

This is a post-divorce case. The original defendant, Sharon Leigh Huggett Lantz, filed a motion pursuant to Rule 60.02, T.R.Civ.P., seeking to set aside the judgment of divorce in this case. She relied upon the grounds set forth at subsection 2 of Rule 60.02--"fraud..., misrepresentation, or other misconduct of an adverse party." The trial court denied the motion, and Ms. Lantz appealed.

The appellant claims that she agreed not to contest her husband's suit for divorce and to allow a judgment for default to be entered against her in return for his agreement "not to prosecute her, civilly or criminally for [an] alleged misappropriation of funds"--specifically, the appellant's cashing¹ in of retirement funds in the appellee's name without his consent or knowledge. Following the divorce, the appellee filed suit against the appellant and others in a separate action to recover the misappropriated funds. The appellant claims that the filing of the civil suit was a violation of the parties' agreement² and that his conduct entitles her to relief under Rule 60.02(2).

The appellee contends that the appellant's factual basis is insufficient, as a matter of law, to warrant relief under Rule 60.02(2). We do not find it necessary to reach this

¹The appellant admitted at the hearing below that she had forged her husband's signature in order to secure the distribution of his I.R.A. funds.

²The alleged agreement is not set forth in the judgment of divorce.

legal issue. This is because the trial court, after listening to the sworn testimony of the parties,³ specifically found that “the husband made no such agreement.” The appellant testified there was an agreement; the appellee testified there was not. The trial court accredited the testimony of the appellee. A trial court “on an issue which hinges on witness credibility, will not be reversed unless, *other than the oral testimony of the witnesses*, there is found in the record clear, concrete and convincing evidence to the contrary.” *Tennessee Valley Kaolin Corp. v. Perry*, 526 S.W.2d 488, 490 (Tenn. App. 1974). (Emphasis added.) There is no such other evidence in this case.

“A motion for relief based on Rule 60.02 grounds addresses itself to the sound discretion of the trial judge.” *Underwood v. Zurich Ins. Co.*, 854 S.W.2d 94, 97 (Tenn. 1993). We have conducted a *de novo* review of the trial court’s factual findings as required by Rule 13(d), T.R.A.P. In doing so, we have kept in mind the role of the trial court on the issue of credibility. We do not find that the evidence preponderates against the trial court’s findings of fact. It results that we find no abuse of discretion. We express no opinion as to whether the appellant’s basis for her Rule 60.02 motion, if proven, would be legally sufficient to warrant relief.

The judgment of the trial court is affirmed. Costs on

³No one else testified.

appeal are taxed to the appellant and her surety. This case is remanded for enforcement of the judgment and collection of costs assessed below, pursuant to applicable law.

Charles D. Susano, Jr., J.

CONCUR:

Houston M. Goddard, P.J.

Herschel P. Franks, J.