

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

ALEXANDRA MORRIS,	:	
	:	
Plaintiff-Appellant,	:	No. 111521
	:	
v.	:	
	:	
APRIL MORRIS, ET AL.,	:	
	:	
Defendants-Appellees.	:	

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: AFFIRMED**

**RELEASED AND JOURNALIZED: February 23, 2023**

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CV-17-886903

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***Appearances:***

Kaufman, Drozdowski & Grendell, LLC, and Evan T. Byron, *for appellant*.

Lewis Brisbrois Bisgaard & Smith LLP, Bradley J. Barmen, and Theresa A. Edwards, *for appellees*.

EMANUELLA D. GROVES, J.:

{¶ 1} Plaintiff-appellant, Alexandra Morris (“appellant”) appeals the trial court’s decision denying her Civ.R. 60(B)(5) motion for relief from judgment. For the reasons that follow, we find appellant’s claims are barred by res judicata.

## **Factual Background**

{¶ 2} This is the second appeal involving these parties. The facts are completely and comprehensively described in *Morris v. Morris*, 8th Dist. Cuyahoga No. 109854, 2021-Ohio-2677 (“*Morris I*”). We will summarize those facts briefly to assist in the examination of the subsequent proceedings here.

{¶ 3} In 2006, Amy Morris (“Amy”), appellant’s mother, was diagnosed with cancer. At the time, appellant was attending Beachwood Middle School. *Id.* at ¶ 3. Amy created an estate plan consisting “of a pour-over will and trust with appellant as the sole beneficiary.” *Id.* Amy’s will left all of the tangible personal effects of her estate to appellant. The intangible assets of the estate, however, including her business interests, “were left through the will’s residual clause for care and management by the trustees of the trust.” *Id.* Amy’s business interests included a company she owned, Focus Groups of Cleveland, Inc. (“Focus Groups”). Amy designated her sister, April Morris (“April”), her mother, Bonnie Morris, and her father, Jeffrey Morris (“Jeffrey”), as the coexecutors of the estate. *Id.*

{¶ 4} The trust was designed to hold property for the benefit of appellant until she reached the age of 25, at which time, one-half of the property in the trust would be distributed to her. The trustees would continue to manage the remaining property until appellant turned 30 years old, after which the remainder would be released to appellant. *Morris I* at ¶ 4.

{¶ 5} On December 10, 2010, Amy passed from cancer. At the time, appellant was 17 years old. April had moved into the home Amy and appellant

shared in spring of 2010. Appellant remained in the home until she graduated from high school. She subsequently began college at The Ohio State University. *Id.*

{¶ 6} On November 11, 2011, an attorney acting on April’s behalf submitted an application to relieve Amy’s estate from probate. As a result of that action and other transactions, April became the owner of Amy’s company, despite Amy’s estate plan. *Morris I* at ¶ 7.

{¶ 7} Appellant was never notified of her mother’s estate documents, nor was she notified of any legal proceedings regarding the estate. Both April and Jeffrey denied the existence of a will when appellant asked. Appellant learned the truth in January 2017 when she located documents in Jeffrey’s home. Those documents established that her mother had left a will and trust and that appellant was the sole beneficiary. *Id.* at ¶ 8.

## **Procedural History**

### **The Civil Action and Trial**

{¶ 8} On October 4, 2017, appellant filed a civil lawsuit against April, Jeffrey, and Focus Groups (collectively, “defendants”).<sup>1</sup> The amended complaint accused defendants April and Jeffrey of engaging in fraudulent concealment, fraud, civil conspiracy, breach of fiduciary duty, interference with an expectancy of inheritance, negligence with respect to Amy’s last will and testament and the Amy A. Morris Family Trust, and conversion of property. *Morris I* at ¶ 9.

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<sup>1</sup> April’s lawyer and his law firm were originally parties to the case, but those claims were dismissed prior to trial.

**{¶ 9}** The defendants asserted counterclaims against appellant for civil theft, conversion, and declaratory relief for taking records from Jeffrey's home. Appellant answered admitting to taking the records but claimed she did so lawfully. *Id.* at ¶ 10.

**{¶ 10}** A bifurcated jury trial commenced in March 2020. The jury first considered liability and compensatory damages and then would consider punitive damages, if necessary. *Morris I* at ¶ 11. After the close of evidence in the first phase of the trial, the trial court granted defendant Jeffrey's motion for directed verdict on appellant's claims. *Id.* The jury then continued to deliberate on the remaining claims against April and Focus Groups (the "appellees"). Although appellant asked for an instruction on constructive trust that was denied, the parties did not object to any other aspect of the jury instructions.

