

[Cite as *Oyer v. Oyer*, 2012-Ohio-2789.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CATHERINE OYER

Appellant

-vs-

KENNETH OYER

Appellee

JUDGES:

Hon. Patricia A. Delaney, P.J.

Hon. William B. Hoffman, J.

Hon. Sheila G. Farmer, J.

Case No. 2011CA00229

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Family Court Division,
Case No. 2010 DR 00470

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

June 18, 2012

APPEARANCES:

For Appellant

For Appellee

SUSAN J. LAX
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Hoffman, J.

{¶1} Plaintiff-Appellant Catherine Oyer appeals the September 20, 2011 Judgment Entry of the Stark County Court of Common Pleas, Family Court Division, denying her Motion for Relief from Judgment. Defendant-appellee is Kenneth Oyer.

STATEMENT OF THE CASE¹

{¶2} Appellant filed a complaint for divorce in 2010. The parties reached a settlement which was read into the record on December 13, 2010. Because of issues regarding Appellant's health insurance coverage, the trial court agreed to wait until May of 2011, to enter a final judgment.

{¶3} Appellee's counsel forwarded a proposed Entry to the trial court which had not been approved by Appellant's counsel. That proposed entry was approved by the trial court and filed on March 10, 2011.

{¶4} On April 29, 2011, Appellant filed a Motion for Relief from Judgment/Oral Argument Requested. Said motion was denied by Judgment Entry filed September 20, 2011. It is from that judgment entry Appellant prosecutes this appeal, assigning as error:

{¶5} "I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR RELIEF FROM JUDGMENT ON THE BASIS OF A MISTAKE OF FACT, WHERE APPELLANT PRESENTED SUFFICIENT EVIDENCE THAT THE FILED JUDGMENT ENTRY DID NOT CONFORM TO THE TERMS OF THE SETTLEMENT, AS SET FORTH DURING THE DECEMBER 10, 2010 TRIAL."

¹ A rendition of the facts is unnecessary for our disposition of this appeal.

{¶6} In response to Appellant's alleged error, Appellee asserts the assignment of error should be overruled for two reasons; the first of which is because a motion to vacate is not a substitute for a timely appeal.² We agree.

{¶7} Civil R.60(B) is not available as a substitute for a timely appeal nor can the rule be used to circumvent or extend the time requirements for an appeal. *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 20. See also *Fifth Third Mortgage, Co. v. Fantine*, 5th Dist. No. 11 CA 20, 2011-Ohio-4968, at ¶19. Appellant claims the entry of divorce approved by the trial court did not accurately reflect the terms of the parties' in-court agreement as evidenced by the transcript of the December 13, 2010 hearing. We agree with Appellee, any alleged error or discrepancy would have been apparent from that record and subject to review on direct appeal. Having failed to take timely appeal from that entry, we dismiss the present appeal.

By: Hoffman, J.

Delaney, P.J. and

Farmer, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

² Given our agreement with Appellee's first response, we find it unnecessary to discuss his second response.

