evidence and verify these facts before it rules on the motion.'" *Coulson v. Coulson*, 5 Ohio St.3d 12, 16 (1983), quoting *Adomeit v. Baltimore*, 39 Ohio App.2d

97, 105 (8th Dist. 1974). Consequently, a trial court abuses its discretion if it fails to hold a hearing on a motion that sufficiently alleges grounds for relief and is supported by evidence that would warrant relief from judgment. *Kay v. Marc Glassman, Inc.*, 76 Ohio St.3d 18, 19 (1996).

{¶11} Guntzelman argues that he was entitled to a hearing because his Civ.R. 60(B) motion sufficiently alleged grounds for relief and was supported by evidence warranting relief from judgment. Although Guntzelman's appellate brief does not identify which subsections of Civ.R. 60(B) entitle him to relief, his motion claimed that he was entitled to relief under subsections (1), (2), and (5).

{¶12} First, Guntzelman argues that he was entitled to relief under Civ.R. 60(B)(1) due to a "procedural irregularity" that prevented him from fully presenting his evidence. To start, Guntzelman is time-barred from relief under this subsection. Though the probate court denied Guntzelman's guardianship application on August 20, 2024, Guntzelman did not file his Civ.R. 60(B) motion until March 2, 2026. This far exceeds the one-year period set by the rule.

{¶13} Even if Guntzelman's motion was timely made, he still would not be entitled to a hearing. Civ.R. 60(B)(1) does not cover "procedural irregularities." Rather, it covers "[m]istake, inadvertence, surprise or excusable neglect." Though he does not explicitly make this argument, Guntzelman appears to be treating a procedural irregularity as a type of mistake. Importantly, however, Civ.R. 60(B)(1) concerns the conduct of the parties to the case. *See, e.g.*, *Union Savings Bank v. James Martin Trucking, LTD*, 2012-Ohio-5758, ¶ 15 (1st Dist.) (holding that any mistake, neglect, or inadvertence committed by an attorney is imputed to their client for the purposes of Civ.R. 60(B)(1)). It does not concern the conduct of the trial court in deciding whether to hold a hearing. *See Culgan v. Miller*, 2011-Ohio-6194, ¶ 12 (9th

Dist.) (noting that any mistake committed by the trial court is not the type of mistake contemplated by Civ.R. 60(B)(1)). In cases where the trial court makes a mistake, the proper remedy is an appeal,[1] not a Civ.R. 60(B) motion. *Id.*

{¶14} Even if Civ.R. 60(B)(1) did cover procedural irregularities, no procedural irregularity occurred in this case. According to Guntzelman, the supposed irregularity was the probate court's cancellation of the evidentiary hearing on his objections to the magistrate's decision. Guntzelman asserts that the probate court's refusal to hold an evidentiary hearing before deciding his motion denied him the "sole procedural vehicle" by which he could introduce "responsive documentary evidence." Essentially, Guntzelman is arguing that the probate court made a mistake by cancelling the objections hearing; this "mistake" then requires the probate court to hold another evidentiary hearing before deciding his Civ.R. 60(B) motion.

{¶15} The probate court, however, was not required to hold an objections hearing. *Guthrie v. Guthrie*, 2024-Ohio-5581, ¶ 21 (1st Dist.) ("[N]either the relevant rules nor this court's precedent require a trial court to hold a hearing upon objections to a magistrate's decision."). Civ.R. 53(D)(4)(d) makes clear that the probate court has discretion to hold a hearing, but that it is not required to do so: "Before so ruling, the court *may* hear additional evidence but *may* refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate." (Emphasis added.)

{¶16} Guntzelman was not entitled to an objections hearing because he did not demonstrate that he had evidence that could not, with reasonable diligence, have been produced for the magistrate's consideration. In fact, Guntzelman did not

[1] Guntzelman already appealed the denial of his guardianship application and lost. *See Foust*, 2025-Ohio-5833 (1st Dist.).

indicate that he had any new evidence at all; his objections consisted solely of legal arguments relating to R.C. 2111.121(B). Given the absence of any new evidence to consider, the court likely concluded that an evidentiary hearing would be fruitless. As a result, it reasonably decided not to hold a hearing. Guntzelman cannot now retroactively claim that this decision was a "procedural irregularity."

{¶17} Furthermore, Guntzelman's repeated argument that the probate court's cancellation of the objections hearing denied him the opportunity to get all the facts into the record is factually incorrect. Guntzelman's financial transactions with his stepmother's funds were the sole subject of the August 9 hearing. Guntzelman and his attorney provided testimony at that hearing attempting to justify the transactions. In addition to their oral testimony, they could have presented the documents that they now wish to have considered, particularly since Guntzelman acknowledged in his Civ.R. 60(B) motion that at least some of the documents existed at that time. Even if Guntzelman could not have presented the documents at the August 9 hearing, he could have mentioned them in his objections and explained why he could not have produced them earlier for the magistrate's consideration. Once again, he failed to do so. The fault for any factual deficiencies in the record lies with Guntzelman, not the probate court. In conclusion, Guntzelman is not entitled to relief under Civ.R. 60(B)(1).

{¶18} Next, Guntzelman argues that he is entitled to relief under Civ.R. 60(B)(2) because he has newly discovered evidence. While Guntzelman acknowledges that some of the documents existed at the time of the August 9 hearing, he argues that they are new evidence because they did not become material until after the August 9 hearing, which "reframed the financial narrative."

{¶19} Once again, Guntzelman's motion cannot succeed under Civ.R. 60(B)(2) because he filed the motion well outside the one-year limit set by the rule.

