

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

HUGH P. MCCLOSKEY, JR.,	:	APPEAL NO. C-150079
Plaintiff-Appellee,	:	TRIAL NO. DR-1100550
vs.	:	<i>JUDGMENT ENTRY.</i>
SHERI A. FOSTER-MCCLOSKEY,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Sheri A. Foster-McCloskey (“Foster”) and plaintiff-appellee Hugh P. McCloskey, Jr., (“McCloskey”) were divorced on August 16, 2013, by entry of the Hamilton County Court of Common Pleas, Domestic Relations Division. Almost one year later, Foster moved for relief from judgment under Civ.R. 60(B) and to change venue. She raised concerns about the fairness of the predecree proceedings, especially with respect to the custody investigation and McCloskey’s financial disclosures. Subsequently, Foster issued subpoenas to Hamilton County Court of Common Pleas Judge Ethna Cooper and Lisa Gorrasi, the court administrator of the domestic relations court, to obtain their presence at a hearing on her motions.

The case was eventually assigned to Judge Jon Sieve. Foster unsuccessfully requested, under the procedures set forth in R.C. 2701.03, that the Ohio Supreme Court disqualify Judge Sieve. Subsequently, Judge Sieve quashed the subpoenas, denied

Foster's oral motion requesting his "reconsideration" of the Supreme Court's denial of her disqualification request and, after an evidentiary hearing, denied the motion to vacate and the motion to change venue. Foster now appeals, raising six assignments of error.

Before we address the assignments of error, we strike appendix E attached to Foster's appellate brief, as the appendix contains evidence outside the proper appellate record. *See State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978), paragraph one of the syllabus. Although Foster cites R.C. 2506.07(A)(1) as authority for the filing, we cannot discern how that statute applies, as it relates to administrative appeals involving adult-entertainment establishments.

In her fourth and sixth assignments of error, which we address first, Foster argues that the trial court erred by denying her Civ.R. 60(B) motion to set aside the decree of divorce. To prevail on a Civ.R. 60(B) motion for relief from judgment, the moving party 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 Civ.R. 60(B)(1) through (5); and (3) the motion is timely made, which means for motions based on grounds (B)(1)-(3) not more than one year after the judgment was entered. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus.

If any one of the three requirements is not met, the motion must be denied. *See id.* at 151; *Strack v. Pelton*, 70 Ohio St.3d 172, 175, 637 N.E.2d 914 (1994). We review a decision on a Civ.R. 60(B) motion under an abuse-of-discretion standard. *See Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 520 N.E.2d 564 (1988).

The trial court found that Foster had not demonstrated any of the grounds stated in Civ.R. 60(B)(1)-(5), and we agree. Although Foster would like to revisit the issues decided in the divorce, Civ.R. 60(B) may not be used as a substitute for a timely appeal

from a final judgment. *See Doe v. Trumbell Cty. Children Servs. Bd.*, 28 Ohio St.3d 128, 502 N.E.2d 605 (1986), paragraph two of the syllabus; *Kidz Bop LLC v Broadhead*, 1st Dist. Hamilton No. C-140686, 2015-Ohio-3744, ¶ 17. We note that Foster filed an appeal from the divorce decree, but then dismissed it.

Because Foster failed to demonstrate any ground for relief under Civ.R. 60(B), the trial court did not abuse its discretion in denying her motion for relief from judgment. Accordingly, we overrule the fourth and sixth assignment of error.

In her fifth assignment of error, Foster contends that the trial court erred by denying her motion to change venue pursuant to Civ.R. 3(C)(4). Foster argued that a future trial upon the vacation of the divorce decree would be tainted as demonstrated by the alleged taint of “bias and personal agenda” that occurred during the predecree proceedings due to her and McCloskey’s contacts within the Hamilton County courts.

Because this court is affirming the trial court’s denial of the motion to vacate, and the cause will not be remanded for a new trial, the issue of venue is moot. For this reason, we do not reach the merits of the fifth assignment of error. *See App.R. 12(A)(1)(c)*.

In her first and second assignments of error, Foster argues that the trial court erred by quashing the subpoenas issued to Gorrasi and Judge Cooper demanding their appearance at the January 2015 hearing on her motion to vacate and to change venue.

The quashing of subpoenas is governed by Civ.R. 45(C). Here, the trial court did not comply with the requirements of that rule. Notably, the trial court quashed Gorrasi’s subpoena even though she failed to indicate by affidavit that it would be an undue burden for her to testify at the January hearing. And the trial court quashed Judge Cooper’s subpoena despite her failure to move to quash the subpoena for the January hearing, which had been rescheduled from an earlier date.

However, accepting Foster's characterization of the evidence she sought to elicit from these individuals, we cannot find that the trial court's errors were prejudicial and reversible. As we have already noted after reviewing the record from the evidentiary hearing, Foster sought to use Civ.R. 60(B) as a substitute for an appeal, and she sought the subpoenaed testimony to further that improper purpose. Consequently, we overrule the first and second assignments of error.

In her third assignment of error, which we address next, Foster argues that the trial court erred by denying her oral motion to reconsider the Supreme Court's denial of her request to disqualify Judge Sieve from presiding over the proceedings in the case. This argument is meritless, and we reject it.

The Chief Justice of the Supreme Court of Ohio, or her designee, has exclusive jurisdiction to determine a claim that a common pleas judge is biased or prejudiced. *See* Article IV, Section 5(C), Ohio Constitution; *Beer v. Griffith*, 54 Ohio St.2d 440, 441, 377 N.E.2d 775 (1978). Thus, the trial court had no authority to reconsider the chief justice's determination. Accordingly, we overrule the third assignment of error.

Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., FISCHER and SUNDERMANN, JJ.

J. HOWARD SUNDERMANN, retired, from the First Appellate District, sitting by assignment.

To the clerk:

Enter upon the journal of the court on December 23, 2015
per order of the court _____.
Presiding Judge