

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

JASON A. KASTER, : APPEAL NO. C-1800125
Plaintiff-Appellee, : TRIAL NO. DR-1501943
vs. : *JUDGMENT ENTRY.*

DEBRA S. KASTER,
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.

In one assignment of error, Debra Kaster (“wife”) argues that the trial court erred in dismissing her Civ.R. 60(B) motion for relief from the decree of dissolution entered into between her and Jason Kaster (“husband”).

The marriage between wife and husband ended upon the filing of a decree of dissolution and final decree of shared parenting on December 18, 2015. Wife filed a Civ.R. 60(B) motion for relief from judgment on January 2, 2018, alleging fraud and undue influence by husband in convincing wife to agree to the separation agreement. Instead of filing a memorandum in opposition, husband filed a motion to dismiss, which was granted on February 8, 2018.

An appellate court reviews a trial court's decision on a Civ.R. 60(B) motion under an abuse-of-discretion standard. *Strack v. Pelton*, 70 Ohio St.3d 172, 174, 637 N.E.2d 914 (1994). A judgment reviewed under abuse of discretion will be upheld unless it is unreasonable, arbitrary, or unconscionable. *Carnes v. Carnes*, 2015-Ohio-2925, 38 N.E.3d 1214, ¶ 10 (1st Dist.).

In order to succeed on a Civ.R. 60(B) motion, wife must show she has a meritorious claim or defense if she were to prevail on her motion, she is entitled to relief on one of the grounds listed in Civ.R. 60(B), and her motion is timely filed. *GTE Automatic Elect., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 150, 351 N.E.2d 113 (1976). Wife argues that she is entitled to relief under Ohio Civ.R. 60(B)(3) for husband's fraud. Civ.R. 60(B) provides:

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: (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. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken.

The rule contains two timeliness requirements which must both be met for motions filed under Civ.R. 60(B)(1), (2), or (3). *GTE Automatic Elect., Inc.* at 150-151. The one-year time limit serves as an absolute outer limit. Wife was required to file the Civ.R. 60(B)(3) motion within a reasonable time, but no later than one year from the date of judgment. *See id.*

Wife is not entitled to a hearing on the Civ.R. 60(B) motion. The trial court has the authority to dismiss a Civ.R. 60(B) motion without a hearing when the motion was untimely filed. *Bednar v. Bednar*, 20 Ohio App.3d 176, 485 N.E.2d 834 (9th Dist.1984).

Wife's Civ.R. 60(B)(3) motion was filed over two years after the decree of dissolution was journalized, in violation of the timeliness requirement of Civ.R. 60(B). The trial court also determined that wife's claims did not fall within any of the other grounds of Civ.R. 60(B) not subject to the one-year timeliness requirement.

We overrule wife's sole assignment of error. The proper method for disposing of wife's Civ.R. 60(B) motion was to treat husband's motion as a memorandum in opposition and to deny the Civ.R. 60(B) motion. *See, e.g., Melton v. Melton*, 1st Dist. Hamilton No. C-130123, 2013-Ohio-4790, ¶ 8, 21 (court denied wife's untimely Civ.R. 60(B) motion). Nevertheless, we find that the trial court did not abuse its discretion in deciding the merits of this case. The trial court's judgment is modified to reflect the denial of wife's Civ.R. 60(B) motion, and the judgment is affirmed as modified.

A certified copy of this judgment entry is 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., CROUSE, and WINKLER, J.J.

To the clerk:

Enter upon the journal of the court April 3, 2019

per order of the court _____
Presiding Judge