

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

In the Matter of Adoption:	:	Case No.	26CA6
	:		
L.A.G.D.	:		
	:	<u>DECISION AND</u>	
	:	<u>JUDGMENT ENTRY</u>	
	:		
	:	RELEASED 10/16/2026	

APPEARANCES:

Matthew J. Hebebrand, Painesville, Ohio, for appellant.

Andrew J. Noe, Gallipolis, Ohio, for appellee.

Hess, J.

{¶1} The mother of L.A.G.D. appeals the judgment of the Gallia County Court of Common Pleas, Probate Division, denying her Civ.R. 60(B) motion to set aside the order granting the adoption petition in favor of L.A.G.D.’s maternal aunt. Mother raises one assignment of error contending that the trial court erred in denying her Civ.R. 60(B) motion because it alleged that she was denied her right to counsel.

{¶2} For the reasons that follow, we overrule the mother’s assignment of error and affirm the trial court’s judgment.

I. FACTS AND PROCEDURAL HISTORY

{¶3} Appellee A.M.D. (“aunt”) filed a petition to adopt her niece L.A.G.D. on November 13, 2025. According to the petition, the child had been in the aunt’s custody since April 2018. The petition included as an exhibit an August 2020 judgment entry from the juvenile court in a separate juvenile proceeding that ordered that the aunt should

continue as the legal custodian until further order of the court. The petition alleged that the mother's consent to the adoption was not necessary because she had failed without justifiable cause to provide meaningful and regular maintenance and support of the minor as required by law or judicial decree for a period of one year immediately preceding the filing of the petition.

{¶4} Appellant M.K.D. ("mother") was served with the petition by certified mail on November 18, 2025, but did not file an objection or contact the court for an attorney. The trial court scheduled a hearing on the aunt's adoption petition on January 6, 2026 and provided notice of it by certified mail on the mother. Mother attended the hearing. Following the hearing, the trial court granted the aunt's adoption petition on February 9, 2026.

{¶5} Several weeks after the trial court issued the order granting the adoption petition, mother filed a Civ.R. 60(B) motion in which she argued that the decision should be set aside under Civ.R. 60(B)(1) (excusable neglect) and Civ.R. 60(B)(5) (any other reason justifying relief). She argued that her failure to file an objection to the adoption petition was based on her inability to find an attorney and constituted excusable neglect under Civ.R. 60(B)(1). She argued that the order granting adoption should be set aside under Civ.R. 60(B)(5) because (a) she did not have a meaningful opportunity to be heard because she did not have an attorney; (b) the trial court should have resolved visitation issues in the juvenile case and any pending motions in it before deciding the adoption petition as a matter of judicial economy; (c) the trial court made inadequate best interest findings; and (d) mother's failure to provide maintenance and support as alleged in the

petition was not proven at the hearing. Mother did not file a timely appeal of the order granting the adoption petition.

{¶6} The trial court denied mother's Civ.R. 60(B) motion. The court found that mother was served with the petition and given the following notice prescribed in R.C. 3107.11:

IF YOU OBJECT TO THE ADOPTION, AND THE MINOR WAS ONE YEAR OF AGE OR OLDER AT THE TIME THE PETITION FOR ADOPTION WAS FILED, YOU MUST DO BOTH OF THE FOLLOWING:

(1) FILE A WRITTEN OBJECTION WITH THE COURT WITHIN TWENTY-EIGHT DAYS FROM THE DATE OF SERVICE OF NOTICE OF THE FILING OF THE PETITION AND OF THE TIME AND PLACE OF HEARING. FOR GOOD CAUSE SHOWN, THE COURT MAY EXTEND THE TIME IN WHICH A WRITTEN OBJECTION MAY BE FILED.

(2) APPEAR AT THE HEARING.

A FINAL DECREE OF ADOPTION MAY BE ENTERED IF YOU FAIL TO FILE A WRITTEN OBJECTION ON TIME AND APPEAR AT THE HEARING.

RIGHT TO AN ATTORNEY: YOU HAVE A RIGHT TO BE REPRESENTED BY AN ATTORNEY. IF YOU ARE INDIGENT AND UNABLE TO EMPLOY AN ATTORNEY, YOU ARE ENTITLED TO HAVE AN ATTORNEY PROVIDED FOR YOU PURSUANT TO CHAPTER 120. OF THE REVISED CODE. YOU MUST CONTACT THE COURT ON RECEIPT OF THIS NOTICE IF YOU ARE REQUESTING THAT AN ATTORNEY BE APPOINTED FOR YOU.