**{¶ 11}** The jury ultimately found in favor of appellant on her claims for fraud, breach of fiduciary duty, tortious interference, conversion, and civil conspiracy. On each of the general verdict forms for each prevailing claim, the jury awarded an amount of \$62,000 as "the total amount of compensatory damages awarded to [appellant]." *Id.* at ¶ 12. Additionally, the jury found for April and Focus Groups on the claims of civil theft and conversion awarding an amount of \$1.00 as to each general verdict form for each claim, also describing the award as the "total amount of compensatory damages." *Id.*

**{¶ 12}** The case was adjourned until the following morning for the punitive damages phase of the trial. The following morning, prior to the jury reconvening,

the parties and the court had a discussion about the jury verdict. *Morris I* at ¶ 13-14. The appellees argued that the total award was \$62,000. Appellant argued that the award was \$62,000 on each claim for a total of \$310,000. *Id.* at ¶ 14. Appellant asked the trial court to seek clarification from the jury.

**{¶ 13}** Although the jury was still empaneled for the second phase of the trial, the trial court inexplicably denied the request to seek clarification. The trial court found that the award was \$62,000, describing the claims as six different ways appellant was entitled to recover, but only one recovery. *Id.* at ¶ 16.

**{¶ 14}** Later, the trial court informed the jury that the parties had settled the case on the remaining issues in the lawsuit. *Morris I* at ¶ 17. The trial court then discharged the jury. Neither party objected to the trial court's representations. Furthermore, the terms of the settlement agreement were not placed on the record prior to the jury's discharge, nor were the terms of the settlement filed with the court.

**{¶ 15}** After the discharge of the jury, the parties discussed the verdict with the jurors. They then learned that the jury had intended to award appellant \$62,000 on each claim, for a total of \$310,000. The trial court subsequently refused to reconsider appellant's motion for clarification or to reempanel the jury to obtain clarification. *Id.* at ¶ 19.

**{¶ 16}** The day after the jury was discharged, March 12, 2020, the appellees' counsel emailed appellant's counsel a proposed settlement agreement and release.

The appellees claimed that, in response, appellant's attorney requested that the parties renegotiate the settlement agreement. *Morris I* at ¶ 20.

**{¶ 17}** On March 17, 2020, appellees filed a motion to enforce the settlement agreement and requested costs. *Id.* at ¶ 21. The appellees alleged that the parties had come to an agreement prior to the start of the punitive phase of the trial. Those terms included, “(1) a monetary settlement amount; (2) time for payment of the settlement amount; and (3) a formal settlement agreement and release would be signed by all parties to the settlement prior to the distribution of any settlement moneys.” *Id.* at ¶ 21, quoting appellee's motion to enforce settlement agreement.

**{¶ 18}** Appellant opposed the motion and simultaneously filed a combined motion (the “combined motion”) for reconsideration, relief, stay, and new trial on judgment only. Appellant did not deny that a settlement was reached but challenged the validity of the agreement. Further, she acknowledged that “the parties engaged in extensive settlement negotiations,” settling on a dollar amount of \$120,000. *Morris I* at ¶ 22.

**{¶ 19}** In that motion, appellant sought relief under Civ.R. 59, 60, 61, and 62. Appellant asked the trial court to stay the judgment during the pendency of the post-trial motions, pursuant to Civ.R. 62(A). *Id.* at ¶ 23. With respect to Civ.R. 60, appellant requested relief under Civ.R. 60(A) arguing a clerical error. Appellant did not seek relief under Civ.R. 60(B).

**{¶ 20}** On June 29, 2020, the trial court denied both motions. With respect to the appellees' motion, the court ruled that it did not have jurisdiction to enforce

the settlement agreement because the “court’s order disposing of this case did not incorporate the terms of the settlement or expressly retain jurisdiction over [the] settlement.” The court summarily denied appellant’s combined motion.

### **Appellants’ First Appeal**

{¶ 21} Appellant appealed the decision raising three assignments of error. Appellant challenged the trial court’s failure to award the equitable relief sought at trial based on the uncontested trial evidence; the trial court’s decision to combine the jury verdict into one \$62,000 award; and argued that the \$62,000 award was not supported by the trial evidence and warranted a new trial on the issue of damages. We found that we were unable to review the merits of the assignments of error because there was a settlement agreement reached during the middle of trial, noting that, “[t]his settlement agreement effectively waives any error that occurred during trial.” *Morris I*, 8th Dist. Cuyahoga No. 109854, 2021-Ohio-2677, at ¶ 41, citing *Bottum v. Jankovic*, 8th Dist. Cuyahoga No. 99526, 2013-Ohio-4914, ¶ 24-25; *Barstow v. O.U. Real Estate III, Inc.*, 4th Dist. Athens No. 01CA49, 2002-Ohio-4989; *Natl. Audubon Soc. v. Schregardus*, 133 Ohio App.3d 245, 727 N.E.2d 614 (10th Dist.1999). Additionally, the “[w]aiver would include any error made by the trial judge in his pretrial rulings or interpretation of the jury verdict.” *Id.*

{¶ 22} Ultimately, we affirmed the trial court’s decision and found that we cannot afford appellant the relief she requests when there is evidence that the trial court terminated trial based on the assertion of counsel that the parties had settled their dispute.” *Id.* at ¶ 51.

