

**IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
MUSKINGUM COUNTY, OHIO**

HEATHER KEEN

Plaintiff - Appellee

-vs-

NATHEN KEEN

Defendant - Appellant

Case No. CT2026-0059

Opinion And Judgment Entry

Appeal from the Court of Common Pleas,
Domestic Relations Division,
Case No. DA2023-0478

Judgment: Affirmed

Date of Judgment Entry: October 13, 2026

BEFORE: Andrew J. King; Craig R. Baldwin; David M. Gormley, Judges

APPEARANCES: SUSAN J. MONTGOMERY MCDONALD, for Plaintiff-Appellee;
NATHEN KEEN, PRO SE, for Defendant-Appellant.

King, P.J.

{¶ 1} Defendant-Appellant, Nathen Keen ("Husband"), appeals the May 21, 2026 judgment entry of the Muskingum County Domestic Relations Court dismissing his Civ.R. 60(B) motion in his divorce case. Plaintiff-Appellee is Heather Keen ("Wife"). We affirm the trial court.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On August 2, 2023, Wife filed a complaint for divorce. At the time, Husband was incarcerated after being convicted of numerous sex offenses. Husband was served and failed to answer or otherwise defend. On October 30, 2023, the Domestic Relations Court issued a judgment entry decree of divorce, awarding Wife the marital residence and naming her the residential parent and legal custodian of their children. Husband did not file a timely

appeal. He attempted to file a delayed appeal, but by judgment entries filed October 28, 2024, and February 6, 2025, this court denied his attempt to do so.

{¶ 3} Over one year after the issuance of the divorce decree, Husband filed a Civ.R. 60(B) motion for relief from judgment on April 4, 2025. Because Husband's motion was filed more than one year after the divorce decree was issued, he could only seek relief under subsections (4) ("the judgment has been satisfied, released or discharged . . .") and (5) ("any other reason justifying relief from the judgment"). *See* Civ.R. 60(B) ("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"). Subsection (4) was not applicable, leaving subsection (B)(5). Husband argued he was entitled to relief because the divorce decree was against the plain language of Civ.R. 75(F), the decree failed to establish parental rights, he still had personal property in the marital residence, the marital property was not properly divided, and he received ineffective assistance of counsel. By judgment filed May 27, 2025, the trial court denied the motion without hearing. The trial court found Husband was attempting to introduce evidence that was available and known to him at the time of trial, but he failed to present anything at trial; in fact, Husband failed to answer, failed to enter an appearance, failed to make a request to attend hearings, and failed to file a timely appeal. The trial court also found Husband failed to make a showing that a meritorious defense or claim existed if relief was granted and failed to demonstrate or assert with any specificity why he believed he was entitled to Civ.R. 60(B) relief.

{¶ 4} Husband filed an appeal and this court affirmed the trial court's decision. *Keen v. Keen*, 2025-Ohio-5810 (5th Dist.), *appeal not accepted*, 2026-Ohio-1308. This court found Husband could not use Civ.R. 60(B) as a substitute for appeal and the issues he raised should

have been raised on direct appeal, which he failed to do. *Id.* at ¶ 12. Further, his claim for ineffective assistance of counsel could not be attacked via a Civ.R. 60(B) motion. *Id.* at ¶ 13. This court also found Husband was not entitled to an evidentiary hearing given that his affidavit failed to allege any operative facts that would have entitled him to relief under Civ.R. 60(B). *Id.* at ¶ 17-19. Lastly, this court found Husband's claim of improper service could not be raised for the first time on appeal. *Id.* at ¶ 21.

{¶ 5} On March 25, 2026, Husband filed a second motion for relief from judgment under Civ.R. 60(B). He argued, for the first time, that he was never served with the complaint for divorce and therefore the trial court lacked personal jurisdiction to determine the divorce complaint. He also reiterated prior arguments related to property allocation and parental rights. By judgment entry filed May 21, 2026, the trial court dismissed the motion, finding the record established service was perfected upon Husband by certified mail at the prison in accordance with the civil rules. Further, the trial court found even if Husband could successfully argue that service was incomplete, he waived the defense of personal jurisdiction by failing to assert the defense at the earliest opportunity.

