

COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

TERI D. LEE	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
	:	Hon. John W. Wise, J.
Plaintiff-Appellee	:	Hon. Julie A. Edwards, J.
	:	
-vs-	:	
	:	Case No. 2011-CA-00068
DENNIS N. LEE	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Licking County Court of Common Pleas, Domestic Relations Division, Case No. 10 DR 01432 RPW

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: April 4, 2012

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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*Gwin, P.J.*

{1} Defendant-appellant Dennis N. Lee appeals a judgment of the Court of Common Pleas, Domestic Relations Division, of Licking County, Ohio which granted a divorce and accepted the terms of the parties' settlement. Appellee is plaintiff Teri D. Lee. For the reasons that follow, we affirm the judgment.

{2} On May 31, 2011, the trial court entered a judgment decree of divorce. On June 15, 2011, appellant filed a motion to set aside the settlement memorandum executed by the parties, and to vacate the decree of divorce because, he alleged, the terms of the decree are inconsistent with the terms of the settlement memorandum. On June 30, 2011, appellant filed a notice of appeal from the divorce decree and on the same day appellee filed a motion for show cause to enforce the decree. On August 2, 2011, the trial court filed a judgment entry finding there was no stay from either the trial court or the court of appeals, and the show cause motion was set for hearing. The court reviewed and overruled the motion to vacate, except that the court agreed there was an error in the decree of divorce and corrected it nunc pro tunc.

{3} Appellant assigns two errors to the trial court:

{4} "I. THE TRIAL COURT ERRED IN FAILING TO VACATE A DECREE OF DIVORCE WHICH INCORPORATED THE TERMS OF A SETTLEMENT MEMORANDUM THAT WAS NOT KNOWINGLY AND VOLUNTARILY EXECUTED.

{5} "II. THE TRIAL COURT SHOULD HAVE VACATED THE DIVORCE DECREE THAT WAS VOIDABLE BECAUSE IT DEPRIVED THE COURT OF IT'S (sic) INHERENT AUTHORITY TO ENFORCE IT'S OWN ORDER."

{6} If an appeal is pending the trial court does not have jurisdiction to consider a Civ. R. 60 motion for relief from judgment unless the reviewing court remands the matter for consideration of the motion. *Howard v. Catholic Social Services of Cuyahoga County, Inc.*, 70 Ohio St. 3d 141, 147, 637 N.E. 2d 890 (1994). A trial court has jurisdiction to correct a clerical oversight pursuant to Civ. R. 60 (A), so long as any mistake is corrected before the appeal is docketed in the appellate court. After the case is docketed, the court may correct a clerical mistake in a judgment with leave of the appellate court.

{7} We find the trial court did not have jurisdiction to rule on appellant's motion to vacate the settlement agreement and divorce decree. Following our disposition here, the trial court regains jurisdiction to determine the appellant's motion for relief. *State ex rel. Newton v. Court of Claims*, 73 Ohio St. 3d, 553, 558, 653 N.E. 2d 366.

{8} Neither of appellant's assignments of error are directed to the May 31 judgment from which the appeal is taken, but rather to the court's ruling on the motion to vacate the court journalized after appellant filed the notice of appeal.

{9} Because appellant's assignments of error do not relate to the judgment from which the appeal is taken, we affirm the judgment of the trial court.

{10} For the foregoing reasons, the judgment of May 31, 2011 is affirmed and the cause is remanded to the trial court for ruling on the Motion to Vacate, which is pending before it.

By Gwin, P.J.,

Wise, J., and

Edwards, J., concur

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HON. W. SCOTT GWIN

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HON. JOHN W. WISE

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HON. JULIE A. EDWARDS

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