

[Cite as *Ahmed v. McCort*, 2004-Ohio-559.]

STATE OF OHIO, BELMONT COUNTY  
IN THE COURT OF APPEALS  
SEVENTH DISTRICT

NAWAZ AHMED	)	CASE NO. 02 BA 8
	)	
PLAINTIFF-APPELLANT	)	
	)	
VS.	)	OPINION AND
	)	JOURNAL ENTRY
SHERIFF THOMAS McCORT, et al.	)	
	)	
DEFENDANTS-APPELLEES	)	

CHARACTER OF PROCEEDINGS: Appellant's Motion for Reconsideration  
and Motion to Certify Conflict  
Case No. 01-CV-025

JUDGMENT: Overruled.

APPEARANCES:

For Plaintiff-Appellant: Mr. Nawaz Ahmed, Pro-se  
A404-511  
Mansfield Correctional Institution  
P.O. Box 788  
Mansfield, Ohio 44901

For Defendants-Appellees: Atty. Mark Landes  
Atty. John E. Vincent  
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JUDGES:

Hon. Cheryl L. Waite  
Hon. Gene Donofrio

Hon. Mary DeGenaro

Dated: February 3, 2004

PER CURIAM.

{¶1} Appellant Nawaz Ahmed has filed a motion for reconsideration of our Opinion in *Ahmed v. McCort*, 7th Dist. No. 02 BA 8, 2003-Ohio-6002, pursuant to App.R. 26(A). Appellant has also filed a motion to certify a conflict as set forth in App.R. 25. For the following reasons, we overrule both motions.

{¶2} “The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been.” *Columbus v. Hodge* (1987), 37 Ohio App.3d 68, 523 N.E.2d 515, paragraph one of the syllabus.

{¶3} As a preliminary matter, Appellant has requested to submit new evidence in support of his motion for reconsideration. In support he cites a prior case from this Court, *Jefferson Place Condominium Assn. v. Naples* (1998), 125 Ohio App.3d 394, 401, 708 N.E.2d 771, discretionary appeal not allowed (1998), 81 Ohio St.3d 1527. *Jefferson Place* dealt with whether or not the trial court had personal jurisdiction over the defendant in a civil case, and has nothing to do with the issues involved in the instant appeal. Appellant is apparently not aware that this Court, as a reviewing court, may only review the official record as presented to us in conformity with the Rules of Appellate Procedure. “It is axiomatic that a court of appeals is bound by the record before it and may not consider facts extraneous to the record.” *State v. Morgan*

(1998), 129 Ohio App.3d 838, 842, 719 N.E.2d 102. Therefore, we overrule Appellant's motion to add new material to the record.

{¶4} In our original Opinion, we dismissed Appellant's appeal as being untimely under App.R. 4(A). Appellant acknowledges that the trial court filed a judgment entry on January 28, 2002, granting summary judgment to Appellees and that there is a notation of service of the judgment entry upon all counsel and parties. Neither notice of appeal filed by Appellant was properly filed within thirty days of the January 28, 2002, judgment entry, and for this reason we dismissed the appeal. Appellant makes a number of unsupported claims that the original judgment entry was not signed by the trial judge and that the judgment entry was tampered with, but the record reflects nothing irregular in the January 28, 2002, Judgment Entry that was the subject matter of the appeal. The record reveals that the trial judge properly signed the entry, and there are no unusual markings on the entry. Appellant also suggests that this Court lacked jurisdiction to consider whether the appeal was timely filed, but we reject this argument. The timeliness of a notice of appeal goes to the subject matter jurisdiction of this Court, and we may review questions of subject matter jurisdiction at any time upon motion by the parties or sua sponte. *Graham*, 147 Ohio App.3d 452, 2002-Ohio-2407, 770 N.E.2d 1123, at ¶29.

