

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Louise James

Court of Appeals No. L-11-1013

Appellee

Trial Court No. CI0201001316

v.

Community Development Center

DECISION AND JUDGMENT

Appellant

Decided: August 26, 2011

* * * * *

Laurel A. Kendall, for appellee.

Thomas A. Yoder, for appellant.

* * * * *

YARBROUGH, J.

{¶ 1} This is an appeal from the December 28, 2010 judgment of the Lucas County Court of Common Pleas denying defendant-appellant Community Development Center, Inc.'s Civ.R. 60(B) motion to set aside a default judgment. For the following reasons, we affirm.

{¶ 2} On January 19, 2010, plaintiff-appellee Louise James filed a complaint against appellant for wrongful discharge based on age discrimination. On February 18, 2010, appellant requested an extension until March 19, 2010 to file a responsive pleading. On March 19, 2010, appellant requested another extension until April 19, 2010. On April 20, 2010, when appellant had still not filed a responsive pleading, James moved for default judgment. On May 10, 2010, the trial court ordered appellant to file a responsive pleading by May 28, 2010, and ordered that James' motion for default judgment be held in abeyance until June 3, 2010. Appellant never filed a responsive pleading.

{¶ 3} On June 30, 2010, James filed a motion to amend the motion for default judgment to include a sum certain. The trial court granted this motion on July 12, 2010, and then, based upon the amended motion, entered default judgment in favor of James for \$26,916 on July 13, 2010.

{¶ 4} Subsequently, on October 26, 2010, appellant filed its Civ.R. 60(B) motion to set aside the default judgment. The trial court denied this motion on December 21, 2010, and this appeal ensued.

{¶ 5} On appeal, appellant has not set forth an assignment of error as required by App.R. 16(A)(3); however, we will construe as the sole assignment of error appellant's argument that the trial court abused its discretion when it denied appellant's Civ.R. 60(B) motion.

{¶ 6} An appellate court applies an abuse of discretion standard in reviewing the trial court's ruling on a motion for relief from judgment under Civ.R. 60(B). *Moore v.*

Emanuel Family Training Ctr., Inc. (1985), 18 Ohio St.3d 64, 66. An abuse of discretion "connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. When applying this standard of review, we may not substitute our judgment for that of the trial court. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

{¶ 7} To prevail on a motion under Civ.R. 60(B), the moving party 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 enumerated in Civ.R. 60(B)(1) through (5); and (3) that 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." *GTE Automatic Elec., Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, 150-51. "These requirements are independent and in the conjunctive; thus the test is not fulfilled if any one of the requirements is not met." *Strack v. Pelton* (1994), 70 Ohio St.3d 172, 174.

{¶ 8} Here, appellant argues that it has presented a meritorious defense based on the affidavit of Janet McMickens, the former Executive Director of The Community Development Center. Appellant asserts that the affidavit refutes two of the necessary elements to prove an age discrimination claim. However, we need not determine whether the affidavit provides a meritorious defense because appellant has failed to demonstrate that it is entitled to relief for any of the reasons enumerated in Civ.R. 60(B)(1)-(5).

{¶ 9} In its Civ.R. 60(B) motion to the trial court, appellant did not state the grounds on which it is entitled to relief under Civ.R. 60(B)(1)-(5). On appeal, appellant now contends that it is entitled to relief under Civ.R. 60(B)(5): "any other reason justifying relief from the judgment." In *Caruso-Ciresi, Inc. v. Lohman* (1983), 5 Ohio St.3d 64, 66, the Ohio Supreme Court stated that "Civ.R. 60(B)(5) is intended as a catch-all provision reflecting the inherent power of a court to relieve a person from the unjust operation of a judgment. However, the grounds for invoking said provision should be substantial." Civ.R. 60(B)(5) should not be used "as a substitute for any of the other more specific provisions of Civ.R. 60(B)." *Id.*

{¶ 10} Before the trial court and on appeal, appellant argues solely that it is entitled to relief because it has a meritorious defense to the age discrimination claim. Appellant contends that having a meritorious defense is sufficient to invoke Civ.R. 60(B)(5). We disagree.

{¶ 11} In support of its contention, appellant relies on the general principle that any doubt should be resolved in favor of the motion to set aside the judgment so that cases may be decided on their merits. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, *supra*, at 151. Continuing on though, the next paragraph of that opinion states:

{¶ 12} "However, the cases do not imply that relief should always be granted at the request of the movant. [The principle] is a general guide, which the trial court uses as a frame of reference in deciding whether the three requirements have been met. *In particular, the principle does not obviate the requirement that the movant must*

demonstrate that he is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5)." Id. (Citations omitted.) (Emphasis added.)

{¶ 13} Here, appellant has provided no argument that it is entitled to relief from the default judgment under one of the Civ.R. 60(B)(1)-(5) grounds. Instead, appellant merely argues that it has a meritorious defense. Therefore, the trial court did not abuse its discretion when it denied appellant's Civ.R. 60(B) motion for failing to satisfy all of *GTE's* requirements. Accordingly, appellant's construed assignment of error is not well-taken.

{¶ 14} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.