

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

SPCG PROPERTIES, LTD., :  
 :  
 Plaintiff-Appellee, :  
 : No. 113609  
 v. :  
 :  
 TASHA M. MOORE, :  
 :  
 Defendant-Appellant. :  
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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: October 10, 2024**

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Civil Appeal from the Euclid Municipal Court  
Case No. 13-CVG-03818

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***Appearances:***

Powers Friedman Linn, PLL, Thomas P. Owen, Robert G. Friedman, and Rachel E. Cohen, *for appellee*.

Tasha Moore, *pro se*.

MARY J. BOYLE, J.:

{¶ 1} In this appeal, defendant-appellant, Tasha M. Moore (“Moore”), pro se, challenges the Euclid Municipal Court’s judgment denying Moore’s motion to vacate the judgment issued in plaintiff-appellee, SPCG Properties, Ltd.’s (“SPCG”) 2013 forcible entry and detainer action against Moore. Moore claims that she does

not owe SPCG any money and her rent was never in default. For the reasons set forth below, we affirm.

## **I. Facts and Procedural History**

{¶ 2} In December 2013, SPCG filed eviction proceedings against Moore for the nonpayment of rent based upon a written lease agreement. According to SPCG's complaint, Moore leased an apartment in Euclid, Ohio from SPCG and owed \$805 in back rent and late charges. SPCG's complaint included two causes of action — a writ of restitution and money damages related to Moore's occupancy of the property. The matter was set for an eviction hearing. On January 7, 2014, the court entered a judgment in favor of SPCG on its first cause of action and issued a writ of restitution. On January 13, 2014, the bailiff filed a return of service on the writ indicating that Moore had vacated the property. We note that Moore initially filed an answer on January 6, 2014, but failed to include a certificate of service; therefore, on January 14, 2014, the court instructed her to refile her answer.

{¶ 3} After filing her pro se answer, SPCG served discovery requests on Moore that, according to SPCG, went unanswered. As a result, SPCG moved for summary judgment in June 2014. SPCG attached to its motion a ledger indicating that Moore owed it \$5,364.62. This amount consisted largely of rent and late fees and, according to SPCG, also included approximately \$1,100 in property damage to the unit. Moore did not oppose the motion, and the trial court granted summary judgment in favor of SPCG in July 2014. The court found that no genuine issues of

material facts exist and rendered judgment against Moore in the amount of \$5,364.62 plus 3% interest. Moore did not appeal this judgment.

{¶ 4} Then, nine years later, on July 11, 2023, Moore filed a pro se motion to vacate the judgment.<sup>1</sup> SPCG opposed, and the matter proceeded to a hearing before a magistrate, where both parties were present. Following the hearing, the magistrate issued a decision on November 13, 2023, denying Moore's motion to vacate. Moore filed objections to the magistrate's decision, and SPCG filed a brief in opposition to Moore's objections. On January 5, 2024, the court issued its judgment overruling Moore's objections and adopting the magistrate's decision. The court treated Moore's motion to vacate judgment as a motion for relief from judgment under Civ.R. 60(B) and found that Moore's motion was untimely because she waited nine years to file her motion and Moore failed to articulate any grounds for relief under Civ.R. 60(B)(1)-(5).<sup>2</sup> The court further noted that Moore cannot use Civ.R. 60(B) as a substitute for an appeal.

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<sup>1</sup> A review of the Euclid Municipal Court's docket in SPCG's garnishment case against Moore reveals that on March 29, 2023, SPCG initiated bank attachment in the amount of \$7,226.48 against Moore and Fifth Third Bank. On April 17, 2023, Fifth Third Bank filed an answer that no funds were available. Then on January 5, 2024, SPCG initiated a garnishment order against Moore and Riser Foods Company in the amount of \$7,482. This garnishment is currently pending. *See SPCG Properties Ltd. v. Moore*, Euclid M.C. No. 13CVG03818. Although this docket is not part of our appellate record, we may take judicial notice of the docket entries. *Zhong v. Liang*, 2020-Ohio-3724, ¶ 20 (8th Dist.), citing *State v. Cuyahoga Cty. Common Pleas Court*, 2019-Ohio-3782, ¶ 5 (8th Dist.); *In re N.V.*, 2017-Ohio-975, ¶ 19 (8th Dist.); *Sultaana v. Horseshoe Casino*, 2015-Ohio-4083, ¶ 4 (8th Dist.); *State ex rel. Ormond v. Solon*, 2009-Ohio-1097, ¶ 15 (8th Dist.).

<sup>2</sup> The court also noted that Moore failed to file a transcript or an affidavit with her objections.

{¶ 5} It is from this order that Moore now appeals, raising the following six assignments of error for review:

**Assignment of Error I:** [SPCG] failed to tell Euclid Municipal Court that [Moore] was not a full paying tenant for the two-bedroom apartment. [Moore] had EDEN Housing US Department of Housing and Urban Development federally funded sharing the costs of her rent subsidized.

**Assignment of Error II:** [SPCG] and their [attorneys] failed to disclose and outline any damages to the property to [Moore] and Eden Housing.

