

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO

IN RE: A.A.H., S.L.H., AND G.M.H.	:	O P I N I O N
	:	
	:	CASE NOS. 2014-P-0061,
	:	2014-P-0062
	:	and 2014-P-0063
	:	
	:	

Civil Appeals from the Portage County Court of Common Pleas, Juvenile Division, Case Nos. 2014 JCF 207, 2014 JCF 208, and 2014 JCF 209.

Judgment: Affirmed.

Victor V. Vigluicci, Portage County Prosecutor, and *Raymond H. Srp*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Appellant, Portage County Department of Job and Family Services).

James K. Reed, J. Reed Enterprises, LLC, 209 South Main Street, Suite 801, Akron, OH 44308 (For Appellee, Mary Hicks).

Pamala S. Harris, 199 South Chillicothe Road, Suite 205, Aurora, OH 44202 (Guardian ad Litem).

DIANE V. GRENDELL, J.

{¶1} Appellant, the Portage County Department of Job and Family Services, appeals the October 7, 2014 judgment of the Portage County Court of Common Pleas, Juvenile Division, granting appellee, Mary Hicks', Motion for Relief from Judgment. The issue before this court is whether a mother's decision to revoke the surrender of

permanent custody of her three children on the same day that she executed the surrender constitutes a “reason justifying relief from judgment” under Civil Rule 60(B)(5). For the following reasons, we affirm the decision of the court below.

{¶2} On March 14, 2014, Portage Job and Family Services filed a Motion for Permanent Custody with respect to Hicks’ minor children: A.A.H. (Case No. 2014 JCF 207), S.L.H. (Case No. 2014 JCF 208), and G.M.H. (Case No. 2014 JCF 209).

{¶3} On March 17, 2014, the juvenile court appointed Pamala S. Harris guardian ad litem for the children.

{¶4} On April 1, 2014, the juvenile court appointed Neil Agarwal counsel for Hicks.

{¶5} On May 23, 2014, a hearing was held on Portage Job and Family Services’ Motion. At the hearing, Hicks “permanently surrendered all rights and responsibilities for her children, A.A.H., S.L.H. and G.M.H.” The juvenile court “reviewed the permanent surrender form with Mary Hicks” and “was satisfied that Mary Hicks executed the permanent surrender document knowingly, intelligently, and voluntarily with a full understanding of the consequences of doing so.”¹

{¶6} On the same date, Hicks wrote the following missive to the juvenile court judge:

I Mary Hicks have not wanted to give up my rights to my girls * * *.

This morning when I came into court and talked with Neil P.

Agarwal. He said that we could fight this but it would be a blood

bath. He said * * * it would be best[] if I just give up my rights. I

1. Also at the May 23, 2014 hearing, “the children’s joint legal custodian and maternal great aunt, Paulette Haupt, relinquished her legal custody rights to the children and consented to the granting of permanent custody of the children to [Portage Job and Family Services].”

was under a lot of stress upset and felt like I was being pushed into giving up my girls. I was very scared. And didn't know what to do. Yes I can take care of my girls. This has been very hard for me and my girls. I would like to stop the permanent surrender of my child [sic]. * * * I feel like I was misrepresent[ed] in this case.

{¶7} On July 8, 2014, a hearing was held at which Hicks requested new counsel and Attorney Agarwal requested to withdraw as counsel. The juvenile court granted the requests and appointed James Reed counsel for Hicks.

{¶8} On September 2, 2014, a Petitioner-Mother's 60(B) *Motion for Relief of Judgment* was filed on Hicks' behalf.

{¶9} On October 3, 2014, a hearing was held on the *Motion for Relief of Judgment*. The juvenile court noted that Portage Job and Family Services "filed no responsive pleading to the Petitioner's Motion and presented no evidence," "[n]either party requested a transcript of the proceedings," and the guardian ad litem "did not appear or submit a written recommendation," having requested a continuance which was denied.

{¶10} Hicks testified at the hearing that she intended to contest Portage Job and Family Services' Motion for Permanent Custody until the day of hearing. She testified she did not want to surrender permanent custody but felt pressured by her attorney to do so.

{¶11} The juvenile court found that "in the interest of fairness and substantial justice * * * the Petitioner [should] be permitted to withdraw the permanent surrenders

executed on May 23, 2014 * * * pursuant to Ohio Civil Procedure Rule 60(B)(5).” The court ordered the matter set for adjudication on the issue of permanent custody.

{¶12} On October 27, 2014, Portage Job and Family Services filed a Notice of Appeal. On appeal, it raises the following assignment of error:

{¶13} “[1.] The trial court lacked the authority to vacate Hicks’ voluntary agreement to permanently surrender her parental rights pursuant to Civ.R. 60(B)(5), when Hicks did not indicate substantial grounds to warrant relief from judgment.”

