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he had complied with the previous agreements of the parties entered into on March 28, 2024. The Defendant testified that he had not, nor did he have documentation to present to the court regarding any repairs. Defendant was given an opportunity to question Plaintiff's witness and then given an additional opportunity to provide any other information to the court that he deemed appropriate before the Magistrate issued a ruling. At that point, the Magistrate found in favor of the Plaintiff and issued a Decision in Plaintiff's favor for restitution of the premises and court costs. The next day, the Duty Judge adopted the Magistrate's Decision and issued judgment for Plaintiff.

Despite the fact the case was concluded as of April 5, 2024, the case was assigned to Judge Green based upon the filing of the "Answer" by Defendant. This was done in error as the Answer had been filed prior to the eviction hearing and Defendant was given an opportunity to present his case to the Magistrate after his Answer was filed. This case never should have been assigned to a Judge, as the case was appropriately heard and decided on by the Magistrate on April 4, 2024.

After the case was erroneously assigned to Judge Green, Defendant filed an Objection to the Magistrate's Decision on April 11, 2024. In the Objection, Defendant attempted to submit evidence that could and should have been presented at the April 4, 2024 hearing. Plaintiff timely responded to Defendant's Objection on April 22, 2024. On that same date, the Writ of Restitution expired and Defendant remained in the property.

On May 30, 2024, the case came before Judge Green for an automatically scheduled pretrial hearing. At this pretrial hearing, Judge Green only considered the Objection to the Magistrate's Decision, which was appropriate given that the case should have been closed after the Magistrate's Order was adopted by Judgment Entry on April 5, 2024 and the Writ of Restitution was issued. After a hearing on the Objection, Judge Green overruled Defendant's Objection and the Judgment for restitution of the premises stood.

On June 20, 2024, after that full hearing on the Objection and a written decision overruling Defendant's Objection, a Supplemental Writ of Restitution was issued. On July 1, 2024, Defendant filed an "Emergency" Motion to Stay Execution of Writ and Setout. That Motion was overruled by Judge Green on the same day.

On July 3, 2024, Defendant filed a Motion for Reconsideration of Denial of Emergency Stay. The Writ was executed on July 5, 2024 and the return indicates that the Defendant "walked away." Defendant's Motion for Reconsideration was denied by Judge Green on July 11, 2024.

On July 30, 2024, Defendant filed a Motion for Relief from Judgment. On August 13, 2024, Judge Green recused himself from the proceedings because Defendant filed an affidavit of disqualification with the Supreme Court. The case was then reassigned to this branch of the Court.

In order to prevail on a 60(B) motion, a movant 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. 60(B)(1) through (5), and (3) the motion is made within a reasonable time. *GTE Auto. Elec. v. ARC Indus., Inc.*, 47 Ohio St. 2d 146, para. 2 (1976). Here, Defendant has not shown that he has a meritorious defense to Plaintiff's claim.

Defendant has asserted that his evidence is not new, but rather was never considered, acknowledged, or allowed in a fair trial and that the judgement is void because he did not receive a fair trial. However, Defendant's claims were fully and fairly litigated during the April 4, 2024 eviction hearing. His Objection, which attached additional information that Defendant should have presented at the original eviction hearing, was also given a full hearing by Judge Green on May 30, 2024. No new evidence has been presented to this court demonstrating a meritorious defense to the original eviction action. In fact, Defendant remained in the property for approximately three months after the judgment for restitution of premises was granted.

Moreover, given that Defendant has now vacated the property at issue in the original Complaint, Defendant's Motion for Relief from Judgment is moot. *Rithy Properties, Inc. v. Cheeseman*, 2016-Ohio-1602 (10th Dist.) ("Actions for forcible entry and detainer become moot when the defendant vacates the property the plaintiff seeks restitution of.").

After a thorough review of the entire record in this matter, Defendant's Motion for Relief from Judgment is DENIED.

*The Clerk is directed to serve a copy of this Entry upon the parties.*

**SO ORDERED.**

9/23/24  
Date

  
JUDGE JESSICA D'VARGA