

COURT OF APPEALS  
TUSCARAWAS COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

PHILLIP J. BONANNO, PRO SE	:	JUDGES:
	:	Patricia A. Delaney, P.J.
Plaintiff-Appellant	:	John W. Wise, J.
	:	Craig R. Baldwin, J.
-vs-	:	
	:	Case No. 2024AP080027
TUSCARAWAS COUNTY JOB AND	:	
FAMILY SERVICES	:	
	:	<u>OPINION</u>
Defendant-Appellee	:	

CHARACTER OF PROCEEDING: Appeal from the Tuscarawas County Court of Common Pleas, Case No. 2023 CV 10 0690

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: January 15, 2025

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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*Delaney, P.J.*

{¶1} Appellant Phillip J. Bonanno appeals from a July 17, 2024 judgment entry of the Tuscarawas County Court of Common Pleas, General Division, overruling his Civ.R. 60(B) motion. Appellee is the Tuscarawas County Department of Job and Family Services.

### **FACTS AND PROCEDURAL HISTORY**

{¶2} The Tuscarawas County Court of Common Pleas, Juvenile Division granted permanent custody of appellant's children to appellee in a separate, unrelated action to the instant appeal.

{¶3} On October 2, 2023, appellant filed a pro se "Petition for Writ of Habeas Corpus" against appellee in the Tuscarawas County Court of Common Pleas, General Division. The habeas petition addressed custody of the children; appellant moved the trial court to produce the children and to certify that lawful power was followed to terminate his parental rights, or in the alternative to discharge his children from appellee's custody. Appellee moved to dismiss the petition for failure to comply with R.C. 2725.04 and the trial court granted the motion to dismiss via judgment entry dated March 4, 2024.

{¶4} Appellant did not timely appeal from the March 4, 2024 decision.

{¶5} On May 31, 2024, appellant filed a motion pursuant to Civ.R. 60(B) entitled "Motion Extrinsic Fraud on the Courts" arguing he was unfairly excluded from the permanent custody proceedings and the Juvenile Division lacked jurisdiction because he was incarcerated in federal prison in Pennsylvania. Appellee moved to dismiss the 60(B) motion as improperly filed in the habeas action because appellant sought relief

from final judgment in the permanent custody case. On July 17, 2024, the trial court overruled appellant's 60(B) motion.

{¶6} Appellant appealed from the trial court's decision of March 4, 2024, but also referenced the decision of July 17, 2024. Appellee moved to dismiss the appeal. We granted the motion to dismiss the appeal from the March 4, 2024 judgment entry but ruled we have jurisdiction to consider an appeal from the July 17, 2024 judgment entry.

{¶7} Appellant now appeals from the trial court's decision of July 17, 2024.

### **ASSIGNMENT OF ERROR**

{¶8} [THE TRIAL COURT ERRED IN DENYING APPELLANT'S 60(B) MOTION FOR LACK OF JURISDICTION.]<sup>1</sup>

### **ANALYSIS**

{¶9} The thrust of appellant's argument is that the General Division of the Tuscarawas County Court of Common Pleas abused its discretion in overruling his Civ.R. 60(B) motion. We disagree.

{¶10} At minimum, pro se litigants are required to comply with rules of practice and procedure. *State v. Hamm*, 2024-Ohio-1621, ¶ 18 (5th Dist.), citing *Hardy v. Belmont Correctional Inst.*, 2006-Ohio-3316, ¶ 9 (10th Dist.). We understand that "an appellate court will ordinarily indulge a pro se litigant where there is some semblance of compliance with the appellate rules." *State v. Richard*, 2005-Ohio-6494, ¶ 4 (8th Dist.) (internal quotation omitted). In the instant case, there is some semblance of compliance with

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<sup>1</sup> As discussed *infra*, appellant's brief contains a heading stating "Assignments of error" followed by three numbered sections of text. This text is not, however, assignments of error arising from the judgment but only numbered paragraphs of argument which do not comply with App.R. 16(A)(3).

appellate rules to the extent that appellant argues the trial court should have granted his 60(B) motion, but the point of appellant's disjointed argument challenges the final judgment in the permanent custody case, a matter not under review here.

{¶11} Nevertheless, we will address appellant's argument on the merits to the extent appropriate. See, *Hamm*, supra. "[I]t is a fundamental tenet of judicial review in Ohio that courts should decide cases on the merits." *DeHart v. Aetna Life Ins. Co.*, 69 Ohio St.2d 189 (1982). We can sufficiently discern the facts supporting appellant's argument from the record in the instant case. Therefore, in the interests of justice, we shall review appellant's argument.

{¶12} Regarding the July 17, 2024 judgment entry, appellant has not assigned error per se but argues the trial court erred in overruling his Civ.R. 60(B) motion for lack of jurisdiction. To prevail on a motion for relief from judgment brought under Civil Rule 60(B), a 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 Civil Rule 60(B)(1) through (5); and (3) the motion is made within a reasonable time. *U.S. Bank, N. A. v. Hurr*, 2024-Ohio-5382, ¶ 13 (5th Dist.), citing *GTE Automatic, Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146 (1976). A failure to establish any one of the three requirements will cause the motion to be overruled. *Id.*, citing *Argo Plastic Products Co. v. Cleveland*, 15 Ohio St.3d 389 (1984).

{¶13} A motion for relief from judgment is addressed to the sound discretion of the trial court and must not be disturbed by this Court absent an abuse of discretion. *Id.*, ¶ 14, citing *Griffey v. Rajan*, 33 Ohio St.3d 75 (1987). The Supreme Court of Ohio

defined the term abuse of discretion as implying the court's attitude is unreasonable, arbitrary, or unconscionable. *Id.*, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217 1983).

{¶14} The juvenile court has exclusive original jurisdiction over matters related to any child taken into custody for abuse, neglect, or dependency, and to hear and determine any application for a writ of habeas corpus involving custody of a child. R.C. 2151.23(A)(1) and (3). The General Division of the Court of Common Pleas lacks jurisdiction over matters related to custody of a child. In the instant case, appellant's petition for habeas corpus and the Civ.R. 60(B) motion for reconsideration arose from the juvenile court's decision in the permanent custody proceeding. The trial court (General Division) was without jurisdiction over either matter. R.C. 2151.23(A)(1) and (3).

{¶15} We have reviewed the proceedings in the trial court as related to the May 31, 2024 motion filed by appellant, and find no error in the trial court's judgment overruling the motion for lack of jurisdiction. See, *State v. Hutchison*, 2022-Ohio-219, ¶ 11 (5th Dist.). The trial court did not abuse its discretion and the judgment is affirmed.

## **CONCLUSION**

{¶16} Appellant's assignment of error is overruled and the judgment of the Tuscarawas County Court of Common Pleas is affirmed.

By: Delaney, P.J.,

Wise, J. and

Baldwin, J., concur.