

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

DELORES M. KARNOFEL,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	CASE NO. 2009-T-0045
- vs -	:	
GIRARD POLICE DEPARTMENT,	:	
et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from Girard Municipal Court, Case No. 2004 CVI 691.

Judgment: Appeal dismissed.

Delores M. Karnofel, pro se, 1528 Greenwood Avenue, Girard, OH 44420 (Plaintiff-Appellant).

Bobbie L. Flynt, Comstock, Springer & Wilson Co., L.P.A., 100 Federal Plaza East, #926, Youngstown, OH 44503-1811 (For Defendant-Appellee, Trumbull Memorial Hospital).

Girard Police Department, pro se, 100 West Main Street, Girard, OH 44420 (Defendant-Appellee).

Girard Fire Department, pro se, 105 East Liberty Street, Girard, OH 44420 (Defendant-Appellee).

John R. Gargano, 175 Franklin Street, S.E., Warren, OH 44481 (For Defendant-Appellee, Kim Kolacz).

Douglas Beck, pro se, 7745 St. James Drive, Mentor, OH 44060 (Defendant-Appellee).

Donna Beck, pro se, 7745 St. James Drive, Mentor, OH 44060 (Defendant-Appellee).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Delores M. Karnofel, has now moved this court for leave, as a declared vexatious litigator under R.C. 2323.52, to bring the instant appeal from the trial court's judgment entry of February 27, 2009. In that entry, the trial court overruled her second motion for relief from an earlier final judgment which had fully disposed of the merits of the underlying civil case.

{¶2} Our review of the trial docket indicates that appellant initiated this matter in August 2004 through the filing of a small claims complaint against six defendants. Her complaint asserted two claims sounding in wrongful detention and medical malpractice. After one defendant had been dismissed for lack of jurisdiction, an evidentiary hearing on the final merits of both claims was conducted before a court magistrate. Ultimately, the ensuing magistrate's decision was adopted by the trial court, and final judgment was entered in favor of the remaining five defendants as to each claim. This determination was rendered in April 2005.

{¶3} Even before the trial court's final judgment had been properly entered on the docket, appellant had appealed the determination to this court. In *Karnofel v. Girard Police Dept.*, 11th Dist. No. 2004-T-0145, 2005-Ohio-6154, we upheld the determination in all respects, essentially holding that appellant had failed to show that the ruling of the magistrate and trial court had been against the manifest weight of the evidence.

{¶4} Approximately five months after the release of our decision, appellant filed her first Civ.R. 60(B) motion for relief from the trial court's April 2005 judgment. Initially, the trial court ordered that this particular motion was to be stricken from the record, and that appellant was not permitted to submit any further pleadings. However, in *Karnofel*

v. Girard Police Dept., 11th Dist. No. 2006-T-0063, 2007-Ohio-7114, this court held that, since the trial court had not predicated its “strike” ruling on any specific authority, it had acted beyond the scope of its jurisdiction. Accordingly, we reversed the striking of the Civ.R. 60(B) motion and ordered the trial court to proceed on the merits of that motion.

{¶5} Upon remand, on February 27, 2008, the trial court issued a new entry in which it overruled the first motion for relief from judgment. Appellant did not pursue an appeal from this determination; instead, she then moved the trial court to reconsider the matter. When the trial court subsequently denied the motion to reconsider on May 15, 2008, appellant sought to appeal the latter ruling. However, in *Karnofel v. Girard Police Dept.*, 11th Dist. Nos. 2008-T-0043 & 2008-T-0048, 2008-Ohio-4414, we dismissed her appeal on the basis that, since a motion for reconsideration is not recognized under the Ohio Rules of Civil Procedure, any judgment on such a motion was a nullity and could not be the subject of a proper appeal.

{¶6} Approximately six months after the foregoing dismissal, appellant filed a second motion before the trial court for relief from the April 2005 final judgment. In this motion, appellant primarily attempted to reargue the merits of the trial court’s decision to enter judgment in favor the five defendants; i.e., she maintained that the trial court had misinterpreted the evidence presented during the magistrate’s hearing. In addition, she also challenged the merits of the trial court’s ruling on the first Civ.R. 60(B) motion. One day following appellant’s submission of the second motion, the trial court overruled it in a separate new entry.

{¶7} During the period between the dismissal of appellant’s “reconsideration” appeal in September 2008 and the filing of her second Civ.R. 60(B) motion in February

2009, she was declared a vexatious litigator under R.C. 2323.52 in a separate civil case before the Trumbull County Court of Common Pleas. Therefore, when appellant sought to institute the instant appeal from the most recent entry, she did not simply file a notice of appeal. Rather, she submitted a motion for leave to proceed with the appeal.

