IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Diana Barrett	Court of Appeals No. E-14-089
Appellee	Trial Court No. 2012 DV 156
v.	
E. Dean Soltesz	**DECISION AND JUDGMENT**
Appellant	Decided: March 6, 2015

* * * * *

E. Dean Soltesz, pro se.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} This is an appeal from the judgment of the Erie County Court of Common Pleas, issuing a domestic violence civil protection order against appellant, E. Dean Soltesz. We affirm.

A. Facts and Procedural Background

{¶ 2} On December 12, 2012, appellee, Diana Barrett, filed a petition for a domestic violence civil protection order against appellant, her brother. In her petition, appellee stated that appellant has been harassing her since 2007, and that the harassment originated regarding their father's probate estate. She alleged that appellant contacted her current neighbor, her ex-husband, her ex-boyfriend, various family members, and most recently the pastor of her church, to falsely accuse appellee of adultery. She also alleged that appellant damaged her character so badly on the internet that it has been difficult for her to obtain gainful employment in her small community.

{¶ 3} On the same day the petition was filed, the trial court granted an ex parte protection order and set the matter for a full hearing on December 19, 2012. However, the sheriff was unable to serve the petition and ex parte order upon appellant, and the hearing was rescheduled. Appellee then requested that the petition and ex parte order be sent to appellant by certified mail. The certified mail was returned unclaimed on February 25, 2013. Another service attempt was made by the sheriff, which was also unsuccessful. Finally, on March 15, 2013, the petition and ex parte order were sent by regular mail to appellant's address.

{¶ 4} On April 17, 2013, a full hearing was held on the petition for a domestic violence protection order. Appellant was not present. After the hearing, the trial court granted the petition, and ordered that the protective order be effective until December 20, 2017.

{¶ 5} On May 1, 2013, appellant filed objections to the April 17, 2013 hearing, in which he claimed that the trial court lacked personal jurisdiction over him, and that he was not properly served under the civil rules because the certified mail was returned "unclaimed." Further, on May 14, 2013, appellant moved to vacate the April 17, 2013 decision. In support of that motion, appellant stated that he became aware of an anonymous note left in the door of his apartment that appeared to be from a neighbor. The note stated that the person had received a piece of mail addressed to E. Dean Soltesz, and that the person returned it to the U.S. Postal Service so that it could be properly mailed to appellant. Appellant's motion to vacate requested that the court allow additional time to see if the mail would be returned to the court so that it may be re-mailed to appellant. Thereafter, on May 30, 2013, appellant filed an affidavit with the court in which he averred, "On May 13, 2013 I received a mailing from this Court dated March 18, 2013 in my mailbox." Appellant indicated that the envelope had been opened and resealed with tape. Finally, on September 17, 2013, appellant moved to set aside the April 17, 2013 decision because, inter alia, he was not served with a copy of the summons "before the hearing."

{¶ 6} Subsequently, the record reflects that on September 26, 2013, the trial court received the original envelope sent to appellant that was postmarked March 15, 2013. Handwritten on the envelope were the words "failure of delivery." With the envelope was a letter from a "concerned U.S. citizen," who stated that he or she mistakenly opened the mail, not realizing that it was addressed to E. Dean Soltesz. Upon realizing his or her

mistake, the concerned citizen contacted an attorney who informed the person that he or she could be charged with tampering with the U.S. mail, and instructed the person to write "failure of delivery" on it and send it back to the post office.

{¶ 7} On March 28, 2014, appellant moved to modify or terminate the April 17, 2013 domestic violence protection order for the reason that he was not provided with timely service of the complaint before the hearing. In the interim between then and September 2013, appellant had appealed the April 17, 2013 protection order. We dismissed his appeal on February 20, 2014, for failing to timely file his brief. Thereafter, on March 31, 2014, appellee filed a motion for contempt of the domestic violence protection order in which she alleged that appellant was involved in getting a man to present himself as a representative of Citizens Bank who then threatened to physically force appellee out of her home if she did not leave. Following a hearing on April 23, 2014, the trial court denied both the motion for contempt and the motion to modify or terminate the protection order.

