

NOTICE

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SLIP OPINION NO. 2012-OHIO-4782

**THE STATE EX REL. MCGRATH, APPELLANT, v. MCCLELLAND, JUDGE, ET AL.,
APPELLEES.**

**[Until this opinion appears in the Ohio Official Reports advance sheets,
it may be cited as *State ex rel. McGrath v. McClelland*,
Slip Opinion No. 2012-Ohio-4782.]**

*Appellate procedure—portions of appeal dismissed as untimely—Civ.R. 60(B)
motion for relief from judgment does not extend appeal time—Civ.R. 60(B)
motion not to be used as substitute for timely appeal.*

(No. 2012-0737—Submitted October 9, 2012—Decided October 17, 2012.)

APPEAL from the Court of Appeals for Cuyahoga County,
No. 97209, 2012-Ohio-157.

Per Curiam.

{¶ 1} Appellant, Joseph McGrath, filed this appeal on April 26, 2012. We dismiss as untimely those portions of his appeal that challenge the court of appeals’ judgments dated January 13 and March 5, 2012. *See* S.Ct.Prac.R. 2.2(A)(1)(a) (“To perfect an appeal from a court of appeals to the Supreme Court,

SUPREME COURT OF OHIO

other than in a certified conflict case, which is addressed in S.Ct.Prac.R. 4.1, the appellant shall file a notice of appeal in the Supreme Court within forty-five days from the entry of the judgment being appealed”). McGrath’s Civ.R. 60(B) motions for relief from judgment did not extend his time to appeal the court of appeals’ judgment denying the writs of mandamus and prohibition and declaring him to be a vexatious litigator. *State ex rel. Manuel v. Stenson*, 126 Ohio St.3d 52, 2010-Ohio-2673, 930 N.E.2d 310.

{¶ 2} In addition, insofar as McGrath timely challenges the court of appeals’ April 10, 2012 judgment denying his second Civ.R. 60(B) motion for relief from judgment, we affirm the judgment because McGrath used the motion to raise claims that he could have raised in a timely appeal from the judgment denying the writs. McGrath could not use Civ.R. 60(B) as a substitute for a timely appeal. *Id.*; *State ex rel. Albourque v. Terry*, 128 Ohio St.3d 505, 2011-Ohio-1913, 947 N.E.2d 169, ¶ 3.

Appeal dismissed in part
and judgment affirmed in part.

O’CONNOR, C.J., and PFEIFER, LUNDBERG STRATTON, O’DONNELL,
LANZINGER, CUPP, and MCGEE BROWN, JJ., concur.

Joseph McGrath, pro se.

William D. Mason, Cuyahoga County Prosecuting Attorney, and James E.
Moss, Assistant Prosecuting Attorney, for appellee.
