

[Cite as *Taylor v. Taylor*, 2017-Ohio-8191.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY

MEGAN L. TAYLOR, EXECUTOR

Plaintiff-Appellant

v.

JAMES F. TAYLOR, et al.

Defendants-Appellees

Appellate Case No. 17CA-11

Trial Court Case No. 86452A

[Civil Appeal from
Common Pleas Court]

DECISION AND ENTRY

July 21, 2017

PER CURIAM:

{¶ 1} This matter is before the court on the motion of Appellee, Federal National Mortgage Association (“FNMA”), entitled “Combined Motion for an Order Requiring Plaintiff-Appellant to Order Transcription of All Recorded Hearings, Notice of Designation of Additional Parts to be Included in the Record on Appeal, and Objection to Plaintiff-Appellant’s Proposed Supplement to the Trial Court Record.” The combined motion was filed in the trial court on June 26, 2017, and in this court on June 29, 2017. Appellants,

Megan L. Taylor, Executor and Megan L. Taylor, Individually (together, “Taylor”), filed a response to the motion in this court on June 28, 2017.

{¶ 2} In the combined motion, FNMA asks this court to compel Taylor to order transcription of all hearings in the trial court, rather than the single hearing Taylor has already ordered. FNMA cites App.R. 9(B)(5), which sets forth the process by which an appellee may seek such an order. It begins in the trial court with the appellant’s notice of a partial transcript:

Unless the entire transcript of proceedings is to be included in the record, the appellant shall file with the notice of appeal a statement, as follows:

(a) If the proceedings were recorded by a stenographic/shorthand reporter, the statement shall list the assignments of error the appellant intends to present on the appeal and shall either describe the parts of the transcript that the appellant intends to include in the record or shall indicate that the appellant believes that no transcript is necessary. * * *

The appellant shall file this statement with the clerk of the trial court and serve the statement on the appellee.

Taylor listed her probable assignment of error in the June 6, 2017 Civil Docket Statement and filed a Notice to FNMA that same day indicating that she would be ordering only a partial transcript. FNMA agrees that these documents were filed on June 6, 2017. The certificate of service on the Notice reflects that it was mailed to FNMA on June 6, 2017. FNMA does not challenge this date but asserts that the documents were not received until June 16, 2017.

{¶ 3} App.R 9(B)(5) continues:

If the appellee considers a transcript of other parts of the proceedings necessary, the appellee, within ten days after the service of the statement of the appellant, shall file and serve on the appellant a designation of additional parts to be included.

(Emphasis added.)

{¶ 4} Here, FNMA had ten days after service of the Notice to designate additional parts of the record. FNMA counts those ten days from its receipt of the Notice. However, under the Rules of Appellate Procedure, service is complete upon mailing. App.R. 13(C)(3) (“A document is served under this rule by * * * mailing it to the person’s last known address by United States mail, in which event service is complete upon mailing”); see *also* Civ.R. 5(B)(2)(c) (same). FNMA’s designation was not filed in the trial court until June 26, 2017,¹ which was twenty days after the Notice was mailed. The designation was not timely filed.

{¶ 5} If appellee files a timely designation, and “[i]f the appellant refuses or fails” within ten days to order the additional parts designated by the appellee, the appellee may order the additional parts itself, or may “apply to the court of appeals for an order requiring the appellant to do so.” Here, the application to this court was filed on June 29, 2017, before Taylor had adequate opportunity to “refuse or fail” to order the additional parts of the record. The application was premature.

¹ An appellee’s designation of additional parts of the record is to be filed in the trial court. See App.R. 9(B)(5) (“The clerk of the trial court shall forward a copy of this designation to the clerk of the court of appeals”). Here, FNMA’s designation was filed in the trial court on June 26, and was then forwarded by the trial court clerk to this court’s clerk, where it was filed on June 29. We calculate time in this context from date of service of the notice to the date of filing in the trial court. FNMA’s request that we extend the time for filing the designation *in this court* is therefore OVERRULED as moot.

{¶ 6} We conclude that because FNMA's designation was late, and its application to this court premature, FNMA may not utilize the procedure in App.R. 9(B)(5) to compel Taylor to order additional parts of the record. If FNMA believes that the additional transcripts are necessary, it may order them and seek to supplement the record with them. However, FNMA will be responsible for the cost of the additional transcripts. FNMA's combined motion is OVERRULED to that extent.

{¶ 7} We take no action on FNMA's objection to a proposed supplement to the record as the supplement has not been presented to this court.

SO ORDERED.

MARY E. DONOVAN, Judge

JEFFREY E. FROELICH, Judge

Copies to:

Konrad Kuczak
130 W. Second Street, Suite 1010
Dayton, Ohio 45402
Attorney for Appellants

Johnathan Secrest
David Lockshaw
150 E. Gay Street, 24th Floor
Columbus, Ohio 43215
Attorneys for Appellee, FNMA

Hon. W. McGregor Dixon, Jr.
Miami County Probate/Juvenile Court
201 W. Main Street
Troy, Ohio 45373