

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Donald W. Stoyer,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 12AP-690
	:	(C.P.C. No. 10CVH-07-9917)
Ryan Fogelman,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on March 29, 2013

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*Donald W. Stoyer, pro se.*

*Benjamin E. Ritterspach, for appellee.*

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APPEAL from the Franklin County Court of Common Pleas

KLATT, P.J.

{¶ 1} Plaintiff-appellant, Donald W. Stoyer, appeals a judgment of the Franklin County Court of Common Pleas denying him relief from judgment under Civ.R. 60(B). For the following reasons, we affirm.

{¶ 2} The conflict between Stoyer and defendant-appellee, Ryan Fogelman, began when Stoyer, who leased a residence from Fogelman, began escrowing his monthly rent checks with the Franklin County Municipal Court. After Fogelman requested release of the escrowed rent to him, Stoyer filed a counterclaim against Fogelman that sought money damages that exceeded the municipal court's monetary jurisdiction. Consequently, the municipal court certified the action to the common pleas court pursuant to R.C. 1901.22(F) and Civ.R. 13(J). In the common pleas court, both Stoyer and Fogelman moved for summary judgment. Stoyer also moved for default judgment. The trial court granted Fogelman's summary judgment motion and released the escrowed rent

to him. Stoyer then appealed to this court. We affirmed the trial court's judgment. *Stoyer v. Fogelman*, 10th Dist. No. 11AP-737, 2012-Ohio-1319.

{¶ 3} Three months after we issued our decision, Stoyer moved for relief from judgment under Civ.R. 60(B). On July 19, 2012, the trial court denied his motion.

{¶ 4} Stoyer now appeals the July 19, 2012 judgment, and he assigns the following errors:

[1.] Did the common pleas court *abuse its discretion* through its fiduciary duty to protect the Plaintiff's constitutional guaranty by the Defendant to submit an *affirmative defense* or *answer* pursuant to **O.R.C. § Civil Rule 8; O.R.C. § Civil Rule 12; O.R.C. § Civil Rule 15** through the *change of venue* pursuant to O.R.C. § Civil Rule 3 of that court's 28-day notice of their summons pursuant to **O.R.C. § Civil Rule 3(C) 3**?

[2.] Did the common pleas court *abuse its discretion* through its fiduciary duty to protect the Plaintiff's constitutional guaranty of its constitutional jurisdiction pursuant to **O.R.C. § 2305.01** by enforcing limited jurisdiction pursuant to **O.R.C. § 1901.01, et seq.**, when in fact, such constitutional jurisdiction was *waived* by the Defendant for failure to submit an *affirmative defense* or *answer* pursuant to **O.R.C. § Civil Rule 8; O.R.C. § Civil Rule 12; O.R.C. § Civil Rule 15** through the *change of venue* pursuant to **O.R.C. § Civil Rule 3** of that court's 28-day notice pursuant to **O.R.C. § Civil Rule 3(C)3** where the Defendant's *summary judgment* pursuant to **O.R.C. § Civil Rule 56** was an *affirmative defense* for the first time?

[3.] Did the common pleas court *abuse its discretion* through its fiduciary duty to protect the Plaintiff's constitutional guaranty of its constitutional jurisdiction pursuant to **O.R.C. § 2305.01** by enforcing limited jurisdiction pursuant to **O.R.C. § 1901.01, et seq.**, where the Defendant's *summary judgment* **O.R.C. § Civil Rule 56** was an *affirmative defense* for the first time through a claim that "the common pleas court lacks jurisdiction over federal laws"?

[4.] Did the common pleas court abuse its discretion through its fiduciary duty to protect the Plaintiff's constitutional guaranty in not considering if in fact the *attorney of record* did not appropriately withdraw from the transferee court through and by the change of venue pursuant to **O.R.C. § Civil Rule 3(C)**, since it had original and current jurisdiction over the municipal local laws because the original

attorney of record submitted an out of order withdrawal pursuant to **Muni Loc. R. 3.02(3)** where the municipal [court] granted withdrawal became *void* and never appeared upon the certified municipal court transferred record which would force both Defendant attorneys to cure this defect through the common pleas Local Rules?

{¶ 5} By his assignments of error and argument, Stoyer maintains that the trial court should have granted him relief from judgment because the trial court was wrong to decide the underlying case against him and in favor of Fogelman. Stoyer mistakes the purpose of a Civ.R. 60(B) motion for relief from judgment. A litigant cannot use Civ.R. 60(B) to contest the legal correctness of the underlying judgment. *Karnofel v. Girard Police Dept.*, 11th Dist. No. 2009-T-0045, 2009-Ohio-4446, ¶ 11 ("[A] motion for relief from a final judgment cannot be used to reargue the merits of the case."); *Naples v. Naples*, 9th Dist. No. 08CA009420, 2009-Ohio-1427, ¶ 9 ("[A] Civ.R. 60(B) motion does not provide for the reconsideration of a judgment and cannot be employed to challenge the legal correctness of a trial court's decision."); *Yoakum v. McIntyre*, 7th Dist. No. 03 CO 63, 2005-Ohio-7083, ¶ 31 (" '[A]n appellant may not challenge the legal correctness of a trial court's original decision by means of a Civ.R. 60(B) motion to vacate.' "). Instead, to justify re-opening a final judgment, the litigant must demonstrate one of the five grounds for relief set forth in Civ.R. 60(B)(1) through (5). *Wells Fargo Bank, N.A.. v. Smith*, 10th Dist. No. 09AP-559, 2009-Ohio-6576, ¶ 11. Mere allegation of one or more of these grounds is insufficient. *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20-21 (1988). A litigant must explain why each ground relied upon applies and warrants relief. *Id.*

{¶ 6} Here, although Stoyer cited four of the five Civ.R. 60(B) grounds in his motion, he failed to explain why any of those four grounds justified relief from judgment in this case. Accordingly, we conclude that the trial court did not err in denying Stoyer's Civ.R. 60(B) motion.

{¶ 7} For the foregoing reasons, we overrule all four of Stoyer's assignments of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

CONNOR and DORRIAN, JJ., concur.

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