

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NATIONAL SUBROGATION SERVICES, LLC	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. W. Scott Gwin, J.
Plaintiff-Appellant	:	Hon. Patricia A. Delaney, J.
	:	
-vs-	:	Case No. 2009-CA-9
	:	
GURJANT S. SAKHO	:	
	:	<u>OPINION</u>
Defendant-Appellee	:	

CHARACTER OF PROCEEDING: Civil appeal from the Richland County Court of Common Pleas, Case No. 2008-CV-1476

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: July 14, 2009

APPEARANCES:

For Plaintiff-Appellant

MANJU GUPTA
Javitch, Block & Rathbone
1100 Superior Avenue, 19th Floor
Cleveland, OH 44114

For Defendant-Appellee

JAMES A. REICHERT
30 Garfield Place
Suite 905
Cincinnati, OH 45202

Gwin, J.,

{¶1} Plaintiff National Subrogation Services, LLC appeals a judgment of the Court of Common Pleas of Richland County, Ohio, which sustained a motion to reconsider its prior ruling on the motion to vacate judgment filed by defendant-appellee Gurjant S. Sakho. Appellant assigns a single error to the trial court:

{¶2} “I. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR AND ABUSED ITS DISCRETION IN GRANTING THE MOTION FOR RELIEF FROM JUDGMENT AFTER PREVIOUSLY OVERRULING THE MOTION FOR RELIEF FROM JUDGMENT.”

{¶3} The record indicates appellant filed a complaint in Richland County Common Pleas Court on July 28, 2008. When appellee failed to file a timely answer, appellant moved for a default judgment on September 8, 2008. The trial court granted judgment in favor of appellant and against appellee on September 10, 2008, for \$42,698.34 plus interest and costs.

{¶4} On November 24, 2008, appellee filed a motion to vacate the judgment pursuant to Civ. R. 60 (B). On December 3, 2008, the court overruled the motion to vacate the judgment.

{¶5} Appellee did not appeal the original default judgment, or the ruling on the Civ. R. 60 (B) motion.

{¶6} On December 12, 2008, appellee filed a motion to reconsider and vacate the court’s ruling on the Civ. R. 60 (B). On December 23, 2008, the trial court vacated the previous order of December 3, and granted appellee leave to file an answer in the

original case. The court found the appellee was not properly served and has meritorious defenses to the original complaint.

{¶7} R.C. 20502 defines a final appealable order:

{¶8} “(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶9} “(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

{¶10} “(3) An order that vacates or sets aside a judgment or grants a new trial;

{¶11} “(4) An order that grants or denies a provisional remedy and to which both of the following apply:

{¶12} “(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

{¶13} “(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.***”

{¶14} Civ. R. 60 (B) provides:

{¶15} “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.”

{¶16} In *GTE Automatic Electric Company v. ARC Industries* (1976), 47 Ohio St.2d 146, 351 N.E.2d 113, the Ohio Supreme Court held to prevail on a motion brought pursuant to Civ. R. 60(B), the movant must demonstrate: (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); and (3) the motion is made within a reasonable time, and where the grounds for relief are Civ. R. 60(B)(1), (2), or (3), not more than one year after the judgment, order, or proceeding was entered or taken.

{¶17} Under the Civil Rules, a trial court can alter a final judgment in only five situations: (1) by granting a new trial pursuant to Civ. R. 59; (2) by granting judgment notwithstanding the verdict pursuant to Civ. R. 50 (B); (3) by correcting a clerical error pursuant to Civ. R. 60 (A); (4) by vacating a judgment under Civ. R. 60 (B); or (5) by vacating a void or voidable judgment entered without proper jurisdiction. *Lacavera v. Cleveland Electric Illuminating Company* (February 21, 1985), Cuyahoga App. No. 48679, at 2. The first two of the situations supra, permit the court to reconsider adjudicated issues, while the remaining three do not. The remedy instead is a timely appeal. *Id.*

{¶18} The Ohio Rules of Civil procedure do not provide for motions for reconsideration after a final judgment is entered. *Shirley v. Republic Franklin Insurance Company* (July 28, 2003), Stark App. No. 2002-CA-00255. Appellee's second motion to vacate reargues his reasons why the original default judgment should be set aside.

{¶19} We find the trial court did not have jurisdiction to enter its December 23, 2008 judgment. Its original ruling on the Civ. R. 60 (B) motion was a final appealable order.

{¶20} The assignment of error is sustained.

{¶21} For the foregoing reasons, the judgment of the Court of Common Pleas of Richland County, Ohio, is reversed, and the cause is remanded to the court to reinstate the final orders of September 10, 2008 and December 3, 2008.

By Gwin, J.,
Farmer, P.J., and
Delaney, J., concur

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NATIONAL SUBROGATION SERVICES, LLC	:	
	:	
	:	
Plaintiff-Appellant	:	
	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
GURJANT S. SAKHO	:	
	:	
	:	
Defendant-Appellee	:	CASE NO. 2009-CA-9

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Richland County, Ohio, is reversed, and the cause is remanded to the court to reinstate the final judgments previously entered on September 10, 2008 and December 3, 2008. Costs to appellee.

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. PATRICIA A. DELANEY