

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY**

VALERIE B. POLKE, et al.,

Plaintiffs-Appellants,

- vs -

DONALD E. ANDRUS, et al.,

Defendants-Appellees.

CASE NO. 2026-A-0007

Civil Appeal from the
Court of Common Pleas

Trial Court No. 2024 CV 00458

OPINION AND JUDGMENT ENTRY

Decided: September 28, 2026

Judgment: Affirmed

Valerie B. Polke and Kenneth J. Polke, pro se, 5919 Lake Road West, Cabin #2, Ashtabula, OH 44004 (Plaintiffs-Appellants).

Steven M. Ott and Bradley E. Bindokas, Buckley King L.P.A., 600 Superior Avenue East, Suite 1400, Cleveland, OH 44114 (For Defendants-Appellees).

EUGENE A. LUCCI, J.

{¶1} Appellants, Valerie B. and Kenneth J. Polke (collectively “the Polkes”), appeal the judgment purporting to both overrule and strike a motion to set aside the parties’ settlement agreement and reopen the case. For the reasons that follow, we affirm the judgment overruling the motion.

{¶2} In 2024, the Polkes, through counsel, filed a complaint against appellees Donald E. Andrus, et al. (“Andrus”), claiming that Andrus breached the terms of a real estate sales agreement, made fraudulent representations and fraudulently concealed

facts relative to the real estate, violated the Consumer Sales Practices Act, violated the Home Construction Service Suppliers Act, and violated Ohio's RICO statute.¹

{¶3} In July 2025, the parties filed a settlement agreement, and the trial court issued an entry dismissing the case with prejudice. In its dismissal entry, the court stated it would "retain jurisdiction over the settlement agreement reached by the parties and any enforcement of the same."²

{¶4} On December 24, 2025, Mr. Polke, pro se, filed a "motion to set aside settlement agreement and reopen case," stating:

Now come the Plaintiffs and move this Honorable Court to set aside the Settlement Agreement in the within case and reopen said case for further action.

This Motion is founded and based on the fact that the Settlement Agreement was impossible to execute in material part. Said failure is in no part the fault of the Plaintiffs.

Evidence of this failure will be further presented at a Hearing on this matter.

Plaintiffs hereby attach an Affidavit and, on the Pleadings, Records and Filing in this case.³

{¶5} In Mr. Polke's affidavit, he averred:

The sole and primary reason for this unsuccessful settlement agreement was the inability to obtain a Home Mortgage from two financial institutions that our attorney directed us to. The details of these "good faith" efforts will be explained during a Court hearing. Suffice to say that the first bank to turn us down was due to our being on a "fixed" income and due to our earning potential at our senior ages. The second bank had a similar set of circumstances.

1. This is a refiled case. The Polkes voluntarily dismissed their original complaint just prior to filing the complaint in the underlying case.

2. The Polkes' appellate brief alleges several facts regarding their prior representation that are not contained in the record. These allegations that lack record support have not been considered in rendering our opinion.

3. Only Mr. Polke signed the motion. As we affirm the trial court's judgment overruling the motion, Ms. Polke's failure to sign the motion is not presently of consequence.

{¶6} On January 2, 2026, the trial court issued an order that “overruled and str[uck]” Mr. Polke’s motion on the bases that (1) appellants were represented by counsel but filed the motion pro se, (2) the court lacked jurisdiction in this matter aside from enforcing the settlement agreement, and (3) the motion did not state a basis under Civ.R. 60(B) that would permit the court to revisit the final judgment.

{¶7} The Polkes noticed a timely appeal and now assign four errors for our review:

[1.] The trial court erred and abused its discretion by denying Appellant[s]’ Motion to reopen the case, as the dismissal was conditioned upon a settlement agreement whose terms were never satisfied and fulfilled.

[2.] The trial court erred in concluding it lacked subject-matter jurisdiction to reopen the case because the dismissal entry was not an unconditional dismissal, as the underlying settlement agreement never materialized and was not incorporated into the entry.

[3.] The trial court erred by failing to conduct an evidentiary hearing on the validity of the settlement agreement, despite evidence that the terms of the settlement had not been finalized or executed.

[4.] The trial court erred by refusing the Plaintiffs their basic fundamental right to be heard and their CONSTITUTIONAL DUE PROCESS.

{¶8} Initially, we note that, although the trial court purported to strike and overrule Mr. Polke’s motion in the January 2, 2026 entry, the entry did not effectively strike the motion because the trial court issued a ruling on the motion. Our discussion thus proceeds on the premise that the trial court overruled the motion.

{¶9} In their first assigned error, the Polkes maintain that the trial court erred in overruling Mr. Polke’s motion because the settlement was conditional, and, because the

“condition precedent” was not met, the settlement agreement was invalid. Based on this, the Polkes maintain that, pursuant to Civ.R. 60(B), extraordinary circumstances exist for relief from judgment to prevent an injustice. In their second assigned error, the Polkes argue that the dismissal entry specifically retained jurisdiction over the settlement agreement, and the trial court had jurisdiction over the agreement which was conditioned on future events. In their third assigned error, the Polkes contend that the trial court abused its discretion in failing to hold a hearing.

{¶10} “[T]he Rules of Civil Procedure specifically limit relief from judgments to motions expressly provided for within the same Rules.” *Pitts v. Ohio Dept. of Transp.*, 67 Ohio St.2d 378, 380 (1981). Nonetheless, a trial court has inherent authority *to enforce* its orders. *Infinite Sec. Sols., L.L.C. v. Karam Properties, II, Ltd.*, 2015-Ohio-1101, ¶ 27. Further, in *Infinite*, the Supreme Court of Ohio held that “[a] trial court has jurisdiction to enforce a settlement agreement after a case has been dismissed” where the dismissal entry “expressly stated that the court retained jurisdiction to enforce the agreement.” *Id.* at ¶ 34.

