

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

State, ex rel. Charles L. Tingler

Court of Appeals No. OT-22-029

Relator

v.

Prosecutor James VanEerten

DECISION AND JUDGMENT

Respondent

Decided: August 10, 2023

* * * * *

Charles L. Tingler, Pro se.

James VanEerten, Ottawa County Prosecuting Attorney.

* * * * *

PER CURIAM.

{¶ 1} Relator Charles L. Tingler petitions this court for leave to proceed to file a Civ.R. 60(B) motion for relief from the June 29, 2022 judgment of this court denying his petition for a writ of mandamus against respondent Prosecutor James VanEerten.

Because relator's motion for relief from judgment is an abuse of process and there are not reasonable grounds for the motion, leave to proceed is denied.

{¶ 2} In September 2022, the Erie County Court of Common Pleas declared Tingler to be a vexatious litigator pursuant to R.C. 2323.52, and prohibited him from “[i]nstituting or continuing any legal proceedings in the Court of Appeals without first obtaining leave from the Court of Appeals pursuant to R.C. 2323.52(F)(2).”

{¶ 3} By way of background, on June 15, 2022, Tingler initiated a mandamus action against Ottawa County Prosecutor James VanEerten seeking to compel him to present a case against Hon. Bruce Winters to the Ottawa County Grand Jury. On June 29, 2022, this court sua sponte dismissed Tingler’s mandamus petition, recognizing that the entirety of Tingler’s complaint could be summarized as: “I alleged a crime was committed, therefore you must prosecute.” In determining that relator could not prevail on the facts alleged in the complaint, and that the complaint was frivolous, this court reasoned that “[w]ithout any facts or evidence—or even allegations of facts or evidence—upon which to evaluate whether a crime may or may not have occurred, we simply cannot say that respondent abused his discretion in declining to present a case against Hon. Bruce Winters to the Ottawa County Grand Jury.”

{¶ 4} The next day, June 30, 2022, Tingler moved for reconsideration of this court’s decision, providing additional summary allegations that Sheriff Levorchick and Judge Winters stole an AR-15 rifle from the Ottawa County Sheriff’s Office and gave it to Judge Winters to take to his personal residence. After he was declared to be a vexatious litigator, Tingler moved for leave to have the court continue the proceedings.

On November 2, 2022, this court granted Tingler’s motion for leave to proceed, but denied his motion for reconsideration, determining that “a reconsideration motion filed in a mandamus action is a legal nullity.”

{¶ 5} Subsequently, on December 8, 2022, Tingler moved for relief from the June 29, 2022 dismissal of his mandamus petition pursuant to Civ.R. 60(B). On December 22, 2022, VanEerten moved to strike Tingler’s Civ.R. 60(B) motion because Tingler failed to first move for leave to file. On March 8, 2023, this court agreed that Tingler had not moved for leave to file the Civ.R. 60(B) motion, and thus denied Tingler’s motion.

{¶ 6} One day later, on March 9, 2023, Tingler filed the present motion for leave to file the Civ.R. 60(B) motion.

I. Analysis

{¶ 7} Under R.C. 2323.52(F)(2), “The court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application.”

{¶ 8} The legal proceeding at issue in this case is Tingler’s Civ.R. 60(B) motion for relief from judgment. “To prevail on a motion under Civ.R. 60(B), the moving party must demonstrate: ‘(1) the party has a meritorious * * * 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 * * *.” *Rusch v. Catawba Landing Marina*, 2021-Ohio-1904, 173 N.E.3d 161, ¶ 19 (6th Dist.), quoting *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 150-151, 351 N.E.2d 113 (1976). “These requirements are independent and in the conjunctive; thus the test is not fulfilled if any one of the requirements is not met.” *Id.*, quoting *Strack v. Pelton*, 70 Ohio St.3d 172, 174, 637 N.E.2d 914 (1994). “The burden is upon the movant to demonstrate that the interests of justice demand the setting aside of a judgment normally accorded finality.” *Id.* at ¶ 20, quoting *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20-21, 520 N.E.2d 564 (1988).

{¶ 9} In his motion for relief from judgment, Tingler argues that any untimeliness should be excused because it took nearly six months for the court to inform him of its decision to deny his application for reconsideration. Tingler also ostensibly argues that he has a meritorious claim to present through his allegations that Judge Winters stole an AR-15 rifle. Tingler contends that Winters’ conduct constitutes theft of a firearm and theft in office, which requires VanEerten to present the case to a grand jury.

{¶ 10} Even assuming for purposes of this analysis only that Tingler satisfied the timeliness and meritorious claim prongs of the *GTE Automatic* test—and we stress that we are not determining that Tingler’s motion either was timely or presented a meritorious

claim—Tingler does not in any way address the requirement that he must be entitled to relief for one of the grounds stated in Civ.R. 60(B)(1) through (5):

- (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.

{¶ 11} None of those grounds for relief apply. Civ.R. 60(B)(2) and (4) are clearly inapplicable. Civ.R. 60(B)(1) contemplates “mistake, inadvertence, surprise or excusable neglect,” none of which are present here. Tingler was in full control of his petition for a writ of mandamus. He simply filed a frivolous complaint that failed to allege facts on which he could prevail. Thus, Civ.R. 60(B)(1) does not apply. Civ.R. 60(B)(3) does not apply because it “refers to deceit or other unconscionable conduct committed by a party to obtain a judgment and does not refer to conduct that would have been a defense to or claim in the case itself.” *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-

4275, 21 N.E.3d 1040, ¶ 13. Here, this court dismissed Tingler’s petition sua sponte; VanEerten played no role in obtaining the judgment. Finally, the catch-all provision in Civ.R. 60(B)(5) is intended to reflect “the inherent power of a court to relieve a person from the unjust operation of a judgment.” *Caruso-Ciresi, Inc. v. Lohman*, 5 Ohio St.3d 64, 66, 448 N.E.2d 1365 (1983). “However, the grounds for invoking said provision should be substantial.” *Id.*; *Tillimon v. Coutcher*, 6th Dist. Lucas No. L-19-1156, 2020-Ohio-3215, ¶ 23. In this case, it is not unjust to require Tingler to bear the consequences of filing an inadequate petition for a writ of mandamus. Thus, Civ.R. 60(B)(5) does not apply.

{¶ 12} Therefore, because Tingler has not demonstrated that he is entitled to relief for one of the grounds stated in Civ.R. 60(B)(1) through (5), Tingler’s motion for relief from judgment is frivolous and contains no grounds upon which relief could be granted. As such, this court is not satisfied that the proceedings are not an abuse of process of the court, nor is the court satisfied that there are reasonable grounds for the proceedings.

{¶ 13} Accordingly, upon due consideration, Tingler’s motion for leave to file his Civ.R. 60(B) motion for relief from judgment is not well-taken, and is hereby denied. Costs of these proceedings are assessed to Tingler. It is so ordered.

Motion denied.

State, ex rel. Charles L. Tingler
v. Prosecutor James VanEerten
OT-22-029

Charles E. Sulek, J.

JUDGE

William R. Zimmerman, V.J.

JUDGE

John R. Willamowski, V. J.
CONCUR.

JUDGE

Judges William R. Zimmerman and John R. Willamowski, Third District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio

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