{¶ 8} On May 1, 2014, appellant moved for relief of the April 23, 2014 judgment, again arguing that he was not properly served with the original petition before the April 17, 2013 hearing. On May 6, 2014, the trial court denied appellant's motion for relief. In so doing, the trial court recognized that at the April 23, 2014 hearing it found that service was complete pursuant to Civ.R. 4.6(D) "as a certificate of mailing was filed on March 15, 2013 reflecting that the ordinary mail envelope was <u>not</u> returned undeliverable." The court further found that appellant's testimony at the April 23, 2014

hearing was not sufficient to overcome the presumption of proper service when the Civil Rules are followed. Nevertheless, due to appellant's "excusable neglect and failure to appear for the full evidentiary hearing," the trial court vacated the April 17, 2013 decision and scheduled a full hearing for May 15, 2014.

{¶ 9} On May 15, 2014, the trial court held a hearing on the original petition for a domestic violence protection order. Both appellee and appellant appeared pro se. At the beginning of the hearing, appellant again objected to the lack of proper service. The parties then testified on their own behalf.

{¶ 10} Appellee testified that she sought the protection order based on appellant's continuing pattern of conduct in contacting her pastor, neighbor, ex-husband, and past employers. She further stated that appellant has somehow obtained her credit report and has been using it to harass her. Appellee also testified that appellant has involved her in his ongoing "legal tirade" by sending her motion after motion because he holds her responsible for his current financial situation. Finally, appellee stated that appellant has gone out of his way to "destroy [her]"; he accuses her, he attacks her sanity and credibility, and he has convinced the remaining members of their family to abandon her. Notably, appellee testified that she is not in fear of bodily harm from appellant, but rather that she fears mental and emotional harm. On cross-examination, appellee testified that she believes appellant is stalking her because he goes out of his way to talk to people in her family, her neighbors, and her ex-husband. Appellee, however, did not subpoena any of those people to testify at the hearing.

{¶ 11} Appellant, in support of his position, testified that he has not committed any of the acts alleged by appellee that would constitute domestic violence under R.C. 3113.31. In addition, appellant denied that he told a person named Ken McKillips that he would "screw [appellee's] life up good." He testified, "I have had no intention of screwing up the life of my sister, Diana, other than what may be lawfully brought out in a court of law and necessary (sic) heard by a fair and impartial jury." Appellant also denied, with qualification, that he has ever made accusations of adultery against appellee as alleged by her in the petition.

{¶ 12} At the conclusion of the hearing, the trial court granted the domestic violence protection order.

B. Assignments of Error

{¶ 13} Appellant, pro se, has timely appealed from the May 15, 2014 judgment granting the protection order, and now raises eight assignments of error for our review:

> I. The trial court lacked jurisdiction over the person, and jurisdiction of process of service, when it held the special hearing of May 15, 2014 due to:
>
> A) The petition in the case having been filed on December 12, 2012,
>
> B) Failure of petitioner to provide service of petition within six months to petitioner under Civ.R. 4(E) without good cause shown,
>
> and accordingly any judgment issued against defendant was void *ab initio*.

II. The domestic relations court lacked subject-matter jurisdiction as well as failure to state a claim upon which relief can be granted to issue the CPO resulting from:

A) Petitioner's admission that defendant had not inflicted *any* physical harm on her

B) Hearsay of alleged slanderous statements about petitioner allegedly made by defendant to:

1) Family members of the parties

2) The next-door neighbor of the petitioner

3) The ex-husband of the petitioner

C) Said statements allegedly had caused her mental and emotional harm, which she claimed fulfilled the statutory requirement for "stalking," and

D) The witnesses to whom those statements were allegedly made were unavailable for the hearing, because petitioner alleged she did not have enough time to *subpoena* them for the May 15, 2014 hearing.

III. The trial court lacked jurisdiction of process to not permit defendant to provide qualifications in explanation to the "yes or no" answers to any allegations against him in the petition under threat of contempt denied (sic) him his right to present evidence in testimony and rebuttal, and his right to present a defense as required for a fair hearing.

