

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

THE HUNTINGTON NATIONAL
BANK,

:

Plaintiff-Appellee,

:

No. 116161

v.

:

RAFAEL AQUINO III, ET AL.,

:

Defendants-Appellants.

:

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: October 22, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-24-107908

Appearances:

Sassano, Deighton, Delaney, Higgins, & Mommsen Co.,
L.P.A. and Eric T. Deighton, *for appellee*.

Rafael Aquino III, *pro se*.

TIMOTHY W. CLARY, J.:

{¶ 1} Defendant-appellant Rafael Aquino III (“Aquino”) appeals the trial court’s denial of his Civ.R. 60(B) motion. For the following reasons, we affirm.

I. Factual and Procedural History

{¶ 2} On November 26, 2024, the Huntington National Bank (“Huntington”) filed a complaint for money and foreclosure against Aquino seeking to foreclose on real property situated on Oak Park Avenue in Cleveland, Ohio (“subject property”).¹ Aquino filed an answer and counterclaim, and the court struck the pleadings because they were filed in violation of Civ.R. 5(D).

{¶ 3} Huntington filed an unopposed motion for summary judgment, and the magistrate issued a decision granting the summary-judgment motion.² The court adopted the magistrate’s decision and issued a judgment and decree of foreclosure on April 30, 2025. On June 23, 2025, Aquino filed two motions to vacate the court’s judgment, and on the same date the real property sold to Huntington for \$113,400. The trial court conducted a hearing on the motions to vacate, and the magistrate issued a decision with findings of fact and conclusions of law.³ Aquino filed objections to the magistrate’s decision, which the trial court overruled. On

¹ The complaint named the following parties as defendants: Rafael Aquino III aka Rafael Aquino, individually and as trustee of Rafael Aquino III Trust and the State of Ohio Department of Taxation. This appeal is filed by Aquino, individually.

² After the magistrate issued the decision on Huntington’s motion for summary judgment, Aquino filed an appeal. This court sua sponte dismissed the appeal for lack of a final appealable order. *The Huntington National Bank v. Aquino, III et al.*, 8th Dist. Cuyahoga No. 115026 (Apr. 21, 2025), motion No. 583752.

³ Following the magistrate’s decision on Aquino’s motions to vacate, Aquino filed an appeal. This court sua sponte dismissed the appeal for lack of a final appealable order. *The Huntington National Bank v. Aquino, III et al.*, 8th Dist. Cuyahoga No. 115380 (Aug. 1, 2025), motion No. 586671.

August 21, 2025, the trial court adopted the magistrate's decision, and the court issued a decree of confirmation on September 29, 2025.

{¶ 4} Aquino filed a motion to vacate the foreclosure judgment for lack of standing and to stay eviction. The court temporarily stayed the eviction, and subsequently issued a judgment entry that denied Aquino's motion to vacate the judgment for lack of standing stating:

Defendant's motion to vacate judgment emergency motion to stay enforcement and to vacate judgment for lack of standing at commencement filed 12/22/25 is denied. The court previously determined on 4/30/25 that plaintiff had standing to bring this case. See order adopting magistrate's decision docketed 4/30/25. Also, defendant's argument is barred by res judicata. A party's lack of standing can be challenged in the course of the foreclosure proceedings themselves or on a direct appeal of that judgment, but res judicata bars a party from raising an issue regarding lack of standing in a collateral attack on a final judgment in foreclosure. *See U.S. Bank*, 2018-Ohio-3770, ¶ 1 (7th dist.).

Jan. 9, 2026 judgment entry.

{¶ 5} On February 13, 2026, Aquino filed a pleading titled "Corrected Motion for Relief from Judgment and Motion to Stay Execution" ("Civ.R. 60(B) motion"). The motion sought relief under Civ.R. 60(B)(2) and (B)(5) because Aquino allegedly had newly discovered evidence that showed (1) the Government National Mortgage Association ("GNMA") was the owner of the loan rather than Huntington and (2) a discrepancy in the accounting records. The trial court denied Aquino's Civ.R. 60(B) motion with the following judgment entry:

Defendant Rafael Aquino III's motion for relief from judgment filed 2/13/26 is denied. Defendant set forth no evidence and/or operative facts that warrant relief under 60(B). Defendant argues that newly

discovered evidence related to request for documents made from the U.S. Department of Housing and Urban Development/Federal Housing Administration and the CFPB warrant a claim for relief from judgment under 60(B)(2). Relief from judgment pursuant to Civ.R. 60(B) under the ground of newly discovered evidence cannot be granted based upon “[e]vidence that could have been discovered prior to trial.” (citation omitted.) *Bell v. Bell*, 11th Dist. Portage No. 2016-P-0066, 2017-Ohio-7956, ¶ 53. Defendant attaches exhibits that are not newly discovered evidence that could have been discovered prior to trial. In defendant’s motion to stay eviction pending FOIA compliance and due process filed 2/12/26 cites that defendant made requests for information on January 20, 2026 and January 22, 2026. Defendant could have made th[ese] inquires [sic] prior to trial. Defendant’s argument is barred by res judicata. The court previously determined on 4/30/25 that plaintiff had standing to bring this case. See order adopting magistrate’s decision docketed 4/30/25. A party’s lack of standing can be challenged in the course of the foreclosure proceedings themselves or on a direct appeal of that judgment, but res judicata bars a party from raising an issue regarding lack of standing in a collateral attack on a final judgment in foreclosure. See *U.S. Bank*, 2018-Ohio-3770, ¶ 1 (7th dist.). Insomuch as defendant is seeking to vacate judgment under 60(b)(5), Mr. Aquino’s arguments are barred by res judicata. Defendant’s emergency motion to stay eviction filed 2/12/26 is denied.

Feb. 19, 2026 judgment entry. It is from this order that Aquino appeals. On the same day the trial court issued the above judgment entry, Aquino filed with the trial court an emergency stay of execution.

{¶ 6} One day later, on February 20, 2026, Aquino filed a notice of appeal and now presents four assignments of error:

Assignment of Error I: The trial court abused its discretion by denying Civ.R. 60(B)(2) and Civ.R. 60(B)(5) relief after mischaracterizing post-judgment federal evidence as discoverable prior to trial.

Assignment of Error II: The trial court abused its discretion and committed reversible error by denying relief without conducting an evidentiary hearing despite operative facts showing a materially disputed debt.

Assignment of Error III: The trial court abused its discretion under Civ.R. 60(B)(5) by failing to recognize extraordinary circumstances created by conflicting federal accounting data and unreconciled financial control.

Assignment of Error IV: The trial court abused its discretion by denying a stay where enforcement of a judgment based on unresolved financial discrepancies caused irreparable harm and rendered appellate review meaningless.

Aquino also filed an emergency stay of execution with this court that we denied.

{¶ 7} Approximately two months later, Aquino filed with the trial court a notice of supplemental federal evidence and attached documents of the “newly obtained federal records relevant to the accounting and disposition of the subject loan” to make the documents part of the trial court record. Aquino was subsequently evicted from the real property.

II. Legal Analysis

{¶ 8} Initially, we note that Aquino acted pro se before the trial court and represents himself pro se on appeal. This court has previously recognized that

a pro se litigant may face certain difficulties when choosing to represent oneself. Although a pro se litigant may be afforded reasonable latitude, there are limits to a court’s leniency. *Henderson v. Henderson*, 2013-Ohio-2820, ¶ 22 (11th Dist.). Pro se litigants are presumed to have knowledge of the law and legal procedures, and are held to the same standard as litigants who are represented by counsel. *In re Application of Black Fork Wind Energy, L.L.C.*, 138 Ohio St. 3d 43, 2013-Ohio-5478, ¶ 22, 3 N.E.3d 173.

Saeed v. Greater Cleveland Regional Transit Auth., 2017-Ohio-935, ¶ 7 (8th Dist.).

Thus, we presume Aquino had knowledge of the law, legal procedures, and appellate process regarding his burden of demonstrating error on appeal.

{¶ 9} A reviewing court will not disturb a trial court's decision regarding a Civ.R. 60(B) motion absent an abuse of discretion. *State ex rel. Russo v. Deters*, 80 Ohio St.3d 152, 153 (1997).

