[Cite as *Swaney v. Swaney*, 2015-Ohio-2456.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

JOYCE L. SWANEY,	:	**O P I N I O N**
Plaintiff-Appellee,	:	
		CASE NO. 2014-T-0084
- vs -	:	
CHALMER A. SWANEY, SR.,	:	
Defendant-Appellant.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Domestic Relations Division, Case No. 10 DR 424.

Judgment: Affirmed.

Charles E. Dunlap, 7330 Market Street, Youngstown, OH 44512 (For Plaintiff-Appellee).

Daniel G. Keating, Keating, Keating & Kuzman, 170 Monroe Street, N.W., Warren, OH 44483 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Chalmer A. Swaney, Sr., appeals from the August 27, 2014 judgment entry of the Trumbull County Court of Common Pleas, Domestic Relations Division, denying his Civ.R. 60(B) motion for relief from the portion of the Judgment Entry Decree of Divorce issued on July 17, 2013, concerning appellant's pension. For the following reasons, the judgment of the trial court is hereby affirmed.

{¶2} On July 22, 2013, the marriage of Chalmer A. Swaney, Sr. and Joyce L. Swaney was terminated by an Agreed Judgment Entry. This entry included a stipulation

that appellant's pension, accrued through his employment with the Weathersfield Township Local School District, would be equally divided with appellee, with the exception of appellant receiving $150 per month from appellee to equalize the benefits received between them. It provided, in relevant part:

> (B) That the Plaintiff and Defendant shall share equally in the Defendant's pension accrued during the course of the marriage through the Weathersfield Township Schools. The entire pension was acquired during the course of the marriage and the same shall be divided by way of Division of Property Order with the Plaintiff Wife receiving fifty percent (50%) of the accumulated benefit less One Hundred Fifty Dollars ($150.00) per month. In the event that the One Hundred Fifty Dollar ($150) deduction cannot be made by way of a Division of Property Order, then the Plaintiff Wife shall receive her fifty percent (50%) interest in the Defendant's pension and shall be obligated to pay directly to the Defendant the sum of One Hundred Fifty Dollars ($150.00) per month as equalization of her social security benefits.

{¶3} After entering into this agreement, appellant became aware the State Teachers Retirement System would not accommodate the parties' request to deduct $150 per month from appellant's benefits. Appellant also became aware that appellee had a judgment against her in a separate matter in the amount of $4,001.60. Appellant filed a motion for relief from judgment, pursuant to Civ.R. 60(B)(5), on August 7, 2014, which was denied by the trial court. The trial court found "that at the time of the Judgment Entry the parties stipulated, agreed and provided for an alternative in the event One Hundred Fifty Dollars ($150.00) could not be deducted by way of a Division of Property Order. The Court does not find a reason for justifying relief from judgment."

{¶4} Appellant filed a timely notice of appeal and asserts the following assignment of error for our review:

{¶5} "The trial court erred to the prejudice of appellant in failing to hold an evidentiary hearing on appellant's motion for relief from judgment."

{¶6} "A motion for relief from judgment under Civ.R. 60(B) is addressed to the sound discretion of the trial court, and that court's ruling will not be disturbed on appeal absent a showing of abuse of discretion." *Griffey v. Rajan*, 33 Ohio St.3d 75, 77 (1987).

{¶7} Civil Rule 60(B) provides as follows:

> On motion and upon such terms as are just, the court may relieve a party * * * 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 * * *; (4) the judgment has been satisfied, released or discharged * * *; 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.

{¶8} As stated in Civ.R. 60(B)(5), relief is to be granted for "any other reason justifying relief from the judgment." Civ.R. 60(B)(5) is a catch-all provision, which reflects "the inherent power of a court to relieve a person of the unjust operation of a judgment." *Smith v. Smith*, 8th Dist. Cuyahoga No. 83275, 2004-Ohio-5589, ¶16.

