

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

CHARLES ZETER,	:	APPEAL NO. C-130660
Plaintiff-Appellee,	:	TRIAL NO. 13CV-15972
vs.	:	<i>JUDGMENT ENTRY.</i>
WEINLE MOTORSPORTS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Weinle Motorsports appeals the denial of its motion for relief from a default judgment entered by the Hamilton County Municipal Court in favor of plaintiff-appellee Charles Zeter.

On July 10, 2013, Zeter filed a complaint for damages arising from his purchase of an allegedly defective used car from Weinle. After Weinle failed to appear for a hearing conducted August 8, 2013, the magistrate recommended that the court enter a default judgment in favor of Zeter. The trial court entered judgment in accordance with that recommendation on August 23, 2013.

On the same day that the trial court entered the default judgment, Weinle filed a motion for relief from judgment under Civ.R. 60(B) on the basis that it had

not received notice of the proceedings. On October 2, 2013, the trial court overruled Weinle's motion, and Weinle filed a notice of appeal that same day.

In two related assignments of error, Weinle argues that the court erred in entering the default judgment where the contract for sale was not admitted into evidence, where there was no evidence of fraudulent conduct, and where Weinle allegedly did not have notice of the proceedings that had culminated in the default judgment.

We find no merit in the assignments. It is well settled that a Civ.R. 60(B) motion cannot be used as a substitute for a timely appeal. *See, e.g., Doe v. Trumbull Cty. Children Servs. Bd.*, 28 Ohio St.3d 128, 502 N.E.2d 605 (1986), paragraph two of the syllabus. Weinle did not file a timely notice of appeal with respect to the default judgment entered August 23, 2013, and therefore failed to preserve any claim of error in that judgment.

Weinle filed a timely notice of appeal only as to the denial of the Civ.R. 60(B) motion. To prevail on a motion for relief from judgment under Civ.R. 60(B), the moving party must demonstrate (1) that it has a meritorious claim or defense if relief is granted, (2), that the party is entitled to relief under one of the grounds enumerated in Civ.R. 60(B)(1) through(5); and (3) that the motion is made within a reasonable time, and, where the grounds for relief are under subsections (1), (2), or (3), not more than one year after the judgment was rendered. *GTE Automatic Electric, Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus. A trial court's decision under Civ.R. 60(B) is reviewed under an abuse-of-discretion standard. *Rose Chevrolet, Inc., v. Adams*, 36 Ohio St.3d 17, 20, 520 N.E.2d 564 (1988).

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In the case at bar, there was no abuse of discretion. In its Civ.R. 60(B) motion, Weinle asserted only that it had not received notice of the proceedings. This lone assertion was insufficient to demonstrate entitlement to relief. We overrule the assignments of error and affirm the judgment of the trial court.

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., HENDON and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on June 18, 2014
per order of the court _____.
Presiding Judge