IV. The trial court erred to the prejudice of the defendant, when it failed to take judicial notice of his Exhibit A, a copy of the notice of hearing of April 17, 2011 for a "pre-trial" hearing in the guardianship and land sale cases, involving their dad proving that petitioner failed to list on the petition all present and pertinent past court cases she has been involved in with the defendant, proving she violated ORC 2921.11, when she signed and filed the petition.

V. The trial court lacked jurisdiction of process to issue any CPO against defendant due to the court's restricting defendant's right (sic) exercise his duty to provide grounds for his objections under threat of holding him in contempt of court for any thing (sic) other than "yes or no" answers.

VI. The domestic relations court lacked subject-matter jurisdiction to hear matters contained in the petition, which originated from the jurisdiction of the probate court under ORC 2111.14(A)(2), ORC 2101.24(A)(1)(g), (m), (n), (o), (q), (s), (t), (w), (bb), (cc), (dd); and (2).

VII. The trial court abused its discretion to the prejudice of respondent in taking the testimony of the petitioner over the denials of the allegations by the defendant, when it issued the CPO.

VIII. The trial court was without jurisdiction in holding the hearing below, and subsequently issuing the CPO as a form of retaliation against

defendant for conducting an investigation as to whether the probate judge has been concealing the fact that a hearing record is truly available for appellate review in the related probate cases.

II. Analysis

{¶ 14} For ease of discussion, appellant's assignments of error will be grouped together where they address the same issue.

A. Service

{¶ 15} In his first assignment of error, appellant argues that there is no evidence to show that he was properly served with the petition for a domestic violence civil protection order before the May 15, 2014 hearing. Thus, appellant concludes that the civil protection order is void ab initio. *See Enterprise Roofing Servs., Inc. v. Skinkiss*, 6th Dist. Lucas No. L-95-313, 1996 WL 532317, *2 (Sept. 20, 1996), citing *Rondy v. Rondy*, 13 Ohio App.3d 19, 22, 468 N.E.2d 81 (9th Dist.1983) ("[W]here service of process has not been accomplished, any judgment rendered is void ab initio.").

{¶ 16} Relevant here, Civ.R. 4.6(D) states that where service by certified mail is returned unclaimed, the serving party may proceed by sending the summons and complaint or other document to the defendant by ordinary mail. In that case, "Service shall be deemed complete when the fact of mailing is entered of record, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery." Civ.R. 4.6(D).

{¶ 17} The record reflects that in his affidavit filed on May 30, 2013, appellant admitted that on May 13, 2013, he received a mailing from the trial court dated March 18, 2013. The only mailing sent by the trial court around that time was the service of process.[1] Notably, appellant's affidavit statement appears to contradict his statement in his motion to vacate—which was filed on May 14, 2013, one day after he admittedly received the mailing from the trial court—wherein he offered that he

> has become aware of an anonymous note left in the door of his apartment that appears to be from a neighbor of his stating that by mistake he or she had a piece of mail in his or her mail box addressed to E. Dean Soltesz. That note was not signed by anyone; however, it stated that he or she had returned it to the U.S. Postal Service so that it could be properly mailed to me instead of whomever it was sent to instead.

{¶ 18} Subsequently, on September 26, 2013, the envelope containing the petition and summons was returned to the trial court. Handwritten on the front of the envelope were the words "failure of delivery." That envelope was contained in a larger manila envelope addressed to the Postmaster, and was accompanied by the anonymous letter from a concerned U.S. citizen. Importantly, the "failure of delivery" notation was not endorsed by the postal authorities.

[1] The record reflects that on March 25, 2013, the trial court also mailed a hearing notice to appellant.

{¶ 19} In *Cervelli v. Cervelli*, 11th Dist. Geauga No. 92-G-1703, 1993 WL 130103, *2 (Mar. 26, 1993), the Eleventh District addressed this scenario wherein an envelope sent by ordinary mail was returned containing a handwritten notation in pencil that read "wrong address returned." In that case, the Eleventh District held that service by ordinary mail was perfected because the notation was not endorsed by the postal authorities. *Id.* Similarly, we hold that because the envelope addressed to appellant did not contain "an endorsement showing failure of delivery" by the postal authorities, service by ordinary mail was proper under Civ.R. 4.6(D). Moreover, our conclusion that service was proper is consistent with appellant's own admission that he received the mailing from the trial court.

