

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

JACQUELYN ROMER,	:	APPEAL NO. C-240248
Plaintiff-Appellee,	:	TRIAL NO. DR-2102043
vs.	:	
TODD ROMER,	:	<i>JUDGMENT ENTRY</i>
Defendant-Appellant.	:	

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

Defendant-appellant Todd Romer (“husband”) appeals the decision of the Domestic Relations Division of the Hamilton County Court of Common Pleas denying his Civ.R. 60(B) motion for relief from an October 17, 2022 divorce decree and separation agreement. In his Civ.R. 60(B) motion, husband argued that the written separation agreement, which was prepared by plaintiff-appellee Jacquelyn Romer (“wife”), did not accurately reflect the parties’ mediated agreement, as set forth in an email from the mediator to the parties. At an evidentiary hearing on husband’s motion, the trial court concluded that the email was subject to the mediation privilege and was therefore inadmissible. The trial court accordingly denied husband’s Civ.R. 60(B) motion.

On appeal, husband raises two assignments of error. First, he contends that the trial court erred in excluding the mediator email under R.C. 2710.05(A)(1), because

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the parties were self-represented and intended for the separation agreement that was filed in court to reflect the mediated agreement.

We ordinarily review questions of evidentiary privilege under a de novo standard of review. *Med. Mut. of Ohio v. Schlotterer*, 2009-Ohio-2496, ¶ 13. However, the document about which the privilege is disputed does not appear in the appellate record for our review. Husband did not profer it into the record at the Civ.R. 60(B) hearing, and as a result it is not before us now. “Absent a record that demonstrates an assigned error, we must presume the regularity of the proceedings below.” *Scott v. Chalk*, 2002-Ohio-1980, ¶ 7 (1st Dist.). We accordingly overrule husband’s first assignment of error.

In his second assignment of error, husband argues that the trial court erred in denying his Civ.R. 60(B) motion. “We review a trial court’s ruling on a motion for relief from judgment for abuse of discretion.” *Melton v. Melton*, 2013-Ohio-4790, ¶ 9 (1st Dist.).

Before us, husband advances arguments under Civ.R. 60(B)(1), (2), and (5). His contentions under Civ.R. 60(B)(5) are prohibited under *Walsh v. Walsh*, 2019-Ohio-3723, ¶ 28, which precludes the applicability of that subsection to separation agreements. In addition, husband never raised an argument under Civ.R. 60(B)(2) before the trial court and therefore waived it for appellate review. *See Effective Shareholder Solutions, Inc. v. Natl. City Bank*, 2009-Ohio-6200, ¶ 18 (1st Dist.).

Husband’s Civ.R. 60(B)(1) mistake and excusable neglect argument essentially relies on his allegation that the decree and separation agreement do not reflect the contents of the mediator’s email. But because the email is not in the record, we cannot discern whether the separation agreement conformed to the mediated agreement.

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Moreover, by signing the decree and separation agreement, husband acknowledged its contents. No evidence in the record indicates that husband involuntarily signed the documents or signed them without an opportunity for review. Husband therefore failed to present evidence of mistake or excusable neglect under Civ.R. 60(B)(1), and the trial court did not abuse its discretion in denying husband's Civ.R. 60(B) motion.

We accordingly overrule husband's assignments of error and affirm the trial court's March 25, 2024 judgment.

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

KINSLEY, P.J., ZAYAS and CROUSE, JJ.

To the clerk:

Enter upon the journal of the court on 2/5/2025 per order of the court.

By: _____
Administrative Judge