

[Cite as *L.W. v. A.B.*, 2024-Ohio-4913.]

[Please see vacated opinion at 2024-Ohio-3109.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

| | | |
|----------------------|---|------------|
| L.W., | : | |
| | : | |
| Plaintiff-Appellee, | : | No. 113397 |
| | : | |
| v. | : | |
| | : | |
| A.B., | : | |
| | : | |
| Defendant-Appellant. | : | |

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 10, 2024

Civil Appeal from the Cuyahoga County Common Pleas Court
Case No. CV-19-912149

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Gregory Ochocki, Assistant Prosecuting Attorney, *for appellee.*

Cullen Sweeney, Cuyahoga County Public Defender, and Michael V. Wilhelm, Assistant Public Defender, *for appellant.*

ON RECONSIDERATION¹

ANITA LASTER MAYS, J.:

{¶1} Pursuant to App.R. 26(A)(1)(a), defendant-appellant, A.B., has filed an application for reconsideration of this court’s opinion in *L.W. v. A.B.*, 2024-Ohio-3109 (8th Dist.). Upon review, appellant’s motion for reconsideration is granted.

{¶2} Defendant-appellant A.B. appeals the trial court’s decision sua sponte vacating his expungement order. We affirm the trial court’s decision because the trial court’s original order granting A.B.’s motion to seal court records of a civil protection order was granted in contingency upon the issuing of a supplemental journal entry.

{¶3} On October 19, 2023, the trial court granted A.B.’s motion to seal and stated that a supplemental journal entry would follow. However, on October 24, 2023, the State opposed A.B.’s motion, and on October 25, 2023, the trial court vacated its previous decision to grant A.B.’s motion and stated that A.B. “failed to provide proof of unusual and exceptional circumstances,” citing *Schussheim v. Schussheim*, 2013-Ohio-4529. Journal Entry No. 162770198 (Oct. 25, 2023).

{¶4} A.B. filed an appeal, assigning one error for our review:

The trial court erred in sua sponte vacating its valid expungement entry.

¹ The opinion released by this court on August 15, 2024, *L.W. v. A.B.*, 2024-Ohio-3109 (8th Dist.), is hereby vacated and substituted with this opinion.

Law and Analysis

{¶5} In A.B.'s sole assignment of error, he argues that the trial court lacked jurisdiction to vacate its own order. On October 4, 2023, A.B. filed a motion to seal court records of a civil protection order. On October 19, 2023, the trial court granted the motion and stated that the supplemental journal entry would follow. However, on October 24, 2023, the State opposed A.B.'s motion. On October 25, 2023, the trial court then vacated its original October 19 decision and denied A.B.'s motion. L.W., the victim in this case, did not file an opposition to A.B.'s motion.

{¶6} We review the trial court's denial of a motion to seal a conviction for an abuse of discretion. *State v. A.K.H.*, 2023-Ohio-220, ¶ 7 (8th Dist.). An abuse of discretion occurs if the court's attitude in reaching its decision was arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). An abuse of discretion occurs if a court exercises its judgment in an unwarranted way regarding a matter over which it has discretionary authority. *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35.

{¶7} Although, "[a]s a general rule, a trial court has no authority to sua sponte vacate or modify its final orders," *Maxwell v. Univ. Hosps. Health Sys.*, 2016-Ohio-7401, ¶ 5 (8th Dist.), citing *Dickerson v. Cleveland Metro. Hous. Auth.*, 2011-Ohio-6437, ¶ 7 (8th Dist.), citing *N. Shore Auto Financing, Inc. v. Valentine*, 2008-Ohio-4611, ¶ 12 (8th Dist.), in this instant case, the trial court had not issued

a final order. “A trial court may only relieve a party from judgment by the mechanisms provided by the Ohio Rules of Civil Procedure.” *Id.*, citing *Allstate Ins. Co. v. Witta*, 2011-Ohio-6068, ¶ 19 (9th Dist.), citing *Pitts v. Ohio Dept. of Transp.*, 67 Ohio St.2d 378, 380 (1981). “Other than upon a motion pursuant to Civ.R. 50(B) (motion notwithstanding the verdict), Civ.R. 59 (motion for a new trial) and Civ.R. 60(B) (motion for relief from judgment) filed by a party, a clerical error, or a void order for want of jurisdiction, ‘a trial court has no authority to vacate a final judgment.’” *Id.*, citing *N.K.* at ¶ 301; *Witta* at ¶ 8, citing *Pitts* at 380. “In a case such as this, where there was no trial, Civ.R. 60 provides the exclusive grounds in order for a court to vacate its own judgment.” *Id.*, citing *Witta* at ¶ 12 and *Miamisburg Motel v. Huntington Natl. Bank*, 88 Ohio App.3d 117, 122-123 (2d Dist. 1993).

{¶8} The appellee in this case did not file a Civ.R. 60(B) motion arguing that the trial court made a mistake. Although the trial court issued a journal entry granting the motion to seal, it stated that a supplemental journal entry would follow. Specifically, the trial court stated: “Motion to seal court records of CSPO unopposed granted. Supp JE to follow.” Journal Entry No. 1621443944 (Oct. 19, 2023). However, the trial court did not actually seal the appellant’s record, and it retained jurisdiction of the case by stating a supplemental journal entry would follow. *See, e.g., Bank of New York Mellon Trust Co. v. Zakrajsek*, 2017-Ohio-17,

¶ 7 (the trial court retains jurisdiction to issue a supplemental journal entry unless the appellant files an appeal before the trial court can do so).

{¶9} Therefore, A.B.'s sole assignment of error is overruled.

{¶10} Judgment 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 issue out of this court directing the common pleas 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.

ANITA LASTER MAYS, JUDGE

SEAN C. GALLAGHER, P.J., and
WILLIAM A. KLATT, J., * CONCUR

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