{¶9} Thus, Civ.R. 60(B) provides parties with an equitable remedy requiring a court to revisit a final judgment and possibly grant relief from that judgment when in the interest of justice. *In re Edgell*, 11th Dist. Lake No. 2009-L-065, 2010-Ohio-6435, ¶53. Civ.R. 60(B) is a curative rule that is designed to be liberally construed with the focus of reaching a just result. *Hiener v. Moretti*, 11th Dist. Ashtabula No. 2009-A-0001, 2009-Ohio-5060, ¶18. "Moreover, Civ.R. 60(B) has been viewed as a mechanism to create a balance between the need for finality and the need for 'fair and equitable decisions

based upon full and accurate information.'" *Id*., quoting *In re Whitman*, 81 Ohio St.3d 239, 242 (1998).

{¶10} The decision of whether to grant relief under Civ.R. 60(B) is entrusted to the sound discretion of the trial court. *Whitman, supra*, at 242, citing *Griffey*, *supra*, at 77. Accordingly, we review the decision of the trial court for an abuse of discretion. *Id*. An abuse of discretion is the trial court's "'failure to exercise sound, reasonable, and legal decision-making.'" *State v. Beechler*, 2d Dist. Clark No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting *Black's Law Dictionary* 11 (8th Ed.2004).

{¶11} We do not find error in the trial court's determination that appellant's Civ.R. 60(B) motion is without merit, as it failed to comply with the three-prong test set forth by the Ohio Supreme Court in *GTE Automatic Elec., Inc. v. ARC Industries, Inc*., 47 Ohio St.2d 146 (1976). First, where the grounds of relief are Civ.R. 60(B)(1)-(3), the motion must be timely, i.e., not more than one year after the judgment or order was entered; otherwise, the motion must be made within a reasonable amount of time. Second, the party must be entitled to relief under Civ.R. 60(B)(1)-(5). Finally, the party must have a meritorious defense or claim to raise if relief is granted. *Id*. at paragraph two of the syllabus. A party must satisfy each of the three prongs to be entitled to relief. *KMV V Ltd. v. Debolt*, 11th Dist. Portage No. 2010-P-0032, 2011-Ohio-525, ¶24. If one prong is not satisfied, the entire motion must be overruled. *Id*., quoting *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20 (1988).

{¶12} Here, appellee has yet to violate her requirement of sending appellant $150 per month as mandated by the divorce decree. As evidenced in appellant's motion for relief from judgment, appellant merely fears that appellee will not pay the

$150 per month in a timely manner and that he will be "forced to repeatedly pursue remedies against" her. Although appellant maintains the trial court's failure to hold a hearing on his motion was error, "[t]he trial court's failure to hold a hearing [on a Civ.R. 60(B) motion] * * * does not rise to the level of an abuse of discretion." *HPSC, Inc. v. Estate of Scarso*, 11th Dist. Lake No. 2009-L-176, 2010-Ohio-5397, ¶20 (citation omitted). The Civil Rules do not require the trial court to hold a hearing before granting or dismissing a Civ.R. 60(B) motion. *Adomeit v. Baltimore*, 39 Ohio App.2d 97, 103 (8th Dist.1974) (where all three *GTE* requirements were not satisfied, the trial court did not commit error in refusing to grant a hearing to the appellants). Under these circumstances, it was within the trial court's discretion to deny the motion without a hearing.

{¶13} Here, the parties agreed to the aforementioned provision in the Agreed Judgment Entry regarding the terms of the pension. It was not error for the trial court to refuse to allow a Civ.R. 60(B) motion to recast the terms of the agreement under these circumstances.

{¶14} Appellant's sole assignment of error is without merit.

{¶15} Based on the foregoing reasons, the judgment of the Trumbull County Court of Common Pleas, Domestic Relations Division, is hereby affirmed.

CYNTHIA WESTCOTT RICE, J.,

COLLEEN MARY O'TOOLE, J.,

concur.