

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

PATRICIA HOLT,	:	APPEAL NOS. C-090908
		C-100007
Plaintiff-Appellant/ Cross-Appellee,	:	TRIAL NO. A-0707708
	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
IRIS C. SAWYER,	:	
	:	
CHRISTINE WADE HASTIE,	:	
	:	
and	:	
	:	
MARTIN L. WADE,	:	
	:	
Defendants-Appellees/ Cross-Appellants.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant/cross-appellee, Patricia Holt, appeals the judgment of the Hamilton County Court of Common Pleas denying her motion for relief from a judgment entered in favor of defendants-appellees/cross-appellants, Iris C. Sawyer, Christine Wade Hastie, and Martin L. Wade. Sawyer, Hastie, and Wade have also appealed, challenging the trial court's denial of their motion for sanctions.

The facts of this case were fully set forth in a previous decision of this court.² Briefly, Holt brought suit in 2007 alleging that the disposition of her father's estate

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

had been the product of tortious conduct on the part of Sawyer, Hastie, and Wade. The entire estate had been bequeathed to Sawyer, the testator's spouse, in a will that Wade had drafted. In her suit, Holt asserted claims for intentional interference with an expected inheritance, unjust enrichment, and civil conspiracy.

The trial court granted summary judgment in favor of Sawyer, Hastie, and Wade. This court affirmed the trial court's judgment on the basis that there had been no evidence of undue influence or other wrongful conduct.³

Holt then filed a Civ.R. 60(B) motion for relief from the summary judgment based upon newly discovered evidence. In her Civ.R. 60(B) motion, Holt first alleged that Wade, though licensed as an attorney, was registered as inactive with the Supreme Court of Ohio at the time he had drafted the will.

Holt also alleged that she had recently discovered Hastie's role in an unrelated will contest. She argued, somewhat obliquely, that Hastie's involvement in the other proceeding indicated that she had also attempted to influence the disposition of the property in this case.

Finally, Holt filed an affidavit averring that her father's explicit wish was that she would inherit a portion of his estate. The trial court overruled Holt's Civ.R. 60(B) motion, and these appeals followed.

We begin with Holt's third assignment of error, in which she argues that the trial court erred in denying her motion for relief from judgment.

To prevail on a motion under Civ.R. 60(B), 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.

² See *Holt v. Sawyer*, 180 Ohio App.3d 255, 2008-Ohio-6686, 905 N.E.2d 213. While the record indicates that Sawyer had died shortly before the filing of the instant appeal, we continue to refer to her as a party.

³ *Id.* at ¶12.

60(B); and (3) the motion is made within a reasonable time, and, where the grounds for relief are under Civ.R. 60(B)(1), (2), or (3), not more than one year after the entry of the judgment from which relief is sought.⁴ A trial court's ruling on a Civ.R. 60(B) motion will not be reversed absent an abuse of discretion.⁵

In this case, the trial court did not abuse its discretion in overruling Holt's motion. First, Holt failed to demonstrate that Wade's inactive status was relevant to her claims. Although she suggests that communications with Wade would not have been privileged in light of his inactive status, there is no indication in the record that broadened discovery would have led to a different result in the underlying litigation. Second, the allegation that Hastie had a role in a prior will contest simply had no bearing on the claims in the case at bar. Third, we fail to see how the contents of Holt's affidavit regarding the wishes of her father could have constituted newly discovered evidence. In any event, we cannot say that the trial court's decision was arbitrary, unreasonable, or unconscionable, and we overrule the third assignment of error.

In her first and second assignments of error, Holt argues that the trial court erred in concluding that her Civ.R 60(B) motion was barred by the doctrine of res judicata and that the motion had not been timely filed. We find no merit in the assignments. The trial court was correct with respect to the merits of Holt's motion, and whatever pronouncements the court made about claim preclusion or timeliness were irrelevant. Therefore, we overrule the first and second assignments of error.

⁴ *GTE Automatic Electric, Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, 351 N.E.2d 113, paragraph two of the syllabus.

⁵ *Harris v. Anderson*, 109 Ohio St.3d 101, 2006-Ohio-1934, 846 N.E.2d 43, ¶7.

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Finally, we address the cross-appeal. In a single assignment of error, Sawyer, Hastie, and Wade argue that the trial court erred in refusing to award them sanctions based on Holt’s allegedly frivolous conduct.

{¶1} Under Civ.R. 11, an attorney’s signature on a pleading constitutes a certificate “that to the best of the attorney’s or party’s knowledge, information, and belief there is good ground to support it[,] and that it is not interposed for delay.” If the court determines that a violation of Civ.R. 11 was willful, it may impose appropriate sanctions.⁶ R.C. 2323.51(A)(2)(a) also permits a trial court to award sanctions to a party adversely affected by frivolous conduct. This court reviews decisions under both Civ.R. 11 and R.C. 2323.51 under an abuse-of-discretion standard.⁷

In this case, the trial court did not abuse its discretion. Though we have held that Holt’s suit was without merit, we cannot say that her claims were so completely groundless that sanctions were warranted. Accordingly, we overrule the assignment of error in the cross-appeal.

Therefore, the judgment of the trial court is affirmed.

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.

HILDEBRANDT, P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on August 20, 2010

per order of the Court _____
Presiding Judge

⁶ Civ.R. 11: *Taylor v. Franklin Blvd. Nursing Home, Inc.* (1996), 112 Ohio App.3d 27, 31-32, 677 N.E.2d 1212.

⁷ See *DiBenedetto v. Miller*, 180 Ohio App.3d 69, 2008-Ohio-6506, 904 N.E.2d 554, ¶20, jurisdictional motion overruled, 121 Ohio St.3d 1453, 2009-Ohio-1820, 904 N.E.2d 902 (Civ.R. 11); and *Gearhart v. Cooper*, 1st Dist. Nos. C-050532 and C-060170, 2007-Ohio-25, ¶25, citing *Wiltberger v. Davis* (1996), 110 Ohio App.3d 46, 52, 673 N.E.2d 628 (R.C. 2323.51).