{¶7} The trial court found that mother "received the proper notice and failed to file a written objection to the adoption or to request an attorney to do so on her behalf. She did absolutely nothing in the probate court but show up for the hearing." As a result, the trial court found that mother's consent to the adoption was not needed under R.C. 3107.07(l), which states that a parent's consent is not required if they were given notice of the adoption petition and failed to file an objection. "As this factor alone rendered the

mother's consent not necessary, the Court has no reason or duty to consider other grounds that may also render her consent to the adoption as unnecessary."

{¶8} The trial court also rejected mother's argument that the court should have waited until visitation issues were resolved in certain related juvenile court proceedings, finding that the juvenile proceeding had no bearing on its decision.

{¶9} Last, the trial court found that it had considered all relevant factors, including those in R.C. 3107.161, when determining the best interest of the child and it had found that the aunt had met her burden of proving that adoption was in the best interest of the child. The trial court's entry denying the Civ.R. 60(B) motion was issued on March 5, 2026.

{¶10} Mother filed a timely appeal from the Civ.R. 60(B) denial.

II. ASSIGNMENT OF ERROR

{¶11} Mother presents the following assignment of error:

The trial court erred in denying appellant's motion for relief from judgment under Civ.R. 60(B) when such judgment involved a fundamental right, appellant was denied the right to counsel during the proceeding, and appellant sought such relief in a timely manner.

III. LAW AND ANALYSIS

A. Civ.R. 60(B) Motion

{¶12} Mother argues that her Civ.R. 60(B) was timely because she retained counsel and filed the motion shortly after the trial court granted the adoption petition. She contends that she made good faith efforts to secure an attorney and she explained this to the trial court at the January 6, 2026 adoption hearing. She contends that the trial court failed to engage in a colloquy with her to ensure that she was knowingly, intelligently, and voluntarily waiving her right to counsel. Instead, the trial court informed mother that her

only option was to move forward with the hearing and show that adoption was not in the child's best interest. She argues that when she appeared at the hearing without counsel, the trial court had an affirmative duty to engage in a colloquy and make specific findings that she had knowingly, voluntarily, and intelligently waived her right to counsel.

{¶13} She contends that relief from judgment under Civ.R. 60(B)(1) and (5) is appropriate because her failure to obtain counsel and object to the adoption “was due to excusable neglect and there existed a systemic failure which deprived Mother of a meaningful hearing.” Mother argues she made reasonable efforts on her own but could not locate an attorney to represent her. Mother argues that she was also confused because there was a “companion case” in juvenile court concerning her visitation rights with the child, which had the same judge as the adoption proceeding.

{¶14} Aunt argues that aunt has had custody of L.A.G.D. since 2018, when the child was a three-month-old infant, and children services became involved due to mother's incarceration. Aunt argues that mother had adequate time to secure counsel prior to the January 6, 2026 hearing and never made a request to the trial court for appointed counsel. Aunt also argues that mother did not file an appeal from the order granting the adoption petition, even though she had retained counsel and filed her Civ.R. 60(B) motion before the time for appeal of the judgment granting the adoption petition had expired. Aunt argues that mother is attempting to use her appeal from the Civ.R. 60(B) motion as a substitute for a timely appeal and the law clearly states that a motion for relief from judgment should not be used as a substitute for appeal. Moreover, aunt argues that there is no evidence that the trial court abused its discretion in denying the mother's Civ.R. 60(B) motion.

1. Standard of Review

{¶15} Under Civ.R. 60(B), a trial court may relieve a party 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.

{¶16} To prevail on a motion 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 in Civ.R. 60(B)(1)-(5), and (3) the motion is made within a reasonable time. *GTE Automatic Electric, Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 150 (1976). A court must overrule the motion if the moving party fails to establish any of these requirements. *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20 (1988).

{¶17} We review a trial court's Civ.R. 60(B) decision for abuse of discretion:

"Civ.R. 60(B) is a mechanism whereby a party or parties may obtain relief by motion from a judgment or order." The Rule strikes a balance between the finality of judgments and a perfect result "by vesting the courts with broad, but not unlimited authority to set aside judgments."

An appellate court's standard of review of a trial court's Civ.R. 60(B) decision is generally the abuse of discretion standard. The term "abuse of discretion" implies that a court's attitude is unreasonable, arbitrary or unconscionable.

(Citations omitted.) *Sites v. Sites*, 2023-Ohio-1278, ¶ 13-14 (4th Dist.).