**Assignment of Error III:** Euclid Municipal Court failed to mention that [Moore] corresponded with their courts and [SPCG's attorneys] for many years totaling ten years which is beyond the statute of limitations to get a breakdown of the debts that was in question.

**Assignment of Error IV:** Euclid Municipal Court failed to acknowledge and dismiss this case as [SPCG] did not have relevant information to bring forth these monetary claims on [Moore].

**Assignment of Error V:** Euclid Municipal Court failed to subpoena Eden Housing to any court proceedings involving their client [Moore].

**Assignment of Error VI:** [SPCG] failed to inform their [attorneys] that the property failed inspection under Eden Housing failed housing quality standard inspection therefore the rent for November 2013 and December 2013 was abated until all such repairs were deemed passable to EDEN Housing guidelines therefore [Moore] was not responsible for abatements that Eden Housing brought forth.

## II. Law and Analysis

{¶ 6} Moore essentially argues that she never owed SPCG back rent and does not owe the \$5,364.62 judgment issued by the court, which has accrued to \$7,482 with interest. According to Moore, EDEN, the organization that provided her with rent assistance, withheld rent payments to SPCG because SPCG failed to make certain repairs in the apartment to render the apartment safe according to

EDEN's standards. SPCG counters that Moore failed to timely appeal the court's decision granting summary judgment and Moore's attempt to vacate this order amounts to "procedural sidestepping." We agree.

{¶ 7} We note that the trial court is vested with discretion in determining whether to grant a motion for relief from judgment under Civ.R. 60(B) and that court's ruling will not be disturbed on appeal absent a showing of abuse of discretion. *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20 (1988). An abuse of discretion occurs when a court exercises "its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority." *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35.

{¶ 8} Civ.R. 60(B) provides in relevant part:

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 (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.

{¶ 9} Under the rule, the moving party is required to establish (1) a meritorious claim or defense in the event relief is granted, (2) entitlement to relief

under one of the provisions of Civ.R. 60(B)(1) through (5), and (3) timeliness of the motion. *GTE Automatic Elec. Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146 (1976), paragraph two of the syllabus.

{¶ 10} A Civ.R. 60(B) motion for relief from judgment, however, may not be used as “a substitute for a timely appeal.” *Doe v. Trumbull Cty. Children Servs. Bd.*, 28 Ohio St.3d 128 (1986), paragraph two of the syllabus. “Thus, when a party merely reiterates arguments that concern the merits of the case and that could have been raised on appeal, relief under Civ.R. 60(B) is not available as a substitute for appeal.” *Blount v. Smith*, 2012-Ohio-595, ¶ 9 (8th Dist.), citing *Buoscio v. Kinkopf*, 2000 Ohio App. LEXIS 3772 (8th Dist. Aug. 17, 2000); *Wozniak v. Tonidandel*, 121 Ohio App.3d 221, 228 (8th Dist. 1997).

{¶ 11} In the instant case, Moore’s appeal and her motion to vacate challenge the trial court’s order dated July 17, 2014, which granted summary judgment against Moore. Moore did not timely appeal that order as required under App.R. 4.<sup>3</sup> (“[A] party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal . . . within 30 days of that entry.) Rather, Moore waited nine years and filed a motion to vacate judgment on July 11, 2023, in which she contested the court’s July 2014 order. The court denied the motion, treating it as a motion for relief from judgment under Civ.R. 60(B). *State v. Schlee*, 2008-Ohio-545, ¶ 12,

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<sup>3</sup> We note that in Ohio, pro se litigants are held to the same standard as all other litigants; that is, they must comply with the rules of procedure and must accept the consequences of their own mistakes. *In re Estate of O’Toole*, 2019-Ohio-4165, ¶ 23 (8th Dist.), citing *Kilroy v. B.H. Lakeshore Co.*, 111 Ohio App.3d 357, 363 (8th Dist. 1996).

citing *State v. Bush*, 2002-Ohio-3993, citing *State v. Reynolds*, 79 Ohio St.3d 158 (1999) (“Courts may recast irregular motions into whatever category necessary to identify and establish the criteria by which the motion should be judged.”).

**{¶ 12}** In her Civ.R. 60(B) motion, Moore fails to allege or demonstrate any circumstances arising under Civ.R. 60(B)(1)-(5) to support relief from judgment. Thus, Moore’s motion was improperly filed as a substitute for an appeal and the trial court correctly denied it. *Smith* at ¶ 10, citing *Buoscio* at \*1-4 (where the plaintiff filed a complaint against defendant for legal malpractice. The trial court awarded defendant summary judgment, and plaintiff then filed a motion for relief from judgment, arguing errors by the trial court with respect to defendant’s motion for summary judgment. The trial court denied plaintiff’s Civ.R. 60(B) motion and plaintiff appealed. We found that the trial court correctly denied plaintiff’s Civ.R. 60(B) motion because plaintiff’s motion was improperly filed as a substitute for an appeal.).

**{¶ 13}** Accordingly, Moore’s assignments of error are overruled.

**{¶ 14}** Judgment is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27  
of the Rules of Appellate Procedure.

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MARY J. BOYLE, JUDGE

MICHELLE J. SHEEHAN, P.J., and  
LISA B. FORBES, J., CONCUR