{¶ 6} Husband filed an appeal with the following assignments of error:

I

{¶ 7} "THE TRIAL COURT ERRED WHEN THEY ABUSED THEIR DISCRETION WHEN THE TRIAL COURT DISMISSED MY MOTION FOR RELIEF OF JUDGMENT PURSUANT TO CIV.R. 60(B)(5) FOR THE COURT LACKS PERSONAL JURISDICTION DUE TO INCOMPLETE SERVICE OF PROCESS."

II

{¶ 8} "THE TRIAL COURT ERRED WHEN THEY ABUSED THEIR DISCRETION IN FINDING THAT SERVICE WAS PROPER AFTER I REBUTTED THE PRESUMPTION OF PROPER SERVICE."

III

{¶ 9} "THE TRIAL COURT ABUSED ITS DISCRETION IN FINDING THAT I DID NOT SEEK RELIEF WITHIN A 'REASONABLE TIME'."

IV

{¶ 10} "TRIAL COURT ABUSED ITS DISCRETION IN FINDING THAT THE DEFENDANT WAIVED AFFIRMATIVE DEFENSE OF PERSONAL JURISDICTION FOR NOT RAISING AFFIRMATIVE DEFENSE AT THE 'EARLIEST POSSIBLE TIME'."

V

{¶ 11} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY FAILING TO CONDUCT AN EVIDENTIARY HEARING PRIOR TO OVERRULING MY MOTION FOR RELIEF OF JUDGMENT."

VI

{¶ 12} "TRIAL COURT ABUSED ITS DISCRETION IN HOLDING MY MOTION TO AMEND DIVORCE DECREE TO INCLUDE ENFORCEABLE VISITING MOOT WHERE JOINING THE 60(B)(5) MOTION FOR RELIEF OF JUDGMENT AND THE MOTION TO AMEND WAS IMPROPER."

STANDARD OF REVIEW

{¶ 13} A motion for relief from judgment under Civ.R. 60(B) lies in the trial court's sound discretion. *Griffey v. Rajan*, 33 Ohio St.3d 75 (1987). "Abuse of discretion" means an attitude that is unreasonable, arbitrary or unconscionable. *Huffman v. Hair Surgeon, Inc.*, 19 Ohio St.3d 83, 87 (1985). Most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary. *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990). An unreasonable decision is one backed by no sound reasoning process which would support that decision. *Id.* "It is not enough that the reviewing court, were it deciding the issue *de novo*, would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result." *Id.*

{¶ 14} In *GTE Automatic Electric Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146 (1976), paragraph two of the syllabus, the Supreme Court of Ohio held the following:

To 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, and, where the grounds of 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.

{¶ 15} The standard for when an evidentiary hearing on a Civ.R. 60(B) motion is necessary is set forth in *Cogswell v. Cardio Clinic of Stark County, Inc.*, 1991 Ohio App. LEXIS

5481 (5th Dist. Oct. 21, 1991). In *Cogswell*, this court held under Civ.R. 60(B), a hearing is not required unless there exist issues supported by evidentiary quality affidavits. A trial court must hold an evidentiary hearing when the motion and supporting evidence contain sufficient allegations of operative facts which would support a meritorious defense to the judgment. *Cogswell; BancOhio National Bank v. Schiesswohl*, 51 Ohio App.3d 130 (9th Dist. 1988); accord *Dutton v. Potroos*, 2011-Ohio-3646 (5th Dist.).

{¶ 16} We will review Husband's arguments under these standards.

I, II, IV

{¶ 17} In Husband's first, second, and fourth assignments of error, he claims the trial court abused its discretion in finding service of process was perfected and it had personal jurisdiction over the matter. We disagree.