{¶ 20} Finally, we note that appellant's due process rights were not violated even if he received service after the April 17, 2013 hearing because the trial court has vacated the judgment from that hearing, and has subsequently held a full hearing on the original petition, post-service, culminating in the May 15, 2014 judgment.

{¶ 21} Accordingly, appellant's first assignment of error is not well-taken.[2]

[2] Unrelated to his failure of service of process claim, appellant also argues under his first assignment of error that the case should have been dismissed because a temporary restraining order cannot be imposed for more than seven days without a full hearing. However, under R.C. 3113.31(D)(2)(a)(i), a trial court can continue a hearing on a domestic violence civil protection order petition where the respondent has not been served. Further, pursuant to R.C. 3113.31(D)(2)(b), an ex parte order does not expire because of failure of service or because the court continues the hearing. Thus, the continuation of the ex parte order was proper and did not constitute grounds for dismissal.

B. Merits of Granting the Civil Protection Order

{¶ 22} Appellant's second and seventh assignments of error are related. Thus, we will address them together.

{¶ 23} In his second assignment of error, appellant challenges the trial court's basis to grant the domestic violence civil protection order. Appellant first contends that appellee's allegations do not constitute domestic violence under R.C. 3113.31, but rather should fall under a libel or slander petition. Next, appellant argues the court improperly relied on hearsay statements offered by appellee. Finally, he asserts that the statements he made threatening to use the legal process do not warrant the issuance of a civil protection order.

{¶ 24} In his seventh assignment of error, appellant argues that the trial court abused its discretion when it believed appellee's allegations over appellant's denials. He contends that appellee failed to demonstrate, by a preponderance of the evidence, that she was in danger of domestic violence.

{¶ 25} Pursuant to R.C. 3113.31, a person who is subject to domestic violence may petition a court for a protection order. Relevant here, domestic violence is defined as "[p]lacing another person by the threat of force in fear of imminent serious physical harm or committing a violation of section 2903.211 or 2911.211 of the Revised Code." R.C. 3113.31(A)(1)(b). R.C. 2903.211(A)(1), in turn, states, "No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person."

A person seeking a civil protection order must demonstrate by a preponderance of the evidence that he or she is in danger of domestic violence. *Felton v. Felton*, 79 Ohio St.3d 34, 42, 679 N.E.2d 672 (1997).

{¶ 26} "The decision to grant or dismiss a request for a civil protection order is within the discretion of the trial court." *Rangel v. Woodbury*, 6th Dist. Lucas No. L-09-1084, 2009-Ohio-4407, ¶ 11, citing *Deacon v. Landers*, 68 Ohio App.3d 26, 31, 587 N.E.2d 395 (4th Dist.1990). "An appellate court will not reverse a trial court's decision regarding a civil protection order absent an abuse of discretion." *Id.*, citing *Parrish v. Parrish*, 146 Ohio App.3d 640, 646, 767 N.E.2d 1182 (4th Dist.2000). An abuse of discretion connotes that the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). "If the trial court's decision is supported by credible and competent evidence, the appellate court will not reverse the decision as an abuse of discretion." *Rangel* at ¶ 11, citing *Jarvis v. Jarvis*, 7th Dist. Jefferson No. 03-JE-26, 2004-Ohio-1386, ¶ 13.

{¶ 27} Upon our review of the record, we cannot find that the trial court abused its discretion in issuing the domestic violence civil protection order. Appellee's testimony, if believed, and even excluding any alleged hearsay testimony, established that appellant engaged in a pattern of conduct that knowingly caused her mental distress as prohibited by R.C. 2903.211(A)(1). Moreover, we must give deference to the trial court's implicit determination that appellee's testimony was more credible than appellant's because "the trial judge is best able to view the witnesses and observe their demeanor, gestures and

voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). Based on the record, we do not find the trial court's decision in this regard to be unreasonable, arbitrary, or unconscionable.

{¶ 28} Accordingly, appellant's second and seventh assignments of error are not well-taken.

