

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

GARY ALLEN THOMAS,	:	APPEAL NO. C-170065
	:	TRIAL NO. DR-1402191
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
BELINDA JEAN THOMAS,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Belinda Jean Thomas has appealed from the trial court's entry overruling her Civ.R. 60(B) motion for relief from judgment that sought to set aside her decree of divorce.

Plaintiff-appellee Gary Allen Thomas filed for divorce from Belinda in January of 2014. Following a trial, a magistrate issued a decision determining that two homes, located at 3628 Barberrry Avenue and 3548 Bevis Avenue, were marital property. Belinda filed an objection to the magistrate's decision, contending that the two homes were her separate property. She argued that she owned the Barberrry property prior to the parties' marriage and that she alone had inherited the Bevis property from an uncle during the marriage. The trial court dismissed Belinda's objection because she had failed to file a transcript. Belinda then filed a motion for reconsideration. The motion argued that both homes were Belinda's separate property. Belinda voluntarily withdrew this motion. The trial court issued a decree of divorce in June of 2016, adopting the findings of the magistrate as to the nature of the two properties. Belinda did not appeal this decision. Approximately six months

later, Belinda filed her Civ.R. 60(B) motion to set aside the decree of divorce, which the trial court overruled.

In a single assignment of error, Belinda challenges the trial court's denial of her Civ.R. 60(B) motion. She argues that the Barberry and Bevis homes were her separate property. We review a trial court's ruling on a Civ.R. 60(B) motion for an abuse of discretion. *Kidz Bop LLC v. Broadhead*, 1st Dist. Hamilton No. C-140686, 2015-Ohio-3744, ¶ 10.

A Civ.R. 60(B) motion cannot serve as a substitute for a direct appeal. *Id.* at ¶ 17; *McCarthy v. Sterling Chems., Inc.*, 1st Dist. Hamilton No. C-150274, 2016-Ohio-1039, ¶ 13. As this court has recognized, a Civ.R. 60(B) motion is a way to collaterally attack the trial court's judgment, and "does not contemplate a direct attack on legal errors allegedly made by the trial court." *McCarthy* at ¶ 13.

Belinda's argument that the two homes were her separate property, which she previously raised in both her objection to the magistrate's decision and in her motion for reconsideration, is a direct attack on the proceedings before the trial court and should have been raised in a direct appeal. Without reviewing the merits of Belinda's argument, we find that it is not appropriate for a Civ.R. 60(B) motion. The trial court did not abuse its discretion in overruling Belinda's motion to set aside her decree of divorce.

The sole assignment of error is overruled, and the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MYERS, P.J., MILLER and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on February 23, 2018
per order of the court _____
Presiding Judge