2. The Trial Court's Civ.R. 60(B) Judgment

{¶18} In her assignment of error mother does not identify specific errors in the trial court's judgment denying her Civ.R. 60(B) motion. Rather, she broadly argues that the Civ.R. 60(B) motion should have been granted because she did not have an attorney at the adoption hearing. She contends that this case provides us with an "opportunity to correct a manifest injustice in which a parent has been deprived of her fundamental right to a parent-child relationship without knowingly, voluntarily, or intelligently waiving her right to counsel." She argues that the trial court should have set aside the judgment under Civ.R. 60(B) because the trial court did not engage in a colloquy to determine if she validly waived the right to an attorney. However, this is not an appeal of the underlying adoption petition. It is an appeal of the trial court's ruling on the Civ.R. 60(B) motion. Mother did not argue in her Civ.R. 60(B) motion that the trial court failed to engage in a meaningful colloquy concerning mother's waiver of her right to an attorney. The mother must raise errors in the trial court's ruling on the Civ.R. 60(B) motion, not use this as a substitute for an appeal of the underlying adoption order.

A Civ.R. 60(B) motion is not a substitute for a timely appeal. The moving party may not "merely reiterate arguments which concern the merits of the case and could have been raised on appeal."

Vandercar, LLC v. The Port of Greater Cincinnati Development Authority, 2026-Ohio-2737, ¶ 23 (1st Dist.). The proper way to raise issues with the underlying adoption petition is to appeal it, not challenge it through an appeal of the Civ.R. 60(B) decision.

{¶19} We find that the trial court did not abuse its discretion when it denied mother's Civ.R. 60(B) motion. Mother's Civ.R. 60(B) motion only satisfied one of the three

prongs of *GTE Automatic Electric* – it was timely. The trial court properly determined that mother failed to show she was entitled to have the judgment set aside for excusable neglect under Civ.R. 60(B)(1) because she received notice of the adoption petition with plain and simple instructions to file a written objection if she objected to the adoption and to contact the court if she wanted an attorney. With respect to pro se litigants:

“ ‘[c]ourts should not generally use Civ.R. 60(B)(1) to relieve pro se litigants who are careless or unfamiliar with the legal system.’ ” We have also noted “ ‘[a] party who is informed of court action against him and fails to seek legal assistance does so at his risk and such conduct cannot be said to constitute “excusable neglect” under Civ.R. 60(B)(1) or (5) unless a compelling reason is presented, like a serious illness.’ ”

(Citations omitted.) *Myers v. Ohio Department of Rehabilitation and Correction*, 2022-Ohio-1412, ¶ 25 (10th Dist.); *Sites* at ¶ 17. The “vast majority” of Ohio courts have held that “lack of counsel and ignorance of the legal system does not constitute ‘excusable neglect.’ ” *Dayton Power & Light v. Holdren*, 2008-Ohio-5121, ¶ 12 (4th Dist.). Mother gave no reason, compelling or otherwise, why she did not contact the court for an attorney or did not file a written objection as plainly instructed in the notice.

{¶20} Additionally, mother failed to allege that she had a meritorious defense or claim to present if the court had set aside the order granting the adoption. *GTE Automatic Electric*, 47 Ohio St.2d at 150. Under Civ.R. 60(B), mother's burden is only to allege a meritorious defense, not to prove that she will prevail on that defense. *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20 (1988). In *Rose Chevrolet*, the defendant filed a Civ.R. 60(B) motion to have a default judgment set aside for failing to file an answer. The court found that the movant met the “meritorious defense” prong when she attached a copy of her answer to the Civ.R. 60(B) motion, which contained several defenses to the

enforcement of the promissory note the plaintiff sued her over, including lack of consideration, violations of the Ohio Consumer Sales Practices Act, and fraud.

{¶21} Mother also failed to show she was entitled to have the judgment set aside under Civ.R. 60(B)(5). Mother argued in her Civ.R. 60(B) motion that her failure to provide maintenance and support was not proven at the hearing because the trial court determined that her consent was not necessary for a different reason – she failed to file an objection to the petition. We find that the trial court did not abuse its discretion when it determined that it had no duty or reason to consider other grounds that might also render her consent unnecessary. Additionally, the record shows mother’s maintenance and support was considered. The evidence presented at the hearing was that mother had an on-going monthly child support obligation of \$158.75 and mother only made two payments each in the sum of \$36.63 in the year immediately preceding the filing of the petition. More importantly, mother never alleged as a defense that she did, in fact, provide this support or that she could rebut the evidence presented at the hearing if the court would grant her motion.

{¶22} Mother also argued that her failure to retain an attorney denied her of her constitutional right to due process and “rendered her incapable of mounting an effective defense.” Yet she gave no reason why she did not follow the simple instruction in the notice and contact the court for an attorney; nor did mother explain what that “effective defense” would be.

