

APPENDIX 3

Judgment Entry, Tuscarawas County Court of Common Pleas
(August, 12, 2014)

relevant law.

Plaintiff requests that the Court reconsider its Judgment Entry filed on July 15, 2014. In the alternative, Plaintiff requests relief from judgment pursuant to Civ.R. 60(B)(1) and/or (5). Plaintiff avers that the grounds for these motions are that this Court either made a mistake when referring to the record or made a finding that is not supported by any evidence in the record. Plaintiff argues, therefore, that the judgment, upon reconsideration, should be vacated in favor of entry of judgment in favor of Plaintiff. Plaintiff particularly disagrees with the Court's finding that the Arbitrator's determination that the State met the seven tests of just cause was not unreasonable.

Defendant Ohio Department of Mental Health (hereafter "ODMH") requests that the Court deny Plaintiff's motion. ODMH argues that Bair's motion is improper and without merit. ODMH argues that the Ohio Rules of Civil Procedure do not provide for a motion for reconsideration after a final judgment is entered. ODMH further argues that Plaintiff's motion for relief from judgment is improper because his arguments may be raised on appeal.

The Ohio Rules of Civil Procedure do not prescribe motions for reconsideration after a final judgment in the trial court. *Pitts v. Ohio Dept. of Transp.* (1981), 67 Ohio St.2d 378, 380, 423 N.E.2d 1105 (1981). Without a specific prescription in the Civil Rules for a motion for reconsideration, it must be considered a nullity. *Pitts*, at 380.

Civ.R. 60(B) provides, in relevant part, that "[o]n 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. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation."

"To prevail on [a] motion under Civ.R. 60(B), the movant must demonstrate that (1) the party has a meritorious defense or claim to present if relief is granted, (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceeding was entered or taken." *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 150-

151, 351 N.E.2d 113 (1976), citing Civ.R. 60(B).

"[A] motion for relief from judgment cannot be predicated upon the argument that the trial court made a mistake in rendering its decision." *Tonti v. Tonti*, 10th Dist. Franklin Nos. 03AP-494, 03AP-728, 2004-Ohio-2529, ¶130, citing *Chester Twp. v. Fraternal Order of Police*, 102 Ohio App.3d 404, 408, 657 N.E.2d 348 (1995). "The type of mistake contemplated by Civ.R. 60(B)(1) is a mistake by a party or his legal representative, not a mistake by the trial court in its legal analysis." *Tonti*, at ¶130, citing *Antonopoulos v. Eisner*, 30 Ohio App.2d 187, 284 N.E.2d 194 (1972).

Ohio "Civil Rule 60(B)(5) is only to be used in an extraordinary and unusual case when the interests of justice warrants it." *Adomeit v. Baltimore*, 39 Ohio App.2d 97, 105, 316 N.E.2d 469 (8th Dist. 1974); *See also Hopper v. Euclid Manor Nursing Home, Inc.*, 867 F.2d 291, 294 (6th Cir. 1989) (interpreting the analogous provision found in Fed. R. Civ. P. 60(b)). The grounds for invoking relief under Civ.R. 60(B)(5) must be "substantial." *In re J.W.*, 9th Dist. No. 26874, 2013-Ohio-4368, ¶29.

The Court **FINDS** that the Court's Judgment Entry filed on July 15, 2014, was a final judgment.

The Court **FINDS**, therefore, that Plaintiff's request for reconsideration is not well taken and must be denied.

The Court further **FINDS** that Plaintiff is averring that the Court made a mistake in

rendering its decision.

Upon review, the Court **FINDS** that Plaintiff has not persuaded the Court that the findings and conclusions reached by the Court in its Judgment Entry filed on July 15, 2014, were the result of a mistake or error.

The Court further **FINDS** that Plaintiff is not entitled to the relief sought under Civ.R. 60(B)(1) based upon an alleged mistake made by this court in its legal analysis and/or in rendering its decision.

The Court **FINDS** that Plaintiff has not shown that relief is warranted or appropriate under Civ.R. 60(B)(5).

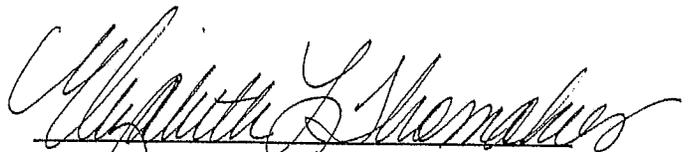
The Court **FINDS**, therefore, that Plaintiff's Motion for Reconsideration of Judgment Entry and Motion for Relief from Judgment is not well taken and should be denied.

It is therefore **ORDERED** that Plaintiff's Motion for Reconsideration of Judgment Entry and Motion for Relief from Judgment is denied.

It is further **ORDERED** that Court costs shall be assessed to Plaintiff.

It is further **ORDERED** that the Clerk of Courts shall close the case file and remove it from the pending docket of the undersigned.

IT IS SO ORDERED.


Judge Elizabeth Lehigh Thomakos

Dated: August 12, 2014

cc: S. David Worhatch, Esq.
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Mediation Department
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