{¶8} R.C. 2323.52(D)(3) provides that, once an individual has been found to be a vexatious litigator, she cannot commence any type of legal proceeding before an Ohio appellate court unless she has first obtained leave from that specific court to go forward. Regarding the standard which an appellate court must follow in ruling upon the motion for leave, R.C. 2323.52(F)(3) states that a vexatious litigator should not be given leave to go forward unless the appellate court “is satisfied that the proceedings or application are not an abuse of process and that there are reasonable grounds for the proceedings or application.”

{¶9} Given the nature of the judgment entry which appellant seeks to appeal in the instant matter, our determination regarding whether “reasonable grounds” exist for this proceeding must focus upon the substance of her second motion for relief from the April 2005 final judgment. That is, this court must decide whether that motion set forth any viable argument for relief under Civ.R. 60(B). As was noted above, a review of her second motion readily indicates that it contained a series of contentions concerning the proper interpretation of the evidence which had either been presented at the evidentiary hearing or attached to her first motion for relief from judgment. For example, appellant argued that the trial court should have rejected the defendants’ evidence as to the basis for her admittance into the hospital because they did not introduce any materials which corroborated the statements in the hospital reports.

{¶10} In construing Civ.R. 60(B), the courts of this state have consistently held that a motion for relief from judgment cannot be employed as a substitute for a direct appeal of the final determination. See, e.g., *Zerinsky v. Fisher*, 11th Dist. No. 2004-L-133, 2005-Ohio-5761, at ¶16. In light of this basic principle, it has been further held that a proper Civ.R. 60(B) motion cannot be predicated upon an argument or point which could have been asserted in a direct appeal. *Chase Manhattan Bank, N.A. v. Elliot*, 5th Dist. No. 2006-CA-255, 2007 Ohio App. LEXIS 1577, at *5. Instead, the motion must be based upon a new point or argument which is sufficient to satisfy one of the grounds set forth in the rule. *Id.*

{¶11} In regard to the viable grounds for a Civ.R. 60(B) motion, section (B)(1) of the rule provides that a trial court may grant relief from a final judgment on the basis of a “mistake” in the trial proceedings. However, in interpreting this aspect of the rule, the courts of this state have expressly concluded that the term “mistake” does not include an error in the trial court’s final determination or underlying logic. See, e.g., *Bonde v. Bonde*, 8th Dist. No. 91633, 2009-Ohio-2135, at ¶9. Thus, a motion for relief from a final judgment cannot be used to reargue the merits of the case, since those types of contentions can only be properly raised in a direct appeal.

{¶12} To the extent that the majority of the arguments in appellant’s second Civ.R. 60(B) motion merely challenge the evidentiary basis of the trial court’s April 2005 final judgment, those arguments do not raise any viable grounds for relief under the rule because they should have been fully litigated in her prior appeal from that decision. In addition, to the extent that the remaining arguments in her second motion pertain to the disposition of her first Civ.R. 60(B) motion, the same logic would apply. That is, since

any argument as to the merits of her first Civ.R. 60(B) motion could have been raised in a timely appeal from the trial court's February 2008 entry, appellant cannot employ a second Civ.R. 60(B) motion as a means of re-litigating the substance of her first motion. In other words, a viable basis for 60(B) relief has not been stated when the movant is essentially asking the trial court to reconsider its prior rulings in the civil case.

{¶13} As a final point, this court would note that, as part of her prayer for relief in her second Civ.R. 60(B) motion, appellant requested the trial court to hold a hearing on that motion. While an oral hearing on a 60(B) motion may be appropriate under some circumstances, we have indicated that such a motion can be summarily denied without benefit of a hearing when the movant has failed to set forth any operative facts which might warrant the granting of relief. *Citigroup Global Markets, Inc. v. Masek*, 11th Dist. No. 2008-T-0060, 2009-Ohio-1832, at ¶29. In this instance, since appellant did not assert any new points upon which 60(B) relief could conceivably be granted, the trial court was not obligated to conduct any hearing prior to the issuance of its entry on the matter.

{¶14} As the arguments in appellant's second motion for relief from judgment only referred to points which were, or could have been, fully considered in the context of prior appeals, this court concludes that the motion in question did not assert any viable grounds for 60(B) relief. Accordingly, in light of the baseless nature of the underlying motion, it follows that there are no reasonable grounds for this appeal, and an abuse of process would occur if appellant was allowed to proceed. For these reasons, she has failed to satisfy the standard, as a vexatious litigator, for maintaining a new proceeding before an appellate court.

{¶15} Pursuant to the foregoing analysis, appellant's motion for leave to proceed is overruled. It is the order of this court that the instant appeal is hereby dismissed.

MARY JANE TRAPP, P.J.,

COLLEEN MARY O'TOOLE, J.,

concur.