**{¶ 23}** The decision affirming the trial court's decision was filed on August 5, 2021. Appellant appealed to the Supreme Court.

### **Proceedings upon Remand to the Trial Court**

**{¶ 24}** After the Ohio Supreme Court refused to accept the case for appeal,<sup>2</sup> appellant filed a motion for relief from judgment before the trial court pursuant to Civ.R. 60(B)(5) on March 1, 2022. On the same date, April filed a motion requesting the trial court order the clerk of courts to accept and deposit the jury verdict of \$62,000 minus costs.

**{¶ 25}** On April 13, 2022, the trial court denied April's motion finding that the jury verdict was never reduced to a judgment. Further, appellant's motion for relief under Civ.R. 60(B)(5) was denied because there was insufficient basis under that section to grant relief. Additionally, appellant's usage of Civ.R. 60(B)(5) was improper when one of the more specific sections of Civ.R.60(B) applied, such as, Civ.R. 60(B)(1). Finally, the trial court found that even if appellant had requested relief under Civ.R. 60(B)(1) the motion would have been denied as untimely.

**{¶ 26}** Appellant appeals assigning the following errors for our review:

#### **Assignment of Error No. 1**

The trial court abused its discretion and committed reversible error by denying Appellant's Civil Rule 60(B)(5) motion for relief from judgment in the trial court's April 13, 2022, judgment entry.

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<sup>2</sup> *Morris v. Morris*, 165 Ohio St.3d 1504, 2022-Ohio-85, 179 N.E.3d 120.



## **Assignment of Error No. 2**

The trial court abused its discretion and committed reversible error by failing to hold an evidentiary hearing prior to ruling on Appellant's Civil Rule 60(B)(5) motion for relief from judgment on April 13, 2022.

### **Standard of Review**

{¶ 27} “Civ.R. 60(B) ‘strikes a balance between the finality of judgments and a perfect result ‘by vesting the courts with broad, but not unlimited authority to set aside judgments.’” *Rodeno v. Mezenski*, 8th Dist. Cuyahoga No. 111030, 2022-Ohio-1176, ¶ 17, quoting *Ouellette v. Ouellette*, 2020-Ohio-705, 152 N.E.3d 528, ¶ 10 (6th Dist.), quoting *Knapp v. Knapp*, 24 Ohio St.3d 141, 493 N.E.2d 1353 (1986). This discretion extends to both the decision to grant or deny the motion and the decision on whether to hold an evidentiary hearing. *Id.*, citing *Kostoglou v. Fortuna*, 8th Dist. Cuyahoga No. 107937, 2019-Ohio-5116, ¶ 21, citing *Williams v. Wilson-Walker*, 8th Dist. Cuyahoga No. 95392, 2011-Ohio-1805, ¶ 7; *GMAC Mtge., LLC v. Coleff*, 8th Dist. Cuyahoga No. 98917, 2013-Ohio-2462, ¶ 10.

{¶ 28} Accordingly, we review a trial court's decision on a Civ.R. 60(B) motion for relief from judgment under an abuse of discretion standard. *Michael v. Miller*, 8th Dist. Cuyahoga No. 110537, 2022-Ohio-1493 ¶ 7, quoting *State v. Waver*, 8th Dist. Cuyahoga No. 107502, 2019-Ohio-1444, ¶ 27, citing *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 520 N.E.2d 564 (1988).

{¶ 29} Similarly, the decision on whether to hold a hearing is a discretionary one. *In re I.L.J.*, 8th Dist. Cuyahoga No. 108251, 2019-Ohio-5241, ¶ 38, citing *Schneider v. Gunnerman*, 12th Dist. Fayette Nos. CA98-11-019 and CA99-03-009,

1999 Ohio App. LEXIS 3784, 3 (Aug. 16, 1999). It is an abuse of discretion to deny a hearing “where grounds for relief from judgment are sufficiently alleged and are supported with evidence which would warrant relief from judgment.” *Id.*, quoting *Kay v. Marc Glassman, Inc.*, 76 Ohio St.3d 18, 665 N.E.2d 1102 (1996).

