

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

RODNEY C. SMITH,	:	APPEAL NO.	C-250368
Plaintiff-Appellant,	:	TRIAL NO.	DR-2300090
vs.	:		
SONYA T. SMITH,	:	<i>JUDGMENT ENTRY</i>	
Defendant-Appellee.	:		

**KINSLEY, Presiding Judge.**

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.

Plaintiff-appellant Rodney Smith (“Husband”) appeals the judgment of the Hamilton County Court of Common Pleas, Domestic Relations Division, denying his request for a continuance of a hearing on his Civ.R. 60(B) motion for relief from judgment.

Husband and Sonya Smith (“Wife”) were married in 2014 and divorced in 2024. By agreement of the parties, the trial court’s final decree of divorce granted Husband a parcel of real property located on Mulberry Street (“Mulberry”) as his separate property and ordered him to pay Wife \$75,000 by December 31, 2024 for her equity in the property.

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Wife then filed a motion requesting that the trial court hold Husband in contempt for failing to make the \$75,000 payment. In response, Husband filed a motion for relief from judgment pursuant to Civ.R. 60(B). In his Civ.R. 60(B) motion, he alleged that the value of Mulberry was “inflated” because the foundation was in “significant disrepair” and would cost \$126,500 to fix.

The motions for contempt and for relief from judgment were heard on May 21, 2025. At the start of the hearing, Husband’s counsel orally requested a continuance to secure a “crucial” witness—a real estate appraiser who would purportedly testify to the impact of the foundation repair on the value of Mulberry—but then agreed to proceed without the witness. On June 4, 2025, the trial court denied Husband’s Civ.R. 60(B) motion and granted Wife’s motion for contempt. This appeal followed.

In two assignments of error, Husband contends that the trial court abused its discretion and deprived him of due process by denying his request to continue the hearing on his Civ.R. 60(B) motion for the witness’s testimony. The grant or denial of a continuance rests in the trial court’s sound discretion. *State v. Batross*, 2016-Ohio-265, ¶ 6 (5th Dist.).

We do not consider whether the trial court abused its discretion, however, because Husband waived this issue for review on appeal. While Husband initially asked for a continuance, he later agreed to go forward with the Civ.R. 60(B) hearing without the witness and never raised the issue again. At the conclusion of the hearing, he did not object to the trial court deciding the case without the witness’s testimony. To the contrary, he conceded that the initial appraisal of Mulberry, which was taken into account in establishing the \$75,000 payment in the 2024 decree, noted that there was damage to the foundation of the property.

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Ohio courts “have long recognized, in civil as well as criminal cases, that failure to timely advise a trial court of possible error, by objection or otherwise, results in a waiver of the issue for purposes of appeal.” *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121 (1997). Husband did not preserve an objection based on due process or the right to a continuance at the Civ.R. 60(B) hearing. His assignments of error are therefore waived, and we do not consider them.

Husband does not separately challenge the trial court’s denial of his Civ.R. 60(B) motion, although he argues in passing that the trial court should have granted his motion. But his two assignments of error only address the lack of a continuance, not the trial court’s ruling on the motion itself. Pursuant to App.R. 12 and 16, the court considers and determines assignments of error presented for review. We do not consider arguments not raised in an assignment of error. *See Bender v. Durrani*, 2024-Ohio-1258, ¶ 166 (1st Dist.); *Frisch v. Restaurant Mgt.*, 2015-Ohio-859, ¶ 15 (1st Dist.); *State v. Perez*, 2005-Ohio-1326, ¶ 21 (1st Dist.). Thus, we do not consider Husband’s statements that the trial court should have granted his motion for relief from judgment.

In conclusion, Husband waived his two assignments of error and did not properly raise an assignment of error addressing the trial court’s decision to deny his Civ.R. 60(B) motion. The trial court’s judgment is accordingly affirmed.

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.

**ZAYAS**, and **BOCK, JJ.**, concur.

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**To the clerk:**

**Enter upon the journal of the court on 2/20/2026 per order of the court.**

By:   
**Administrative Judge**