[Cite as *Geico Advantage Ins. Co. v. Williams*, 2026-Ohio-4284.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

GEICO ADVANTAGE INSURANCE COMPANY, :

Plaintiff-Appellant, :

No. 116090

v. :

JASMINE A. WILLIAMS, ET AL., :

Defendants-Appellees. :

JOURNAL ENTRY AND OPINION

JUDGMENT: VACATED
RELEASED AND JOURNALIZED: October 29, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-24-104564

Appearances:

Kreiner & Peters Co., LPA, and Shaun D. Byroads, *for appellant*.

DEENA R. CALABRESE, J.:

{¶ 1} Plaintiff-appellant Geico Advantage Insurance Company ("Geico") appeals the trial court's order granting defendant-appellee Terricko Clyde Early's ("Early") Civ.R. 60(B) motion to vacate. For the reasons stated below, we vacate the trial court's order granting Early's Civ.R. 60(B) motion.

I. Relevant Facts and Procedural History

{¶ 2} This case stems from an automobile accident. Geico filed a negligent-entrustment claim against Early and Jasmine A. Williams ("Williams") for subrogation for losses they and their insured sustained as a result of the accident. The original case was dismissed without prejudice, and Geico refiled the claim on September 27, 2024. Geico later dismissed Williams from the case. Early was served with a copy of the complaint and subsequently filed a pro se answer.

{¶ 3} Early failed to respond to Geico's discovery requests. Subsequently, on June 5, 2025, Geico filed a motion for summary judgment and asserted, in part, that Early admitted to all matters alleged in the complaint by failing to timely respond to their requests for admissions. Among the facts deemed admitted was the statement that Early negligently entrusted a vehicle to a driver that was later involved in an automobile accident and the driver fled the scene of the accident. Early did not file a brief in opposition to Geico's motion for summary judgment. On July 15, 2025, the trial court granted Geico's motion as unopposed and entered judgment in favor of Geico in the amount of $35,344.56. Early did not appeal the trial court's July 2025 judgment.

{¶ 4} On November 25, 2025, Early, through counsel, filed a motion to vacate judgment, which contended that the trial court's order granting Geico's motion for summary judgment should be vacated pursuant to Civ.R. 60(B)(5). Early did not file any supporting affidavits or other evidentiary materials with his motion. Geico did not file a response to Early's motion, and the trial court did not hold a hearing

on Early's motion to vacate. On December 31, 2025, the trial court granted Early's motion to vacate.

{¶ 5} It is from this order that Geico now appeals, raising the following three assignments of error for our review.

> 1. The Trial Court Committed error by granting a Civ. Rule 60(B) motion when the party could have appealed the granting of summary judgement.
>
> 2. The Trial Court committed error in granting the Civ. Rule 60(B) Motion Without Any Evidence Presented to Support its Decision.
>
> 3. The Trial Court Committed error in granting the Civ. Rule 60(B)(5) Motion when another subsection of Civ. Rule 60(B) would apply.

{¶ 6} While Geico filed an appellate brief, Early did not.

II. Law and Analysis

{¶ 7} We consider Geico's second assignment of error first because it is dispositive of the case. In its second assignment of error, Geico contends that the trial court erred when it granted Early's motion to vacate pursuant to Civ.R. 60(B) because Early did not submit any evidentiary material supporting his motion. We agree.

{¶ 8} A trial court's ruling on a Civ.R. 60(B) motion to vacate is generally reviewed for an abuse of discretion. *Kassouf v. Barylak*, 2023-Ohio-314, ¶ 16 (8th Dist.), citing *Brookville Ents. v. Clarence J. Kessler Estate HCF Mgt.*, 2022-Ohio-1420, ¶ 20 (2d Dist.). However, when a challenge to the trial court's determination regarding a Civ.R. 60(B) motion to vacate implicates an issue of law, we review the issue of law de novo. *Id.*, citing *Altman v. Parker*, 2018-Ohio-4583, ¶ 6 (1st Dist.),

citing *Cincinnati Ins. Co. v. Emge*, 124 Ohio App.3d 61 (1st Dist. 1997). "[C]ourts lack the discretion to make errors of law, particularly when the trial court's decision goes against the plain language of a statute or rule." *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 39. Whether a trial court can grant a Civ.R. 60(B) motion to vacate without any evidentiary material supporting the motion is a determination of law; thus, our review is de novo.

{¶ 9} Civ.R. 60(B) states, in relevant part,

> 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.

{¶ 10} It is well established that to prevail on a Civ.R. 60(B) motion, the moving party must demonstrate:

> (1) a meritorious claim or defense in the event relief is granted, (2) entitlement to relief under one of the provisions of Civ.R. 60(B)(1) through (5), and (3) timeliness of the motion.