{¶23} Mother also argued that the trial court provided only conclusory findings regarding the best interest factors. Yet she did not address any of the best interest factors, she did not allege that any of them are in her favor, and she did not allege that granting

the aunt's adoption petition was not in the best interest of the child or which factors were not in the child's best interest. Moreover, a challenge to the best interest findings is an issue for an appeal of an order granting the adoption. It is not a proper challenge to raise in a Civ.R. 60(B) motion. *Worthington v. Admr., BWC*, 2021-Ohio-978, ¶ 22 (2d Dist.) ("when one party merely reiterates arguments that concern the merits of the case and that could have been raised on appeal, relief under Civ.R. 60(B) is not available as a substitute for appeal"); see also *Matter of Adoption of M.R.M.*, 2017-Ohio-7710, ¶ 15-16 (7th Dist.) (a trial court is not required to list each best interest factor enumerated in R.C. 3107.161, but the record should clearly indicate that the statutory factors were considered). Here the trial court clearly indicated in the order granting the adoption that it considered all eleven best interest factors in R.C. 3107.161 and that it "considered all those factors and reviewed the assessor's report" and "finds that it is in the child's best interest to be adopted." And, in addressing the mother's Civ.R. 60(B) motion, the trial court again specified, "Finally, in determining what was in the best interest of the child, the Court did consider all relevant factors, including those set forth in Ohio Revised Code Section 3107.161."

{¶24} Mother also alleged that the trial court should have resolved a visitation issue in the juvenile proceedings and maybe a possible show cause motion before resolving the adoption petition. But again, this raises a legal issue that should be brought in an appeal from the order granting adoption. *Worthington v. Admr., BWC*, 2021-Ohio-978, at ¶ 22. We find that the trial court did not abuse its discretion in finding that there was no requirement that the probate court wait until a visitation matter and a possible "show cause motion" that might be pending in the juvenile proceedings were resolved

before going forward with the adoption. According to evidence presented at the adoption hearing, the juvenile proceedings were initiated in 2018 when the child was three months old due to mother being sent to prison. Aunt has been the sole legal custodian of the child since that time. The juvenile proceedings have been ongoing for eight years – the child was three months old when her aunt became her legal custodian and was eight years old at the time of the adoption petition. Though mother argued that the juvenile proceeding should be resolved before the adoption petition, in her Civ.R. 60(B) motion she only vaguely alleged that “on information and belief” there could be a “show cause motion” in the juvenile case that could “bear upon the fitness determination and best interest analysis required in this adoption proceeding.” She failed to allege that it “bears” in her favor, how it “bears” in her favor, which best interest factor would be implicated, or how those best interest factors would be in her favor.

{¶25} In short, mother sought to have the adoption order set aside because she did not hire an attorney or contact the court for an attorney. Yet she did not allege that the outcome of the adoption petition would be any different if the trial court set aside the judgment and she had an attorney. She did not allege her consent to adoption was required or that it was not in the best interest of the child to be adopted by the aunt.

“[T]o prevail on a motion for relief from judgment, the moving party must establish that it has a meritorious defense or claim to present if relief is granted. This requires the moving party to allege operative facts ‘with enough specificity to allow the trial court to decide whether he or she has met that test.’ ” “Ultimately, ‘a proffered defense is meritorious if it is not a sham and when, if true, it states a defense in part, or in whole, to the claims for relief set forth in the complaint.’ ”

(Citations omitted.) *Citizens Bank Co. v. Keffer*, 2013-Ohio-245, ¶ 13 (4th Dist.).

Additionally, a movant must provide evidentiary material supporting his or her Civ.R.

60(B) motion. *Spaulding-Buescher v. Skaggs Masonry, Inc.*, 2008-Ohio-6272, ¶ 14 (4th Dist.); *KeyBank Natl. Assn. v. Midtown Inspirion, LLC*, 2025-Ohio-1737, ¶ 26-27 (8th Dist.). To establish a meritorious defense, a movant must include operative facts rather than mere general allegations or conclusory statements. “[A] ‘belief’ is not an ‘operative fact.’ ” *KeyBank Natl. Assn. v. Midtown Inspirion, LLC* at ¶ 34.

{¶26} We find that the trial court did not abuse its discretion when it denied mother’s Civ.R. 60(B) motion for failing to show she was entitled to relief under Civ.R. 60(B)(1) or (5). Additionally, Mother failed to allege the existence of a meritorious defense or claim. *Innovative Architectural Planners, Inc. v. Ohio Dept. of Adm. Services*, 2024-Ohio-824, ¶ 26 (10th Dist.) (an appellate court may affirm a judgment if it determines that judgment is appropriate, albeit for different or additional reasons). We overrule the mother’s sole assignment of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Gallia County Court of Common Pleas, Probate Division, to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Wilkin J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.