

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel., DOUGLAS : CASE NO. 2011-2069
D. BYERS :

APPELLANT, :

V. :

MIAMI COUNTY SHERIFF'S OFFICE :
AND CHARLES A. COX, SHERIFF :

ON APPEAL FROM THE SECOND
DISTRICT COURT OF APPEALS
CASE NO. CA 09-CA-42

APPELLEES. :

NOTICE OF DECISION AND ENTRY FROM THE SECOND DISTRICT COURT OF APPEALS

COUNSEL FOR APPELLANT:

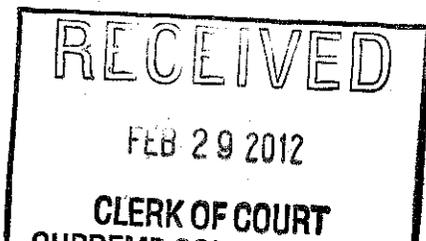
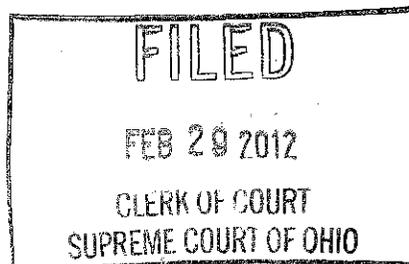
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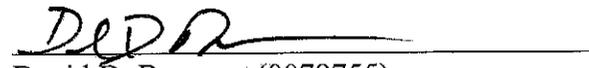
COUNSEL FOR APPELLEE:

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Now comes Relator-Appellant Douglas Byers, and respectfully provides notice to this Court that the Second District Court of Appeals denied Appellant's motion for relief from judgment on February 10, 2012. See attached. On January 18, 2012, this Court ordered that the matter pending before the Ohio Supreme Court be stayed pending the outcome of that decision. Clearly that decision has been rendered. Therefore, because the case in the Second District Court of Appeals has been terminated, Appellant seeks that this matter be reactivated for resolution.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following this 27th day of February, 2012, by regular U.S. Mail.

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IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY

STATE OF OHIO, ex rel., DOUGLAS D. BYERS : Appellate Case No. 09-CA-42

Relator

v.

MIAMI COUNTY SHERIFF'S OFFICE
AND CHARLES A. COX, SHERIFF

Respondents

DECISION AND ENTRY

February 10, 2012

PER CURIAM:

This matter is before the court on Douglas Byers' December 11, 2011 "Motion for Relief from Judgment Pursuant to Civ.R. 60(B)." Byers seeks relief from this Court's November 15, 2011 judgment denying his petition for a writ of mandamus. *State ex rel. Byers v. Miami Cty. Sheriff's Office*, 2d Dist. Miami No. 09-CA-42, 2011-Ohio-6125.

On January 10, 2012, we declined to rule on Byers' Civ.R. 60(B) motion, finding that his intervening notice of appeal to the Supreme Court deprived us of jurisdiction. Byers subsequently sought and obtained an order of remand from the Supreme Court directing us to determine Byers' motion for Civ.R. 60(B) relief.

The controversy in this case involves Byers' reinstatement as a deputy sheriff

following disability leave through Ohio's Public Employees Retirement System ("PERS"). The record shows that Byers initially sought a writ of mandamus compelling the Miami County Sheriff's Office ("MCSO") to restore him to his previous position of deputy sheriff and the salary commensurate thereto or to a similar position and salary, pursuant to R.C. 145.362. Having been reinstated while this action was pending, Byers modified his claim to request backpay and benefits for the time he was not permitted to work, although allegedly entitled to work; attorney's fees; and costs.

Both parties moved for summary judgment. In a final decision rendered November 15, 2011, this Court concluded that Byers had an adequate remedy at law via an appeal to the State Personnel Board of Review ("SPBR"), and we entered a summary judgment in favor of Respondents. *Id.* at ¶¶ 24-25.

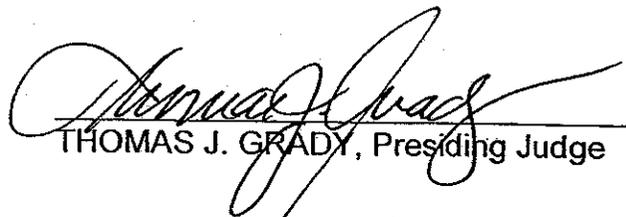
Byers claims entitlement to relief from the final judgment in this matter under Civ.R. 60(B)(1). He argues that the court's decision is based on a mistake, because the Collective Bargaining Agreement ("CBA") governing his employment with MCSO demonstrates that Byers waived his right to pursue claims with the SPBR. However, "a motion for relief from judgment cannot be predicated upon the argument that the trial court [i.e., the court of appeals in this original action] made a mistake in rendering its decision." *Foy v. Trumbull Corr. Inst.*, 10th Dist. Franklin No. 11AP-464, 2011-Ohio-6298, at ¶ 11, citing *Chester Twp. v. Fraternal Order of Police, Ohio Labor Council, Inc.*, 102 Ohio App.3d 404, 408, 657 N.E.2d 348 (11th Dist. Geauga 1995). Civ.R. 60(B)(1) contemplates a mistake by a party or a legal representative, not a mistake by the trial court in its legal analysis. *Id.*, citing *Antonopoulos v. Eisner*, 30 Ohio App.2d 187, 284 N.E.2d 194 (8th Dist. Cuyahoga 1972).

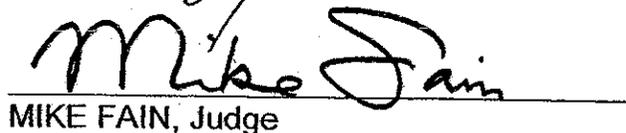
Byers must directly appeal the November 15, 2011 judgment to contest our finding

that his legal remedy was a claim with the SPBR. Civ.R. 60(B) is not a substitute for a direct appeal. *Seitz v. Seitz*, 2d Dist. Montgomery Nos. 22426 & 23698, 2010-Ohio-3655, at ¶ 7.

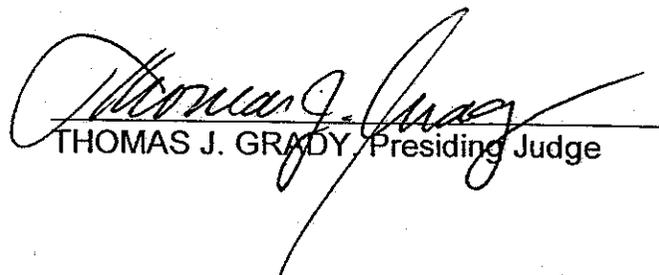
Accordingly, Byers' "Motion for Relief from Judgment Pursuant to Civ.R. 60(B)" is OVERRULED.

SO ORDERED.


THOMAS J. GRADY, Presiding Judge


MIKE FAIN, Judge

To The Clerk: Within three (3) days of entering this judgment on the journal, you are directed to serve on all parties not in default for failure to appear notice of the judgment and the date of its entry upon the journal, pursuant to Civ.R. 58(B).


THOMAS J. GRADY, Presiding Judge

Copies to:

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