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

JOSHUA FIKES,	:	APPEAL NO. C-260064 TRIAL NO. A-2500373
Plaintiff-Appellant,	:	
vs.	:	*JUDGMENT ENTRY*
MIKE DREXELIUS,	:	
Defendant-Appellee.	:	

ZAYAS, Judge.

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); Loc.R. 11.1.

Plaintiff-appellant Joshua Fikes appeals the trial court's judgment denying his Civ.R. 60(B) motion to vacate the judgment dismissing his action for discovery against defendant-appellee Mike Drexelius. For the following reasons, we affirm.

In 2006, Fikes was convicted of the murder of D.P. and having weapons while under a disability. At trial, Fikes asserted self-defense, claiming that the confrontation began when D.P. held a gun to his head and pulled the trigger. But D.P.'s girlfriend testified that Fikes had approached D.P. while armed, precipitating the confrontation. This court affirmed Fikes's convictions on direct appeal. *State v. Fikes*, 2007-Ohio-5870 (1st Dist.), *appeal not accepted*, 2008-Ohio-969.

In January 2025, Fikes filed an action for discovery under R.C. 2317.48 against retired Cincinnati Police Detective Mike Drexelius, one of the detectives who

investigated D.P.'s death. Attached to the complaint were six interrogatories seeking information about whether the police had provided defense counsel with the police department's "Summary of Investigation." Fikes alleged that he needed this information to file a delayed motion for a new trial under Crim.R. 33 based on ineffective assistance of trial counsel. According to Fikes, a family member obtained the investigation summary through a public-records request, and the summary revealed that D.P.'s girlfriend never told police that she saw Fikes carrying a gun when he initially approached D.P. Fikes maintained that trial counsel was ineffective for failing to investigate and use this information to challenge her testimony at trial.

The City of Cincinnati, on behalf of retired Detective Drexelius, moved to dismiss the complaint for failure to state a claim. On September 18, 2025, the trial court granted the motion, explaining that R.C. 2317.48 authorizes pre-suit discovery only when a plaintiff intends to pursue a civil action, and because Fikes sought discovery to pursue a criminal action, he failed to state a claim upon which relief could be granted. The court noted that at the hearing on the motion to dismiss, Fikes acknowledged that he was seeking discovery solely to pursue a Crim.R. 33 motion for a new trial in his criminal case, and his complaint reflected the same.

Two months later, Fikes filed a Civ.R. 60(B) motion to vacate the trial court's judgment dismissing his action for discovery and to grant him leave to amend his complaint. Fikes explained that his amended complaint would clarify that he sought the requested discovery to pursue a successive petition for postconviction relief and a successive federal habeas petition under 28 U.S.C. 2244(b), rather than a delayed motion for a new trial. Because postconviction and federal habeas proceedings are civil in nature, Fikes argued that his action for discovery fell within the scope of R.C. 2317.48. He maintained that the proposed amendment would allow the case to

proceed and constituted a valid "reason[] justifying relief from the judgment under Civ.R. 60(B)(5)."

The trial court denied the motion, determining that Fikes's representations at the dismissal hearing made clear that he sought discovery "to be used for a motion under Crim.R. 33, not a civil suit."

Fikes now appeals, raising two assignments of error.

In his first and second assignments of error, Fikes argues that the trial court erred in denying his Civ.R. 60(B)(5) motion for relief from judgment and, because his motion contained operative facts supporting relief, the court further erred by failing to conduct an evidentiary hearing. We address both assignments together.