State ex rel. Hatfield v. Miller, 2023-Ohio-429, ¶ 8, citing *Strack v. Pelton*, 70 Ohio St.3d 172, 174 (1994), citing *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146 (1976), paragraph two of the syllabus. "The movant has the burden of proving [entitlement] to the relief requested or to a hearing on the motion." *Adomeit v. Baltimore*, 39 Ohio App.2d 97, 103 (8th Dist. 1974). "A court must overrule a motion to vacate where a movant fails to establish even one of the three requirements in the *G.T.E.* test." *BMV Mechanical, Inc. v. Desvar Co.*, 2008-Ohio-

792, ¶ 13 (8th Dist.), citing *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20 (1988); *Argo Plastic Prod. Co. v. Cleveland*, 15 Ohio St.3d 389, 391 (1984).

{¶ 11} This court has consistently found that a Civ.R. 60(B) motion must be supported by evidentiary material. *See Keybank N.A. v. Midtown Inspirion, L.L.C.*, 2025-Ohio-1737, ¶ 27 (8th Dist.) ("[A] movant must provide evidentiary material supporting his or her Civ.R. 60(B) motion."); *Coleman v. Cleveland School Dist. Bd. of Edn.*, 2004-Ohio-5854, ¶ 76 (8th Dist.), citing *Adomeit* at 104 ("In order to merit a hearing and prevail, a motion under Civ.R. 60(B) must be accompanied by a memorandum of facts and law and evidentiary materials containing operative facts which would warrant relief under the rule."); *Powells v. S.C.I.T.*, 1989 Ohio App. LEXIS 2356, *5 (8th Dist. June 15, 1989) ("A movant must demonstrate the satisfaction of these requirements by asserting operative facts in evidentiary materials of the nature contemplated by Civ.R. 56(C)."); *E. Ohio Gas Co. v. Walker*, 59 Ohio App.2d 216, 221 (8th Dist. 1978) (A Civ.R. 60(B) motion to vacate must be accompanied by evidence "in the form of affidavits, depositions, written admissions, written stipulations, answers to interrogatories, or other sworn testimony.").

{¶ 12} As stated above, the evidentiary materials should be of the nature contemplated by Civ.R. 56(C). The supporting evidentiary materials contemplated by Civ.R. 56(C) are affidavits, pleadings, depositions, answers to interrogatories, written admissions, transcripts of evidence, and written stipulations of fact, if any. Further, Civ.R. 56(E) states that

> [s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to or served with the affidavit. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits.

{¶ 13} This court has also found that "[u]nsworn allegations of operative facts contained in a motion for relief from judgment filed under Civ.R. 60(B) or in a brief attached to the motion are not sufficient evidence upon which to grant a motion to vacate judgment." *Coleman* at ¶ 76, citing *E. Ohio Gas Co*. at 220. "Broad conclusory statements do not satisfy the requirement that a Civ.R. 60(B) motion must be supported by operative facts that would warrant relief from judgment." *Coleman* at ¶ 77, citing *Spivey v. Spivey*, 1991 Ohio App. LEXIS 6231 (8th Dist. Dec. 19, 1991).

{¶ 14} In addition, the trial court should hold a hearing to allow the moving party to present evidentiary materials in support of the party's Civ.R. 60(B) motion. In *Coulson v. Coulson*, 5 Ohio St.3d 12 (1983), the Ohio Supreme Court found that "'[i]f the movant files a motion for relief from judgment and it contains allegations of operative facts which would warrant relief under Civil Rule 60(B), the trial court *should* grant a hearing to take evidence and verify these facts before it rules on the motion.'" (Emphasis added.) *Id.*, quoting *Adomeit*, 39 Ohio App.2d at 105 (8th Dist. 1974).

{¶ 15} In this case, the trial court granted Early's motion to vacate even though Early did not submit any supporting evidentiary materials with his motion.

In addition, the trial court did not hold an evidentiary hearing to allow the parties to present evidence in support of or in opposition to Early's Civ.R. 60(B) motion. Thus, only Early's unsworn assertions in his motion were before the trial court when it made its determination. Therefore, Early did not demonstrate his entitlement to relief from the judgment against him. Accordingly, we find that the trial court erred when it granted Early's motion to vacate pursuant to Civ.R. 60(B) and Geico's second assignment of error is sustained. Finding Geico's second assignment of error dispositive, all other assignments of error are rendered moot. *See* App.R. 12(A)(1)(c).

{¶ 16} For the reasons stated above, the trial court's order granting Early's motion to vacate pursuant to Civ.R. 60(B) is vacated.

It is ordered that appellant recover from appellee 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.

DEENA R. CALABRESE, JUDGE

MICHELLE J. SHEEHAN, A.J., and
MICHAEL JOHN RYAN, J., CONCUR