

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

ROBERT GREER,	:	APPEAL NO. C-170545
Plaintiff-Appellee,	:	TRIAL NO. A-1104694
vs.	:	<i>JUDGMENT ENTRY.</i>
GERALD BENJAMIN BRUCE,	:	
Defendant-Appellant,	:	
and	:	
EARL L. BRUCE,	:	
Defendant.	:	

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 Gerald Benjamin Bruce appeals pro se the trial court's judgment denying his April 24, 2017 motion for a new trial and to vacate a judgment in favor of plaintiff-appellee Robert Greer. In February 2014, the trial court had awarded Greer compensatory and punitive damages on his conversion claim, which had been based on the sale of new and used industrial equipment by Bruce and his father, defendant Earl L. Bruce, that Greer had stored on the Bruces' property pursuant to an oral lease agreement.

In his first assignment of error, Bruce argues the trial court erred by denying his April 24, 2017 motion to vacate the 2014 judgment and to order a new trial.

We review a trial court's judgment on a Civ.R. 60(B) motion for an abuse of discretion. *Griffey v. Rajan*, 33 Ohio St.3d 75, 77, 514 N.E.2d 1122 (1987). To prevail on a Civ.R. 60(B) motion, a movant must demonstrate the following: (1) a meritorious defense or claim to present if relief is granted; (2) entitlement to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the timeliness of the motion. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus. Failure to establish any one of the requirements requires denial of the motion. *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20, 520 N.E.2d 564 (1988).

Here, the trial court did not abuse its discretion in overruling Bruce's motion because it did not meet the requirements of *GTE*. In his motion, Bruce had alleged that he was entitled to relief, pursuant to Civ.R. 60(B)(2), because he had newly discovered evidence that at a November 25, 2013 hearing Magistrate Kothman, and not Magistrate Bachman, had ordered him to clean the subject property. But Bruce's allegation that the court reporter's mistake in listing Magistrate Bachman instead of Magistrate Kothman as the magistrate presiding at the hearing for a temporary protective order was not properly the subject of a Civ.R. 60(B)(2) motion.

Initially, we hold that the motion was not timely filed. A motion for relief from judgment based on the grounds set forth in Civ.R. 60(B)(1)-(3) must be filed no later than one year after the judgment was entered. *Strack v. Pelton*, 70 Ohio St.3d 172, 175, 637 N.E.2d 914 (1994). Bruce's motion was filed more than three years after the February 2014 judgment became final.

Because he recognizes the untimeliness of his motion for relief under Civ.R. 60(B)(2), Bruce now argues that his claim could have prevailed under Civ.R. 60(B)(4) or (5). But Bruce did not make this argument in his April 24, 2017 motion, and he cannot raise it for the first time on appeal.

Moreover, even if we generously construe his motion as having claimed relief under these other provisions of Civ.R. 60 that provide more time for filing, Bruce still cannot prevail, because he cannot show a meritorious defense or claim for relief to present if relief is granted. Bruce had argued in his direct appeal from the trial court's judgment affirming the magistrate's decision that the magistrate's oral statements at the November 25, 2013 hearing had absolved him of any liability. This court rejected that argument in *Greer v. Bruce*, 1st Dist. Hamilton No. C-140121, 2014-Ohio-4901, ¶ 10-11, and the Ohio Supreme Court declined jurisdiction to entertain his discretionary appeal. Under the law-of-the-case doctrine, this court's decision in the first appeal remains the law of the case throughout all subsequent proceedings in both the trial court and this appellate court. *Nolan v. Nolan*, 11 Ohio St.3d 1, 3-4, 462 N.E.2d 410 (1994). The fact that the court reporter made a mistake in listing the magistrate who allegedly made those statements does not alter the enforceability of our holding that any reliance on the oral pronouncements of the magistrate was misplaced. Thus, the law-of-the-case doctrine prevented the trial court from revisiting these issues raised in Bruce's April 24, 2017 motion.

For these reasons, we overrule Bruce's first assignment of error.

In his second assignment of error, Bruce asserts the trial court erred by failing to find that Greer and his counsel had committed a fraud on the court that would

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warrant a new trial. In his third assignment of error, Bruce contends the trial court erred by awarding Greer punitive damages.

Bruce, however, did not raise these allegations in his April 24, 2017 motion for relief from judgment and cannot raise them now. For this reason, we overrule his second and third assignments of error.

Accordingly, we affirm the judgment of the trial court.

Further, 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.

CUNNINGHAM, P.J., ZAYAS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on January 18, 2019
per order of the court _____.
Presiding Judge