

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

ANTHONY BOULDING,	:	APPEAL NO. C-100823
	:	TRIAL NO. 10CV-21061
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
JANAY DRAIN, a.k.a. JAYNA DRIAN,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Defendant-appellant Janay Drain appeals from the trial court’s denial of her motion for relief from a default judgment entered in favor of plaintiff-appellee Anthony Boulding on his claims for eviction and money damages. In two assignments of error, Drain argues that the court erred by (1) granting a default judgment to Boulding and (2) denying her motion to set aside the default judgment.

We are unable to review the merits of the first assignment of error because Drain has failed to timely appeal from the original judgment in favor of Boulding. “A Civ.R. 60(B) motion for relief from judgment cannot be used as a substitute for a timely appeal or as a means to extend the time for perfecting an appeal from the original judgment.”<sup>2</sup>

But Drain has timely appealed the trial court’s order denying her Civ.R. 60(B) motion for relief from judgment. To prevail on a Civ.R. 60(B) motion, the moving party must demonstrate that (1) the party has a meritorious defense or claim to

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

<sup>2</sup> *Key v. Mitchell*, 81 Ohio St.3d 89, 90-91, 1998-Ohio-643, 689 N.E.2d 548.

present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time.<sup>3</sup> To meet this burden of proof, the movant must set forth operative facts and cannot rely on bare allegations that she is entitled to relief.<sup>4</sup> We review the trial court's denial of a Civ.R. 60(B) motion under an abuse-of-discretion standard.<sup>5</sup>

In her Civ.R. 60(B) motion, Drain alleged that she had never received the eviction complaint or summons. After reviewing the record, the trial court determined that Drain had been properly served with the summons and complaint through ordinary mail. The court also noted that Drain had disputed the amount of the default judgment, claiming that the apartment she had rented from Boulding was rat-infested. The court determined that Drain's allegations were insufficient to provide a defense to her nonpayment of rent and denied the motion.

We cannot say that the trial court abused its discretion in denying Drain's Civ.R. 60(B) motion. Accordingly, we overrule the assignments of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**SUNDERMANN, P.J., HENDON and FISCHER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on July 15, 2011

per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>3</sup> *GTE Automatic Elec., Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, 351 N.E.2d 113, paragraph two of the syllabus.

<sup>4</sup> *Kay v. Marc Glassman, Inc.*, 76 Ohio St.3d 18, 20, 1996-Ohio-430, 665 N.E.2d 1102.

<sup>5</sup> *Id.* at 19.