Even if his motion was timely, the text of Civ.R. 60(B)(2) clearly states, and case law confirms, that new evidence is only new if it could not have been discovered within the time required to move for a new trial. *Carnes v. Carnes*, 2015-Ohio-2925, ¶ 19 (1st Dist.). By Guntzelman's own admission, many of the documents could have been discovered well before the magistrate entered his judgment on August 20. Furthermore, Guntzelman admits that the necessity of the documents became apparent after the August 9 hearing. Once again, this was before the magistrate entered his judgment on August 20. As a result, Guntzelman failed to demonstrate that his "new" evidence could not have been discovered before judgment. Thus, he is not entitled to relief under Civ.R. 60(B)(2).

{¶20} Finally, Guntzelman argues that he is entitled to relief under Civ.R. 60(B)(5). This subsection is a catch-all provision, but it should not be used as a substitute for the rule's four other, more specific grounds for relief. *Caruso-Ciresi, Inc. v. Lohman*, 5 Ohio St.3d 64, 66 (1983). It requires the movant to demonstrate that there are extraordinary circumstances warranting relief. *Westbrook v. Westbrook*, 2026-Ohio-2192, ¶ 19 (10th Dist.).

{¶21} Guntzelman suggests that he is entitled to relief under subsection (5) because this is a guardianship matter dealing with significant liberty and property interests, and that the probate court's cancellation of his objections hearing rendered the record incomplete. As previously stated, the probate court was not required to hold an evidentiary hearing on Guntzelman's purely legal objections. Thus, the record is potentially incomplete because of Guntzelman's failure to produce relevant evidence in a timely matter. Furthermore, the mere fact that this is a guardianship matter hardly makes the case an extraordinary one. Therefore, Guntzelman is not entitled to relief under Civ.R. 60(B)(5).

{¶22} Despite his claims to the contrary, Guntzelman's Civ.R. 60(B) motion did not contain allegations of operative facts that would warrant relief under any of the five grounds. For that reason, the probate court did not abuse its discretion by declining to hold a hearing before ruling on the motion.

{¶23} Even if Guntzelman had successfully alleged operative facts that would warrant relief, he failed to demonstrate that he has a meritorious claim or defense if relief were granted. First, Guntzelman already appealed the denial of his guardianship application and lost. *See Foust*, 2025-Ohio-5833 (1st Dist.). This is strong evidence that he does not have a meritorious claim. Second, even if Guntzelman's "new" evidence shows that his transactions were legal, it is still unlikely that he would have a winning claim. The probate court took issue with the financial transactions because they cast doubt on Guntzelman's judgment on how to manage his stepmother's funds. Even if entirely legal, the transactions were questionable and risky. Therefore, the new documentary evidence purporting to show that Guntzelman's transactions were legal or that he otherwise followed proper procedures in making the transactions is unlikely to change the probate court's decision on his application. Because Guntzelman does not have a meritorious claim or defense, the probate court did not abuse its discretion by declining to hold a hearing.

{¶24} Guntzelman's final argument under this assignment of error is that he is entitled to a hearing because no party would be prejudiced by him having one. Though this may be true, the probate court has discretion in whether to grant a party's request for a hearing. Since Guntzelman's motion did not contain allegations of operative facts that would warrant relief under Civ.R. 60(B), the probate court did not err in denying him a hearing regardless of the lack of prejudice.

{¶25} For these reasons, we overrule Guntzelman's first assignment of error.

B. Probate Court's Interpretation of Civ.R. 53(D)(3)(b)(ii)

{¶26} In its order denying Guntzelman's Civ.R. 60(B) motion, the probate court noted that Guntzelman "made no argument in his objections regarding the evidence that he now alleges existed at the time." Guntzelman's second assignment of error argues that in denying his motion on this ground, the probate court was misreading the requirements of Civ.R. 53(D)(3)(b)(ii) ("An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection."). Specifically, Guntzelman argues that the probate court was improperly requiring him to pre-identify the evidence that he would have used to support his objections, above and beyond the specificity and particularity requirements of the rule.

{¶27} By noting that Guntzelman did not make any objections based on the financial transactions, the probate court was not misinterpreting the requirements of Civ.R. 53(D)(3)(b)(ii). It is unlikely that the court was even referring to the rule at all. Rather, the court was merely noting, correctly, that Guntzelman never raised any arguments in his objections that related to the financial transactions. He raised purely legal arguments. It made this observation in support of its ultimate conclusion that there was no "procedural irregularity" in the court deciding not to hold an evidentiary hearing on the objections. As a result, the probate court did not err in noting that Guntzelman first raised arguments relating to the financial transactions in his Civ.R. 60(B) motion, not in his written objections to the magistrate's decision.

{¶28} Accordingly, we overrule Guntzelman's second assignment of error.

III. Conclusion

{¶29} The probate court did not abuse its discretion in denying Guntzelman's Civ.R. 60(B) motion for relief from judgment without a hearing. Guntzelman was not entitled to a hearing because his motion failed to demonstrate that he was entitled to

relief under any of the five grounds in Civ.R. 60(B). Furthermore, Guntzelman failed to demonstrate that he had a meritorious claim if relief were granted.

{¶30} Additionally, the probate court did not err by noting in its decision denying Guntzelman's motion that he failed to make any arguments relating to his financial transactions with his stepmother's funds in his objections to the magistrate's decision. This observation was not a misinterpretation of the requirements of Civ.R. 53(D)(3)(b)(ii).

{¶31} Because neither of Guntzelman's assignments of error have merit, we affirm the judgment of the probate court.

Judgment affirmed.

KINSLEY, P.J., and **CROUSE, J.,** concur.