{¶ 30} An abuse of discretion implies that the trial court’s attitude is “unreasonable, arbitrary, or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983), quoting *State v. Adams*, 62 Ohio St.2d 151, 404 N.E.2d 144 (1980).

### **Law and Analysis**

{¶ 31} For ease of analysis we will address appellant’s assignments of error together. Appellant alleges that the trial court erred in denying her Civ.R. 60(B) motion for relief from judgment and erred in failing to hold a hearing on the motion. In order to prevail under Civ.R. 60(B), appellant 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)(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.

*GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), citing Civ.R. 60(B); *Universal Film Exchanges, Inc., v. Lust*, 479 F.2d 573 (4th Cir.1973). *Adomeit v. Baltimore*, 39 Ohio App.2d 97, 316 N.E.2d 469 (8th Dist.1974). *Brenner v. Shore*, 34 Ohio App.2d 209, 297 N.E.2d 550 (10th Dist.1973).

**{¶ 32}** Furthermore, if this standard is met, a hearing on the motion would be required. *In re I.L.J.*, 8th Dist. Cuyahoga No. 108251, 2019-Ohio-5241, ¶ 38. Failure to do so would be an abuse of discretion. *Id.* Accordingly, we first examine whether appellant established grounds for relief under Civ.R. 60(B).

**{¶ 33}** Appellant argues that she was entitled to relief under Civ.R. 60(B)(5), which states:

(B) 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:

\* \* \*

(5) any other reason justifying relief from the judgment.

**{¶ 34}** Civ.R. 60(B)(5) is recognized as a catchall provision that “recognizes a trial court’s inherent power \* \* \* to relieve a party from the unjust operation of a judgment.” *Treasurer of Cuyahoga Cty. v. 440 High St., LLC*, 8th Dist. Cuyahoga No. 110786, 2022-Ohio-1239, ¶ 33. However, the grounds for allowing relief under Civ.R. 60(B)(5) should be substantial. *Caruso-Ciresi, Inc. v. Lohman*, 5 Ohio St.3d 64, 448 N.E.2d 1365 (1983), citing staff note to Civ.R. 60(B); *Adomeit* at 106. The staff note to Civ.R. 60(B) suggests that fraud upon the court, such as a nonparty bribing a jury, would be the type of “substantial” grounds warranting relief from judgment under Civ.R. 60(B)(5).

**{¶ 35}** However, based on the procedural posture of this case, we must determine whether appellant’s appeal is barred by res judicata. “[T]he doctrine of res judicata prevents repeated attacks on a final judgment and applies to *all issues*

*that were or might have been litigated.”* (Emphasis added.) *Blue Durham Properties v. Krantz*, 8th Dist. Cuyahoga Nos. 107974 and 108167, 2019-Ohio-4459, ¶ 22; citing *Bank of New York v. Jackson*, 8th Dist. Cuyahoga No. 99874, 2013-Ohio-5133, ¶ 10, citing *Rogers v. Whitehall*, 25 Ohio St.3d 67, 494 N.E.2d 1387 (1986). Furthermore, “where the facts alleged in successive motions were available to an appellant at the time he or she filed an earlier motion, the principles of res judicata bar the later motion.” *Id.*, citing *D’Agnese v. Holleran*, 8th Dist. Cuyahoga No. 86769, 2006-Ohio-2470, ¶ 6, citing *Bahgat v. Bahgat*, 10th Dist. Franklin No. 83AP-469, 1984 Ohio App. LEXIS 11749 (Dec. 6, 1984).

**{¶ 36}** In the instant case, the facts on which appellant based her second Civ.R. 60 motion, i.e., the judge’s decision regarding the verdict amount, were available to her when she filed the combined motion prior to her first appeal. “Res judicata bars relitigation of a matter that was raised or could have been raised on direct appeal when a final, appealable order was issued in accordance with the law at the time.” *State v. Griffin*, 138 Ohio St.3d 108, 2013-Ohio-5481, 4 N.E.3d 989, ¶ 3. Here, as in her first appeal, appellant attempts to challenge the trial court’s unilateral determination that the jury’s award was \$62,000. The only difference this time is that she is using Civ.R. 60(B)(5) as the basis of her challenge. Consequently, res judicata applies and no relief of judgment may be afforded.

**{¶ 37}** Accordingly, appellant’s assignments of error are overruled as barred by res judicata. The trial court’s judgment is affirmed to the extent that it denied appellant’s motion for relief from judgment.

**{¶ 38}** Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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EMANUELLA D. GROVES, JUDGE

EILEEN T. GALLAGHER, P.J., and  
MICHAEL JOHN RYAN, J., CONCUR