

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

FORREST P. GAUTHIER,	:	APPEAL NO. C-150037
Plaintiff-Appellant,	:	TRIAL NO. A-1303244
vs.	:	<i>JUDGMENT ENTRY.</i>
SU KANG GAUTHIER,	:	
and	:	
ROBERT A. KLINGLER,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Forrest P. Gauthier appeals from the judgments of the Hamilton County Court of Common Pleas granting summary judgment for defendants-appellees Su Kang Gauthier, Forrest's former spouse, and Robert A. Klingler, Su's attorney, and denying Forrest's Civ.R. 60(B) motion. The trial court's judgments were explained in comprehensive decisions.

Forrest alleged that Su had converted his personal property which had been the subject of a Personal Property Agreement that the Warren County Domestic Relations Court had incorporated into their 2009 divorce decree, and that Su had breached that agreement by not complying with its terms for the return of his personal property. Forrest also alleged that Su had converted certain proceeds of an IRS refund check that was the

subject of a 2010 Addendum Agreement and had breached this agreement for various reasons. This 2010 Addendum Agreement governed the disposition of the IRS refund check and, separately, required Forrest's payment to Su of a lump sum that was characterized as alimony for tax purposes.

With respect to Klingler, Forrest alleged that he had breached an agreement concerning Su's negotiation of the IRS refund check and that, as a result, Klingler had converted his refund proceeds.

Before filing this action, Forrest had moved for contempt against Su in the Warren County Domestic Relations Court based on Su's alleged failure to comply with terms of the Personal Property Agreement for the return of his property. Part of that contempt action is still pending in Warren County due to a remand order from the Twelfth District Court of Appeals with respect to seven items of personal property. *See Gauthier v. Gauthier*, 12th Dist. Warren No. CA2011-05-048, 2012-Ohio-3046, ¶ 45.

After the trial court entered summary judgment in this case, Forrest unsuccessfully moved under Civ.R. 60(B)(2) and (3) to set aside the judgment for Su on the conversion and breach-of-contract claims related to his personal property. He essentially argued that newly discovered evidence showed Su had stolen and converted his personal property at issue in this case and the post-decree contempt action in Warren County, and that she had repeatedly lied about the theft and conversion.

We address Forrest's two assignments of error in reverse order.

In his second assignment of error, Forrest argues that the trial court erred by granting summary judgment for Su and Klingler on the conversion and breach-of-contract claims. We review the grant of summary judgment de novo, applying the standard set forth in Civ.R. 56. *Comer v. Risko*, 106 Ohio St.3d 185, 2005-Ohio-4559, 833 N.E.2d 712, ¶ 8. We find no error.

First, Forrest's claims against Su that related to the Personal Property Agreement were barred by claim preclusion and the jurisdictional priority rule, as those claims arose out of the same transaction or occurrence that was the subject matter of the previously filed contempt action in Warren County. *See Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 653 N.E.2d 226 (1995), syllabus, adopting 1 Restatement of the Law 2d, Judgments, Sections 24-25 (1982); *State ex rel. Dunlap v. Sarko*, 135 Ohio St.3d 171, 2013-Ohio-67, 985 N.E.2d 450, ¶ 9-11. Although the trial court erroneously referred to issue preclusion in granting judgment for Su on those claims, this court may affirm the judgment on grounds other than those relied upon by the trial court. *See State ex rel. Carter v. Schotten*, 70 Ohio St.3d 89, 92, 637 N.E.2d 306 (1994).

With respect to the remaining conversion and breach-of-contract claims against Su, we determine, after construing the evidence in the light most favorable to Forrest, that reasonable minds could only conclude that Su had not materially breached the 2010 Addendum Agreement, that she had not converted Forrest's portion of the tax refund, and that she had not proximately cause any damages.

Likewise, construing the evidence in the light most favorable to Forrest, we determine that if any enforceable agreement existed between Forrest and Klingler concerning the negotiation of the tax refund, reasonable minds could only conclude that Klinger had not materially breached it, that he had not converted Forrest's proceeds, and that he had not proximately caused any damages. Thus, Su and Klingler were entitled to summary judgment on those claims.

Finally, Forrest's argument that summary judgment was improperly granted on his unjust-enrichment claim against Su is meritless, as the the complaint does not state a cause of action for unjust enrichment against Su. Accordingly, we overrule the second assignment of error.

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We overrule Forrest's first assignment of error because the trial court did not abuse its discretion in overruling Forrest's Civ.R. 60(B) motion. *See GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 148, 351 N.E.2d 113 (1976). As the trial court noted, the earlier judgment was based on issues of law, not on issues of fact, and nothing presented in Forrest's motion to set aside the judgment implicated those legal bars to proceeding with Forrest's claims in the Hamilton County Court of Common Pleas.

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.

HENDON, P.J., CUNNINGHAM and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on October 21, 2016
per order of the court _____.
Presiding Judge