Vermont Rules of Probate Procedure, Rule 60

RULE 60. RELIEF FROM JUDGMENT OR ORDER

Currentness

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal in the Supreme or Superior Court, such mistakes may be so corrected before the appeal is docketed, and thereafter while the appeal is pending may be so corrected with leave of the Supreme or Superior Court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to introduce; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of a party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. In a proceeding under 15A V.S.A., a motion for reasons (1), (2), and (3) shall be filed not more than six months after the decree or order was issued. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(c) Motion to alter or amend a judgment. A motion to alter or amend the judgment shall be served not later than 14 days after entry of the judgment.

(d) Death or Disability of Court Reporter. When any material part of a transcript of the evidence taken by an official court reporter cannot be obtained because of the reporter's death or disability, or is otherwise unavailable without the fault of the parties, the court may on motion, if it is satisfied that the lack of such transcript prevents a party from effectively prosecuting an appeal, set aside any judgment entered in the proceeding.

Credits

[Amended July 2, 2004, effective October 1, 2004; September 20, 2017, effective January 1, 2018; October 17, 2017, effective January 1, 2018.]

Editors' Notes

REPORTER'S NOTES--2017 EMERGENCY AMENDMENT

Rule 60(c), as amended September 20, 2017, effective January 1, 2018, is further amended to provide a 14-day time period consistent with the basic purpose of the day-is-a-day amendments of the Civil and Probate rules rather than the 28 days adopted initially for consistency with the comparable provisions of the Federal Rules of Civil Procedure. The amendment reflects the significant differences between probate and civil practice. Matters in probate court generally involve important personal concerns that could be adversely affected by the additional extension of the time for appeal resulting from the longer period. Moreover, there is less need in probate practice to be concerned with uniformity with the Federal Rules.

REPORTER'S NOTES--2018 AMENDMENT

Rules 60(c) is amended to extend its 10-day time period to 28 days consistent with the simultaneous "day is a day" amendments to V.R.P.P. 6 and for consistency with the new standard of the comparable Civil Rule, V.R.C.P. 59(e), adopted for consistency with the federal rule.

REPORTER'S NOTES--2004 AMENDMENT

Subsection (b) is amended to reflect the new adoption law enacted in 1996. 15A V.S.A. § 3-706 shortens the time period for motions to set aside adoption decrees under Rule 60(b)(1), (2), and (3) from one year to six months.

REPORTER'S NOTES

This rule combines features of V.R.C.P. 59 and 60. See V.R.C.P. 59(e), (f); 60(a), (b). The features incorporated have been recognized in former probate procedure.

Subdivision (a) is virtually identical to V.R.C.P. 60(a). It covers the same ground as was formerly covered by a motion nunc pro tunc to correct errors in judgments and records. See In re Estate of Moody, 115 Vt. 1, 49 A.2d 562 (1946); In re Estate of Prouty, 105 Vt. 66, 163 A. 566 (1933). Thus, the subdivision does not introduce a change in Vermont law.

Subdivision (b) is virtually identical to V.R.C.P. 60(b). As the Reporter's Notes to that rule points out, the intent is to replace all independent modes of obtaining relief from judgment on grounds such as mistake, fraud or newly discovered evidence with two alternative procedures: (1) a motion under this rule; (2) an independent action for such relief, generally in superior court. The case law has recognized the power of the probate courts to vacate its judgments and orders for reasons considered sufficient in civil cases. See Haskins v. Haskins' Estate, 113 Vt. 466, 35 A.2d 662 (1944). Haskins lists many of the grounds described in this rule. The reference to an independent action does not create probate court jurisdiction over such actions. See In re Mahoney's Estate, 126 Vt. 31, 220 A.2d 475 (1966) (superior court jurisdiction in aid of probate).

Rule 60(b) motions must be made within a reasonable time. Brown v. Tatro, 136 Vt. 409, 392 A.2d 380 (1978). The one exception is Rule 60(b)(4) motions which can be made at any time. Solomon v. Atlantis Development, Inc., 145 Vt. 70, 483 A.2d 253 (1984). Some motions must be brought within a year even if a longer delay would be reasonable. Brown v. Tatro, supra. The Supreme Court has not defined "reasonable" in the context of Rule 60 but has held that 4 years is unreasonable and affirmed a lower court holding that 15 months was unreasonable. Burroughs v. Burroughs, 132 Vt. 34, 316 A.2d 522 (1973); Brown v. Tatro, supra.

Whatever grounds are posed, the court has substantial discretion in acting on a Rule 60(b) motion. Waitt v. Waitt, 137 Vt. 374, 406 A.2d 395 (1979). The Supreme Court has, however, construed the grounds strictly especially where the moving party alleges surprise or newly discovered evidence. See Meacham v. Kawasaki Motors Corp., 139 Vt. 44, 421 A.2d 1299 (1980); Okemo Mountain, Inc. v. Okemo Trailside Condominiums, Inc., 139 Vt. 433, 431 A.2d 457 (1981); Darken v. Mooney, 144 Vt. 561, 481 A.2d 407 (1984).

This rule does not authorize a motion for a new trial as provided in V.R.C.P. 59(a). This procedure is not found in the case law probably because the appeal to superior court is a new trial. See 12 V.S.A. § 2553; In re Estate of Collette, 122 Vt. 231, 167 A.2d 361 (1961) (superior court is "higher court of probate"). Of course, if the court relieves a party from a final judgment, there may be a need for a new hearing to develop a new judgment. Note that the authority to relieve a party from a judgment because of newly discovered evidence is in essence the recognition of a motion for a new trial for newly discovered evidence.

Subdivision (c) is identical to V.R.C.P. 59(c). As the Reporter's Notes to that rule points out, the intent is to create a discretionary but strictly time limited authorization to amend the judgment. The grounds are not limited to those in subdivision (b).

Subdivision (d) is substantially identical to V.R.C.P. 59(f). Transcripts of probate proceedings are becoming more common, in part because of requirements proposed by decision or rule, see Rule 47(a), and in part because of the need to create a proper record for review. See Ricci v. Bove's Estate, 116 Vt. 335, 75 A.2d 682 (1950). Thus, the absence of a transcript may in fairness require that a judgment be set aside and the matter reheard with a new record created. This subdivision would apply only where the evidence is taken by a court reporter assigned under Rule 47(d).

A hearing is required on a Rule 60 motion when grounds are stated with particularity and the motion is not frivolous or totally lacking in merit. Jacobs v. Jacobs, 144 Vt. 124, 473 A.2d 1165 (1984); Jensen v. Jensen, 139 Vt. 551, 433 A.2d 258 (1981).

Rules Prob. Proc. Rule 60, VT R PROB P Rule 60
State court rules are current with amendments received through December 1, 2021.

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