{¶ 10} Pursuant to Civ.R. 60(B), a trial court has the authority to vacate a final judgment due to:

(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.

Aquino asserted that he was entitled to relief pursuant to Civ.R. 60(B)(2) and (B)(5).

{¶ 11} This court has found that Civ.R. 60 motions can not be used as a substitute for an appeal:

Public policy favors the finality of judgments. *Rhoads v. Greater Cleveland Regional Transit Auth.*, 8th Dist. Cuyahoga No. 92024, 2009-Ohio-2483, ¶ 5. If not appealed, a trial court's judgment must remain undisturbed pursuant to the doctrine of res judicata, which bars claims that were or could have been raised on direct appeal. *La Barbera v. Batsch*, 10 Ohio St.2d 106, 113, 227 N.E.2d 55 (1967). Thus, relief from judgment under Civ.R. 60(B) should be granted only in the exceptional circumstance where justice demands relief from a prior judgment. *Adomeit v. Baltimore*, 39 Ohio App.2d 97, 105, 316 N.E.2d 469 (8th Dist.1974). For these reasons, a Civ.R. 60(B) motion may not be used as a substitute for appeal to collaterally attack a final judgment. *Kuchta* at ¶ 16, citing *Harris v. Anderson*, 109 Ohio St.3d 101, 2006-Ohio-1934, 846 N.E.2d 43, ¶ 8-9.

M & T Bank v. Steel, 2015-Ohio-1036, ¶ 13 (8th Dist.). See also *Fannie Mae v. Nedbalski*, 2015-Ohio-2159, ¶ 14 (8th Dist.), citing *Doe v. Trumbull Cty. Children Serv. Bd.*, 28 Ohio St.3d 128 (1986), paragraph two of the syllabus (“It is well established, however, that Civ.R. 60(B) cannot be used as a substitute for an appeal.”); *Bank of Am., N.A. v. Kuchta*, 2014-Ohio-4275, ¶ 16, citing *Harris v. Anderson*, 2006-Ohio-1934, ¶ 8-9 (“It is well established that a Civ.R. 60(B) motion cannot be used as a substitute for an appeal and that the doctrine of res judicata applies to such a motion.”).

{¶ 12} Here, Aquino’s remedy was to challenge on appeal either the trial court’s order of foreclosure or confirmation of sale. *CitiMortgage, Inc. v. Roznowski*, 2014-Ohio-1984, ¶ 35, citing *LaSalle Bank Natl. Assn. v. Smith*, 2012-Ohio-4040, ¶ 20 (7th Dist.) (“[T]wo judgments are appealable in foreclosure actions: the order of foreclosure and sale and the order of confirmation of sale.”). Aquino did not appeal either of those judgments. Because Aquino improperly filed a Civ.R. 60(B) motion in substitution of an appeal, the trial court did not abuse its discretion in denying the motion. Accordingly, Aquino’s first and third assignments of error that contend the trial court abused its discretion when it denied his Civ.R. 60(B) motion are overruled. Further, our finding that Aquino erroneously filed his Civ.R. 60(B) motion in substitution of an appeal renders his second assignment of error — that the court failed to conduct an evidentiary hearing on the Civ.R. 60(B) motion — moot.

{¶ 13} In his fourth assignment of error, Aquino argues that the trial court abused its discretion when it denied a stay. Aquino cites to no case law in support of his fourth assigned error. “An appellate court may disregard an assignment of error pursuant to App.R. 12(A)(2) if an appellant fails to cite to any legal authority in support of an argument as required by App.R. 16(A)(7).” *Strauss v. Strauss*, 2011-Ohio-3831, ¶ 72 (8th Dist.), citing *State v. Martin*, 1999 Ohio App. LEXIS 3266 (12th Dist. July 12, 1999); *Siemientkowski v. State Farm Ins.*, 2005-Ohio-4295 (8th Dist.). “If an argument exists that can support [the] assigned error, it is not this court’s duty to root it out.” *Strauss*, quoting *Cardone v. Cardone*, 1998 Ohio App. LEXIS 2028 (9th Dist. May 6, 1998). Therefore, we disregard Aquino’s fourth assignment of error.

{¶ 14} Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

TIMOTHY W. CLARY, JUDGE

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