We review the denial of Civ.R. 60(B) motion for relief from judgment for an abuse of discretion. *Shelter Mut. Ins. Co. v. Jones*, 2026-Ohio-1482, ¶ 23 (1st Dist.), citing *Fifth Third Bank v. NCS Mtge. Lending Co.*, 2006-Ohio-571, ¶ 12 (1st Dist.), citing *GTE Automatic Elec., Inc. v. ARC Industries*, 47 Ohio St.2d 146 (1976), paragraph two of the syllabus. A court abuses its discretion when it exercises its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority. *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35. A trial court has no discretion to commit legal error. *Id.* at ¶ 39. And a trial court does not abuse its discretion by denying a Civ.R. 60(B) motion without a hearing where the movant fails to allege operative facts warranting relief. *Planchak v. Ladd*, 2023-Ohio-1836 (2d Dist.).

To obtain relief under Civ.R. 60(B), a movant must establish (1) a meritorious claim or defense, (2) entitlement to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5), and (3) that the motion was filed within a reasonable time. *Jones* at ¶ 23. These requirements are independent; failure to satisfy any one of them defeats the motion. *Id.* at ¶ 13, citing *Strack v. Pelton*, 1994-Ohio-107, ¶ 10.

Here, Fikes relies on Civ.R. 60(B)(5), the rule's "catch-all" provision, which reflects the court's inherent authority to prevent an unjust judgment. *Caruso-Ciresi, Inc. v. Lohman*, 5 Ohio St.3d 64 (1983), paragraph one of the syllabus. Relief under Civ.R. 60(B)(5) requires "substantial" grounds arising from circumstances attributable to the court or otherwise entirely beyond the movant's control. *Id.* at paragraph two of the syllabus; *Stuller v. Price*, 2003-Ohio-583, ¶ 49 (10th Dist.). It does not apply when the movant's own failure to act caused the judgment. *Price* at ¶ 49, citing *Templin v. Grange Mut. Cas. Co.*, 1991 Ohio app. LEXIS 1739, *14 (2d Dist. Apr. 8, 1991) (relief under Civ.R. 60(B)(5) does not include errors or omissions created by the failure of a party to produce evidence when he had the duty and opportunity to do so).

Fikes's asserted grounds for relief—his failure to amend his complaint before dismissal and his failure to research and plead a viable claim under R.C. 2317.48—are matters entirely within his control. At the hearing on the motion to dismiss, the trial court repeatedly explained that R.C. 2317.48 applies only to information necessary to file a civil action. When asked what claim he intended to pursue, Fikes consistently stated that he sought information to support a Crim.R. 33 motion for a new trial. Because both the drafting of his complaint and his argument he presented at the hearing were solely his responsibility, Fikes cannot demonstrate extraordinary circumstances beyond his control sufficient to invoke Civ.R. 60(B)(5).

Because Fikes failed to establish entitlement to relief under Civ.R. 60(B), we need not address timeliness or the existence of a meritorious claim. Even so, Fikes cannot show a meritorious claim. He seeks discovery under R.C. 2317.48 to pursue a successive, untimely petition for postconviction relief. Postconviction proceedings are "special statutory proceeding[s]" governed exclusively by R.C. 2953.21 and 2953.23.

State v. Hill, 2026-Ohio-1427, ¶ 19. The postconviction statutes contain their own limited discovery provisions, applicable only to timely petitions filed by capital defendants upon a showing of good cause. R.C. 2953.21(A)(1)(e); *State v. Conway*, 2019-Ohio-2260, ¶ 29 (10th Dist.). Additionally, discovery in a federal habeas proceeding is governed by Rule 6 of the Rules Governing Section 2254 Cases, rather than state-law discovery procedures. *Williams v. Bagley*, 380 F.3d 932, 974 (6th Cir. 2004). Thus, even if the dismissal was vacated, an amended complaint would not state a viable claim under R.C. 2317.48.

Finally, because Fikes's motion did not allege operative facts demonstrating entitlement to relief, the trial court did not abuse its discretion by declining to hold an evidentiary hearing.

The first and second assignments of error are overruled, and the judgment of the trial court is 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.

KINSLEY, P.J., and **CROUSE, J.,** concur.

To the clerk:

Enter upon the journal of the court on 9/25/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer A. Kinsley
Administrative Judge