{¶14} “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 * * * any other reason justifying relief from the judgment.” Civ.R. 60(B)(5); *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus (“[t]o prevail on a motion brought under Civ.R. 60(B), the movant must demonstrate that: (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”).

{¶15} This court has described the purpose of Civil Rule 60(B) as “a curative rule which is to be liberally construed with the focus of reaching a just result” and which “provides parties with an equitable remedy requiring a court to revisit a final judgment and possibly afford relief from that judgment when in the interest of justice.” *Waterfall Victoria Master Fund Ltd. v. Yeager*, 11th Dist. Lake No. 2012-L-071, 2013-Ohio-3206, ¶ 10.

{¶16} With respect to Civil Rule 60(B)(5), the Ohio Supreme Court has stated that it is “intended as a catch-all provision reflecting the inherent power of a court to

relieve a person from the unjust operation of a judgment, but it is not to be used as a substitute for any of the other more specific provisions of Civ. R. 60(B),” and that “[t]he grounds for invoking Civ. R. 60(B)(5) should be substantial.” *Caruso-Ciresi, Inc. v. Lohman*, 5 Ohio St.3d 64, 448 N.E.2d 1365 (1983), paragraphs one and two of the syllabus. “In simple English, the language of the ‘other reason’ clause, for all reasons except the [four] particularly specified, vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.” *State ex rel. Gyurcsik v. Angelotta*, 50 Ohio St.2d 345, 346, 364 N.E.2d 284 (1977), quoting *Klapprott v. United States*, 335 U.S. 601, 614-615, 69 S.Ct. 384, 93 L.Ed. 266 (1949).

{¶17} “The determination of whether relief should be granted is addressed to the sound discretion of the trial court.” *In re Whitman*, 81 Ohio St.3d 239, 242, 690 N.E.2d 535 (1998).

{¶18} On appeal, Portage Job and Family Services argues that Hicks’ feelings of being pressured into surrendering custody are inadequate to justify the granting of relief where there is no evidence that the surrender was not knowingly and voluntarily executed. We disagree.

{¶19} The language of the Rule broadly encompasses “any other reason” for relief which includes misgivings that do not otherwise render the surrender of parental rights involuntary. If circumstances were such that Hicks’ surrender was involuntary, her recourse would be a direct appeal, in which case Civil Rule 60(B) relief would be inappropriate. *Bank of America, N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 16 (“a Civ.R. 60(B) motion cannot be used as a substitute for an appeal”).

{¶20} We emphasize that the decision to grant relief in these circumstances is both equitable and discretionary. The juvenile court was entitled to consider, as it did, the fact that “Ms. Hicks’ response to the court [was] written the same day as the surrender hearing and in an attempt to have [the] substantive issues come before the court.” The court could also consider the significance of the surrender in light of the oft-quoted dictum that a termination of parental rights is “the family law equivalent of the death penalty.” *In re B.C.*, 141 Ohio St.3d 55, 2014-Ohio-4558, 21 N.E.3d 308, ¶ 19, quoting *In re Smith*, 77 Ohio App.3d 1, 16, 601 N.E.2d 45 (6th Dist.1991). Certainly, a court is not compelled to grant relief in such circumstances, see *In re Young*, 11th Dist. Ashtabula No. 2006-A-0025, 2006-Ohio-4537, ¶ 27 (relief denied where the mother “changed her mind three months after the juvenile court approved of the permanent surrender”), but neither is it precluded from doing so when, in the exercise of its discretion, it determines that vacation serves “the interest of fairness and substantial justice.”

{¶21} Portage Job and Family Services also argues that Hicks is not entitled to relief under Civil Rule 60(B)(5) because her Motion also sought relief under Rule 60(B)(1), providing for relief in case of “mistake, inadvertence, surprise or excusable neglect.” *Caruso-Ciresi*, 5 Ohio St.3d at 66, 448 N.E.2d 1365 (Civ.R. 60(B)(5) cannot “be used as a substitute for any of the other more specific provisions of Civ. R. 60(B)”). A fair reading of Hicks’ argument in favor of relief makes clear that she was not alleging mistake, inadvertence, or surprise as contemplated by Rule 60(B)(1). The “any other reason” provision of Rule 60(B) was the appropriate one under which to analyze Hicks’ request for relief.

{¶22} The sole assignment of error is without merit.

{¶23} For the foregoing reasons, the judgment of the Portage County Court of Common Pleas, Juvenile Division, granting Hicks' Motion for Relief from Judgment, is affirmed. Costs to be taxed against appellant.

TIMOTHY P. CANNON, P.J.,

COLLEEN MARY O'TOOLE, J.,

concur.