{¶5} Appellant also argues that we should have relied on certain handwritten notations on the March 12, 2002, notice of appeal rather than on the date stamp. Appellant cites *William Cherry Trust v. Hoffman* (1985), 22 Ohio App.3d 100, 489 N.E.2d 832, in support. The case that Appellant has cited does not support his argument. *William Cherry Trust* held that:

{¶6} “the practice of file-stamping judgment entries is not necessarily the only or the exclusive method that may be used to comply with Civ.R. 58, so long as there is some indication on the document *that* it was filed with the trial court clerk and, most importantly, *when*. But, whatever the particular method used, the practice of endorsing the date of filing on the judgment entry (or, for example, on notice of appeal) has been held to be ‘evidence that it was filed on that date,’ which is all that an appellate court needs to determine the timeliness of the appeal for jurisdictional purposes.” (Emphasis in original.) (Citations omitted.) *Id.* at 106, 489 N.E.2d 832.

{¶7} We do note that one clarification may be necessary arising from our judgment in this case. Appellant asserts out that we did not specifically rule upon his fourth assignment of error dealing with the February 20, 2002 Judgment Entry overruling his Civ.R. 60(B) motion for relief from judgment. For the most part, Appellant’s fourth assignment of error was actually an attempt to argue the merits of

the January 28, 2002 Judgment Entry granting summary judgment to Appellees. It was this January 28, 2002, Judgment Entry that Appellant failed to timely appeal. A party cannot use a Civ.R. 60(B) motion as a substitute for a timely appeal. *Key v. Mitchell* (1998), 81 Ohio St.3d 89, 90-91, 689 N.E.2d 548, 549. Therefore, we could not consider most of the arguments raised by Appellant in his fourth assignment of error.

{¶8} Furthermore, a trial court has broad discretion in granting a motion for relief from judgment under Civ.R. 60(B). *Griffey v. Rajan* (1987), 33 Ohio St.3d 75, 77, 514 N.E.2d 1122. A trial court's ruling on a Civ.R. 60(B) motion will not be disturbed on appeal unless it can be shown that the trial court abused its discretion. *Id.* The trial court's stated reason for overruling Appellant's Civ.R. 60(B) motion was that the motion was merely an attempt to supplement the trial record beyond the time limits set by the court, and the record supports the trial court's conclusion. The trial court scheduled a hearing on December 10, 2001, to rule on Appellees' motion for summary judgment, Appellant filed a response, and the hearing took place as scheduled. It does not appear that Appellant moved for a continuance or extension of the hearing date. Appellant obviously knew how to file motions with the trial court, because the record is replete with them. Therefore, we find no abuse of discretion in the trial

court's February 20, 2002, decision to overrule Appellant's motion for relief from judgment. Appellant's fourth assignment of error is overruled.

{¶9} Finally, with respect to Appellant's motion to certify a conflict, we must point out that in order to qualify for certification to the Supreme Court of Ohio pursuant to Section 3(B)(4), Article IV of the Ohio Constitution, a case must meet the following three conditions:

{¶10} "First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict *must* be 'upon the same question.' Second, the alleged conflict must be on a rule of law--not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals." (Emphasis sic.) *Whitelock v. Gilbane Bldg. Co.* (1993), 66 Ohio St.3d 594, 596, 613 N.E.2d 1032, 1034.

{¶11} The first five of the alleged conflicts that Appellant sets forth do not attempt to conform to the requirements of *Whitelock* and are overruled. The sixth alleged conflict deals with our failure to rule upon Appellant's designated fourth assignment of error concerning the February 20, 2002, judgment entry. To the extent

that we have specifically ruled upon this so-called assignment of error in this Opinion, any claim of a conflict is now moot.

**{¶12}** In conclusion, we overrule Appellant's motion for reconsideration. We hereby clarify our decision concerning his original fourth assignment of error and formally overrule Appellant's fourth assignment of error. As we also find no merit in Appellant's motion to certify a conflict, this motion is also overruled.

Waite, P.J., Donofrio and DeGenaro, JJ., concur.