{¶ 18} "Upon the filing of the complaint the clerk shall forthwith issue a summons for service upon each defendant listed in the caption" within six months. Civ.R. 4. Service can be made by certified mail, "[e]videnced by return receipt signed by any person accepting delivery" which return receipt shall then be filed in the record. Civ.R. 4.1(A)(1)(a) and (2). Service can be made upon an individual confined to a penal institution by serving the individual. Civ.R. 4.2(D). "In general, certified mail no longer requires actual service upon the party receiving the notice or that only the addressee may sign for it, but is effective upon certified delivery. Ohio courts considering this rule have specifically concluded that prison officials may sign in receipt of the mailing and deliver or permit delivery of service of process to prisoners." (Citations omitted.) *In re D.C.*, 2007-Ohio-2344, ¶ 8 (9th Dist.); accord *Ladd v. Strong*, 2025-Ohio-2020, ¶ 13 (5th Dist.).

{¶ 19} The trial court found service was perfected upon Husband by certified mail and we agree. *See* Judgment Entry filed May 21, 2026. The record reveals a signed return receipt addressed to Husband in care of his institution, BECI (Belmont Correctional Institution), sent by certified mail, signed by a signature on August 11, 2023, and filed on August 15, 2023. *See* Docket Entry No. 12.¹ Husband did not present any evidence to successfully rebut the presumption of proper service.

{¶ 20} Further, the trial court found Husband waived his right to assert a lack of personal jurisdiction and again, we agree. In *In re Guardianship of Dickerhoof*, 2024-Ohio-2628, ¶ 28, this court stated:

This Court has previously held that a judgment due to lack of personal jurisdiction may be void. . . . However, the defense of personal jurisdiction is waivable due to the actions of the defendant. . . . "A defendant must raise a challenge to the trial court's personal jurisdiction over him at the earliest opportunity; otherwise, he risks a finding that he waived any defects in service, allowing a court to enter a valid personal judgment against him." *Gliozzo v. Univ. Urologists of Cleveland, Inc.*, 114 Ohio St.3d 141, 2007-Ohio-3762, 870 N.E.2d 714.

{¶ 21} After the filing of the divorce decree on October 30, 2023, Wife filed a motion for contempt on April 11, 2024. Husband requested court-appointed counsel which was

¹We acknowledge the docket entry notes "SERVICE INCOMPLETE" but agree with the trial court that the notation was made in error as the return receipt card evidences service was completed.

granted on June 4, 2024. On April 4, 2025, Husband filed his first Civ.R. 60(B) motion seeking relief from the divorce decree. On April 9, 2025, Husband appeared via Zoom for the contempt hearing before a magistrate. The magistrate noted Husband "knew that there was a Complaint for Divorce filed and that he knew there was a final hearing set, but that he believed that he had an attorney who would be appearing on his behalf." Magistrate's Decision filed April 23, 2025. The magistrate also noted Husband did not deny receiving a copy of the divorce decree. *Id.* At no time throughout these proceedings did Husband contest personal jurisdiction over the divorce complaint. The first time he raised the issue was on appeal to this court of the denial of his motion for relief from judgment. We concur with the trial court that Husband waived the defense of personal jurisdiction by failing to assert the defense at the earliest opportunity.

{¶ 22} Upon review, we find the trial court did not abuse its discretion in finding service of process was perfected and it had personal jurisdiction over the matter.

{¶ 23} Assignments of Error I, II, and IV are denied.

III

{¶ 24} In Husband's third assignment of error, he claims the trial court erred in finding his Civ.R. 60(B) motion was not filed within a reasonable time. We disagree.

{¶ 25} In ruling Husband's motion was not filed within a reasonable time, the trial court found:

The Decree of Divorce was issued October 30, 2023. Defendant has filed numerous motions and appeals in the intervening period. This most recent Motion for Relief from Judgment was filed more than two years after

the Decree issued. Defendant had full knowledge of the alleged issues since the Decree of Divorce was issued and had provided no explanation for the more than two-year delay in filing.