{¶11} *Infinite* additionally instructs:

[T]he Ohio Rules of Civil Procedure do not provide for a conditional dismissal. Instead, Civ.R. 41 provides for voluntary or involuntary dismissals and for dismissals with or without prejudice. And although we have stated that a court loses jurisdiction when it dismisses a case “unconditionally,” we have never expressly held that a court may “conditionally” dismiss a case. Neither have we defined what “conditional dismissal” means or under what circumstances such a dismissal is appropriate. Faced with those questions here, we reject the notion of a “conditional” dismissal and focus more precisely on the fundamental question of whether, and if so, how, a trial court may retain jurisdiction after a dismissal for purposes of enforcing a settlement agreement.

Infinite at ¶ 22.

{¶12} Here, there is no dispute that the dismissal entry expressly stated that the court retained jurisdiction over the agreement. *Infinite* permits a court to retain jurisdiction in a dismissal entry *to enforce* a settlement agreement by a statement to this effect in the entry. As the Polkes requested the court *set aside* the settlement agreement and reopen the case, they could obtain relief from the dismissal only as prescribed by the Rules of Civil Procedure. See *Pitts* at 380.

{¶13} Although Mr. Polke did not invoke any particular rule to support his motion, the trial court concluded that “[e]ven if this motion were not a nullity, it does not state a requisite basis under Civil Rule 60(B) to allow for this Court to revisit the judgment.” See *Infinite* at ¶ 33 (concluding that the dismissal entry failed to retain jurisdiction and remanding the matter for consideration of whether the moving party was entitled to relief under Civ.R. 60(B)).

{¶14} Civ.R. 60(B) sets forth the procedure for obtaining relief from final judgment. “[T]he determination of whether relief from judgment should be granted is addressed to the sound discretion of the trial court, and the court’s ruling will not be disturbed on appeal absent an abuse of discretion. An abuse of discretion implies that the trial court’s attitude was unreasonable, unconscionable, or arbitrary.” *Classic Oldsmobile, Inc. v. 21st Century Painting, Inc.*, 1999 WL 545750, *3 (11th Dist. Feb. 12, 1999), citing *Griffey v. Rajan*, 33 Ohio St.3d 75, 77 (1987).

{¶15} Civ.R. 60(B) provides:

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.

The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules.

{¶16} Thus, to prevail on a Civ.R. 60(B) motion, the movant must show that (1) the movant has a meritorious claim or defense to present if relief is granted; (2) the movant is entitled to relief under one of the grounds identified in Civ.R. 60(B)(1) through (5); and (3) the movant has made the motion within a reasonable time, and, where the movant seeks relief under Civ.R. 60(B)(1), (2), or (3), not more than a year after the judgment was entered. *GTE Automatic Elec. Inc. v. ARC Indus., Inc.*, 47 Ohio St.2d 146 (1976), paragraph two of the syllabus. A court is not required to hold an evidentiary hearing on a Civ.R. 60(B) motion unless it contains “allegations of operative facts which would warrant relief under Civ.R. 60(B).” (Citations omitted.) *State ex rel. Richard v. Seidner*, 1996-Ohio-54, ¶ 9.

{¶17} On review of Mr. Polke’s motion, we agree with the trial court that he did not reference Civ.R. 60(B), let alone specify on which subsection of that rule he relied. “A movant’s failure to identify which subsection of Civ.R. 60(B) he is invoking may alone be fatal to a motion for relief from judgment, as the second prong of the *GTE* test has not

been satisfied.” *Haynes v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-5099, ¶ 11 (10th Dist.); accord *Tucker v. Cuyahoga Cty. Dept. of Children & Family Services*, 2000 WL 426561, *2 (8th Dist. Apr. 20, 2000).⁴ Therefore, we cannot say that the trial court abused its discretion in overruling the motion without a hearing when considered under Civ.R. 60(B).

{¶18} Last, the basis for Mr. Polke’s motion, i.e., that the Polkes were unable to obtain post-settlement financing, does not fall within the grounds for relief from judgment under subsections Civ.R. 60(B)(1) through (5).

{¶19} Accordingly, the Polkes’ first, second, and third assigned errors lack merit.

{¶20} In their fourth assigned error, the Polkes contend the trial court erred in failing to hold a hearing on the matter on the basis that Mr. Polke’s motion constituted impermissible hybrid representation. However, because the motion was properly overruled without hearing for other reasons addressed above, we need not reach the merits of this argument, as any error in the court’s conclusion that Mr. Polke was not permitted to file his motion pro se is harmless. See Civ.R. 61 (“The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.”).

{¶21} Accordingly, the Polkes’ fourth assigned error lacks merit.

{¶22} The judgment is affirmed.

MATT LYNCH, P.J.,
ROBERT J. PATTON, J.,
concur.

4. Although Mr. Polke filed his motion pro se, it is well established that pro se parties are held to the same standards as represented parties. See *In re Application of Black Fork Wind Energy, L.L.C.*, 2013-Ohio-5478, ¶ 22.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, appellants' assignments of error lack merit. It is the judgment and order of this court that the judgment of the Ashtabula County Court of Common Pleas is affirmed.

Costs to be taxed against appellants.

JUDGE EUGENE A. LUCCI

PRESIDING JUDGE MATT LYNCH,
concur

JUDGE ROBERT J. PATTON,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY
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A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.