C. "Yes" or "No" Response

{¶ 29} Appellant's third and fifth assignments of error address the trial court's threat to hold appellant in contempt if he did not respond to questions with a simple "yes" or "no" answer, where warranted. The record reflects that, near the beginning of the hearing, the trial court instructed appellant on the manner in which appellant should respond to the court's questions: "If I ask you a question and there's a yes or no answer, you may give me a yes or no, but no speeches. When I want to hear a speech, I'll let you know." After considerable back and forth with appellant on his understanding of this directive, the court concluded:

> No, there you go again. Now, I'm telling you for the last time, and I'm going to hold you in contempt if you violate my orders. I'm making it very clear. And when she makes a statement, you'll get your opportunity to address the Court. There you go. Did I ask a question? No. Don't interrupt me. You'll get your day, your hour, your half hour, whatever the Court determines in the courtroom.

{¶ 30} Evid.R. 611(A) provides, "The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." "A trial court's decisions on Evid.R. 611(A) matters will not be overturned absent an abuse of discretion." *Relizon Co. v. Shelly J. Corp.*, 6th Dist. Lucas No. L-02-1377, 2004-Ohio-6884, ¶ 48.

{¶ 31} In his third assignment of error, appellant claims the trial court's restriction violated his right to present testimony. We disagree. Notably, appellant does not cite a specific example of how his right to present testimony was infringed. Furthermore, contrary to appellant's argument, we find that the trial court afforded appellant an open forum to cross-examine appellant, and to present his own testimony in defense without interruption. In addition, when questioned by the court following his testimony, appellant was permitted to give an explanation with his response. For example, when the court asked appellant whether he had made the allegations of adultery, appellant replied, "No, with qualification." Appellant then explained his qualification as, "I'm saying that I did not make the statements as alleged by the Petitioner." Thus, because we find in this case that appellant's presentation of evidence was not limited by the trial court's instruction, we hold that the trial court's restriction was not an abuse of discretion.

{¶ 32} Accordingly, appellant's third assignment of error is not well-taken.

{¶ 33} Similarly, in his fifth assignment of error, appellant argues that the trial court abused its discretion in not allowing him to explain the grounds for his objections. Appellant again fails to cite the specific objections to which he is referring. Regardless, the record indicates that appellant was given wide latitude to raise any issue he desired. At the beginning of the hearing, he confirmed that a court stenographer was present. Next, appellant objected to the court holding the hearing and issuing an order because he claimed that to do so would violate due process given the issues surrounding the service of the petition. Following the presentation of his testimony, appellant then stated that he was reserving his right to present the matter to a jury, stated that he was not provided an opportunity to be represented by counsel, inquired whether the proceedings were being conducted under admiralty and maritime law, requested either a cease and desist order against appellee or a dismissal of the case, and objected to the court issuing a civil protection order because it gives the impression that the trial court is retaliating against appellant for investigating the actions of the probate court in allegedly concealing an entire hearing record in appellant's father's guardianship proceedings. Therefore, because the content of appellant's objections was presented to, and understood by the court, we do not find the court's admonition to respond in "yes" or "no" answers was an abuse of discretion.

{¶ 34} Accordingly, appellant's fifth assignment of error is not well-taken.

D. Perjury

{¶ 35} In his fourth assignment of error, appellant argues that the trial court erred when it failed to find appellee in contempt and subject to criminal penalties for committing perjury under R.C. 2921.11 in her filing of the petition. R.C. 2921.11(A) provides, "No person, in any official proceeding, shall knowingly make a false statement under oath or affirmation, or knowingly swear or affirm the truth of a false statement previously made, when either statement is material." Violation of this statute is a felony of the third degree.

{¶ 36} Here, the petition requires the petitioner to list "all present court cases and pertinent past court cases * * * that relate to the Respondent, [and] you." Appellee did not list any cases. At the hearing, appellant submitted his Exhibit A, which was a notice of hearing on the guardianship matter, showing that both he and appellee were part of that case. The trial court admitted Exhibit A into evidence.