Judgment Entry filed May 21, 2026.

{¶ 26} The procedural posture of this case as discussed above supports this finding.

{¶ 27} Upon review, we find the trial court did not abuse its discretion in finding Husband's Civ.R. 60(B) motion was not filed within a reasonable time.

{¶ 28} Assignment of Error III is denied.

V

{¶ 29} In Husband's fifth assignment of error, he claims the trial court erred in failing to hold an evidentiary hearing prior to denying his Civ.R. 60(B) motion. We disagree.

{¶ 30} As noted by this court in *Keen*, 2025-Ohio-5810, at ¶ 17 (5th Dist.):

Keen was entitled to an evidentiary hearing before the denial of his motion "*only if* the motion or supportive affidavits contain[ed] allegations of operative facts which would warrant relief under Civ.R. 60(B)." *Boster v. C&M Servs.*, 93 Ohio App.3d 523, 526, 639 N.E.2d 136 (10th Dist. 1994) (emphasis in original); *Kay v. Marc Glassman, Inc.*, 76 Ohio St.3d 18, 19, 1996- Ohio 430, 665 N.E.2d 1102 (1996) ("the trial court abuses its discretion in denying a hearing where grounds for relief from judgment are sufficiently alleged and are supported with evidence which would warrant relief from judgment"). Though

Keen was not required to support his motion with evidentiary materials, he must have done more than simply make bare allegations that he was entitled to relief. *Monaco v. Monaco*, 2023-Ohio-1869, ¶ 30 (5th Dist.).

{¶ 31} In his second motion for relief from judgment, Husband executed and attached his affidavit. This affidavit was similar to the affidavit submitted with his first motion, except it included an argument on the lack of service of process. As found by this court in reviewing his affidavit attached to his first motion, the affidavit "did not set forth any operative facts that would entitle him to relief under Civ.R. 60(B). . . . Keen's affidavit — which merely repeats the legal arguments that he made in his Civ.R. 60(B) motion — mainly attacked the terms of the divorce decree and detailed his grievances regarding his conviction in a criminal case that, in our view, has no bearing on the divorce case underlying this appeal." *Id.* at ¶ 18. We find the same deficiencies with the second affidavit. Husband failed to submit sufficient allegations of operative facts which would support a meritorious defense to the judgment.

{¶ 32} Upon review, we find the trial court did not abuse its discretion in not holding an evidentiary hearing.

{¶ 33} Assignment of Error V is denied.

VI

{¶ 34} In Husband's sixth assignment of error, he claims the trial court improperly "joined" his motion to amend the divorce decree on visitation with his Civ.R. 60(B) motion. We disagree.

{¶ 35} On April 7, 2026, Husband filed a Motion to Amend Divorce Decree to Include Enforceable Visiting: Motion to Enforce Visiting. He argued he completed four parenting

courses while in prison so "in the event" his Civ.R. 60(B) motion was granted, he wanted his completion certifications included in the record "to satisfy the requirement of the court to enforce visiting." In ruling that the motion was moot, the trial court found the motion was "premised upon the Court granting his Motion for Relief from Judgment, which was dismissed." Judgment Entry filed May 21, 2026. In Husband's appellate brief at 27, he argues: "To promote judicial economy and prevent piece mail (sic) litigation the intention of the 'motion to enforce visiting' was for the court to use the evidence I provided in the 'motion to amend divorce decree to include enforceable visiting', as evidence to be used in the allocation of parental rights in the divorce in the event a new hearing was awarded." A new hearing was not awarded.

{¶ 36} Upon review, we find the trial court did not abuse its discretion in finding the motion to amend to be moot given that the Civ.R. 60(B) motion was dismissed.

{¶ 37} Assignment of Error VI is denied.

{¶ 38} For the reasons stated in our accompanying Opinion, the judgment of the Muskingum County Domestic Relations Court is AFFIRMED.

{¶ 39} Costs to Appellant.

By: King, P.J.

Baldwin, J. and

Gormley, J. concur.