{¶ 37} We find appellant's conclusion that appellee is guilty of perjury to be without merit. First, we note that this was not a criminal proceeding, that appellee was not charged with perjury under R.C. 2921.11, and that appellant, himself, cannot prosecute appellee for allegedly committing a felony. Moreover, appellee's omission was not a material one because it did not affect the outcome of the proceeding. *See* R.C. 2921.11(B) ("A falsification is material, regardless of its admissibility in evidence, if it can affect the course or outcome of the proceeding."). In this case, the outcome did not turn on whether appellant and appellee had been involved in a prior court case, rather the

outcome turned solely on appellant's conduct towards appellee. Thus, we find no error in the trial court's failure to find that appellee committed perjury.

{¶ 38} Additionally, appellant argues that the "[p]etition was inaccurate and therefore proves insufficient evidence in *Ritter v. Ritter*[, 8th Dist. Cuyahoga No. 83241,] 2004-Ohio-2550." In *Ritter*, the petition for domestic violence was dismissed after a hearing in which the presented evidence contradicted the statements in the petitioner's affidavit regarding an injury to his child, and the petitioner admitted that his affidavit was inaccurate. Thus, there was no evidence to support the claim for domestic violence. *Id.* at ¶ 11. Here, in contrast, appellee's testimony provided sufficient grounds to warrant the issuance of a civil protection order as discussed above in assignments of error Nos. 2 and 7. Therefore, we find that this argument lacks merit.

{¶ 39} Accordingly, appellant's fourth assignment of error is not well-taken.

E. Jurisdiction

{¶ 40} For his sixth assignment of error, appellant contends that the trial court lacked jurisdiction over the petition. Specifically, appellant asserts that because the petition referenced the probate court judge and the attorney appointed to be the guardian of his father's estate, the petition fell under the exclusive jurisdiction of the probate court under R.C. 2101.24(A)(1). We disagree. Although the genesis of the dispute between appellant and appellee may have been the probate case, that matter is wholly unrelated to whether a domestic violence civil protection order should be issued under R.C. 3113.31. Furthermore, a petition for a domestic violence civil protection order under R.C. 3113.31

does not fall under any of the categories over which the probate court has exclusive jurisdiction as enumerated in R.C. 2101.24(A)(1)(a)-(ff).

{¶ 41} Accordingly, appellant's sixth assignment of error is without merit.

F. No Error Identified

{¶ 42} Finally, appellant's argument in support of his eighth assignment of error states, in its entirety,

> Exhibit A entered into evidence of the trial court proceedings below proves that this Court of Appeals had made a false finding of fact in *Egger [v. Soltesz*, 6th Dist. Erie No. E-11-047, 2012-Ohio-3182], with regard to ¶¶ 4-6, and thus discriminated against this same Appellant and my Dad in that case. * * * That exhibit was proffered into the record of those proceedings to prove to the Ohio Supreme Court upon any further action to prove fraud by one or more officers of the Courts involved in these cases, that there has been retaliation going on against this Appellant and his Dad contrary to Jud. Cond. R. 2.16(B), and *State ex rel. Estate of Hards v. Klammer*, 110 Ohio St.3d 104, 2006-Ohio-3670 at ¶ 14. Therefore, even if this Honorable Court decides against this Appellant based upon the record of this case on appeal, he is preserving issues involving probable violations of the Code of Judicial Conduct as well as the Code of Professional Conduct for review by the Supreme Court under O Const Art. 4, § 4.02(B)(1)(g). Thus, this court should find sufficient evidence in the record

of this case and the records of the cases identified in the proceedings below to correct the injustices committed against this Appellant and his now deceased Dad.

{¶ 43} Upon our review of appellant's statement in support of his eighth assignment of error, we do not find that he identified any perceived error of the trial court in the issuance of the domestic violence civil protection order that he wishes us to correct. Therefore, we will disregard appellant's eighth assignment of error. *See* App.R. 12(A)(2) ("The court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based.").

{¶ 44} Accordingly, appellant's eighth assignment of error is not well-taken.

III. Conclusion

{¶ 45} For the foregoing reasons, the judgment of the Erie County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

Stephen A. Yarbrough, P.J.
CONCUR.

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JUDGE