

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Slats & Nails Pallets, Inc.,	:	
Appellant-Appellant,	:	Nos. 14AP-690
	:	14AP-880
v.	:	(C.P.C. No. 14CVF04-4144)
Ohio Department of Job and Family Services,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

D E C I S I O N

Rendered on March 31, 2015

Sidney N. Freeman, for appellant.

Michael DeWine, Attorney General, and *Laurence R. Snyder*,
for appellee.

APPEALS from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Appellant-appellant, Slats & Nails Pallets, Inc. ("Slats & Nails"), appeals a judgment of the Franklin County Court of Common Pleas that dismissed its appeal of a decision of the Unemployment Compensation Review Commission ("Commission"). Slats & Nails also appeals a judgment of the Franklin County Court of Common Pleas that denied its motion to vacate the dismissal of its appeal. For the following reasons, we affirm the trial court's dismissal of Slats & Nails' appeal, and we vacate the judgment denying Slats & Nails' motion to vacate.

{¶ 2} In a decision mailed March 17, 2014, the Commission affirmed the determination of the director of the Ohio Department of Job and Family Services ("director") that made Slats & Nails the successor in interest to S & N Pallets, Inc. ("S & N"). Slats & Nails appealed that decision to the trial court pursuant to R.C. 4141.26. At

the same time that Slats & Nails filed its notice of appeal, it also filed a "Brief Summary of Arguments of Appellant."

{¶ 3} Upon receiving the notice of appeal, the Franklin County Clerk of Courts issued an original case schedule. That schedule required Slats & Nails to file its brief by June 24, 2014. Slats & Nails did not file a brief by that deadline.

{¶ 4} In an order dated July 21, 2014, the trial court notified Slats & Nails that it would dismiss the appeal no sooner than July 31, 2014 unless Slats & Nails could demonstrate good cause why it had not filed a brief. Slats & Nails did not respond to the July 21, 2014 order. Rather, on July 28, 2014, Slats & Nails moved for an extension of time to file its brief. In the motion, Slats & Nails explained that its main attorney was out of the country until August 11, 2014, and thus, it requested that the trial court extend the filing deadline to September 5, 2014.

{¶ 5} On August 5, 2014, the trial court issued a dismissal judgment. The trial court found that Slats & Nails had failed to provide any explanation for its noncompliance with the briefing schedule. Consequently, the trial court denied Slats & Nails' motion for an extension of time and dismissed the appeal with prejudice.

{¶ 6} Slats & Nails then simultaneously appealed the August 5, 2014 judgment and moved to vacate that judgment pursuant to Civ.R. 60(B). In a judgment dated October 8, 2014, the trial court denied Slats & Nails' motion to vacate.

{¶ 7} Slats & Nails now appeals the August 5, 2014 and October 8, 2014 judgments, and it assigns the following error in both cases:

THE TRIAL COURT ERRED, TO THE PREJUDICE OF
SLATS & NAILS PALLETS, WHEN IT IGNORED THE
APPELLANT'S COMMON PLEAS BRIEF AND DISMISSED
THE APPEAL BELOW, WITH PREJUDICE.

{¶ 8} With respect to the August 5, 2014 judgment dismissing its appeal, Slats & Nails argues that the trial court erred for four reasons: (1) the trial court could not dismiss the appeal without first holding a hearing; (2) R.C. 4141.26 does not permit the trial court to require briefing from the parties, so the failure to submit a brief cannot result in dismissal of an appeal; (3) the "Brief Summary of Arguments of Appellant," filed at the same time as the notice of appeal, constituted an appellant's brief; and (4) the Commission's belated filing of the record excused Slats & Nails from filing a brief. Each of

these arguments raises legal issues, which we review de novo. *Hayward v. Summa Health Sys./Akron City Hosp.*, 139 Ohio St.3d 238, 2014-Ohio-1913, ¶ 23.

{¶ 9} To resolve Slats & Nails' first two arguments, we must review R.C. 4141.26. That statute sets forth the process whereby an employer may appeal the contribution rate determined by the director.¹ An employer may first seek reconsideration of the contribution rate determination from the director. If the employer is unsatisfied with the director's reconsidered decision, it may apply for review of that decision with the Commission. The Commission's determination is final unless the employer or the director timely appeals that determination to the Franklin County Court of Common Pleas. R.C. 4141.26(D) provides the following with regard to an appeal to the trial court:

Such appeal shall be taken by the employer or the director by filing a notice of appeal with the clerk of [the Franklin County Common Pleas Court] and with the commission. Such notice of appeal shall set forth the decision appealed and the errors in it complained of. Proof of the filing of such notice with the commission shall be filed with the clerk of such court.

The commission, upon written demand filed by the appellant and within thirty days after the filing of such demand, shall file with the clerk a certified transcript of the record of the proceedings before the commission pertaining to the determination or order complained of, and the appeal shall be heard upon such record certified to the commission. In such appeal, no additional evidence shall be received by the court, but the court may order additional evidence to be taken before the commission, and the commission, after hearing such additional evidence, shall certify such additional evidence to the court or it may modify its determination and file such modified determination, together with the transcript of the additional record, with the court. After an appeal has been filed in the court, the commission, by petition, may be made a party to such appeal. Such appeal shall be given precedence over other civil cases. The court may affirm the determination or order complained of in the appeal if it finds, upon consideration of the entire record, that the determination or order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of

¹ Employers owe contributions to the unemployment compensation fund. The amount an employer must pay depends upon the contribution rate assigned by the director. R.C. 4141.24 and 4141.25. If an employer transfers all of its trade or business to another employer, the acquiring employer will be the successor in interest to the transferring employer and assume the transferring employer's contribution rate. R.C. 4141.24(F). Here, Slats & Nails used the R.C. 4141.26 process to contest the determination that it is the successor in interest to S & N and, thus, the heir to S & N's contribution rate.

such a finding, it may reverse, vacate, or modify the determination or order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal.

{¶ 10} Here, Slats & Nails first argues that the trial court could not dismiss its appeal without first setting and holding a hearing on the appeal. Slats & Nails premises this argument on *Gil Lieber Buick Oldsmobile, Inc. v. State*, 16 Ohio App.3d 124 (10th Dist.1984). In that case, this court interpreted R.C. 119.12, which includes a requirement that the trial court hold a hearing on appeals undertaken pursuant to that statute. Unlike R.C. 119.12, R.C. 4646.26 contains no hearing requirement. *Gil Lieber*, therefore, is irrelevant to this appeal.

{¶ 11} Next, Slats & Nails argues that R.C. 4141.26 prohibits a trial court from requiring briefing from the parties. R.C. 4141.26 actually says nothing regarding briefing. The briefing requirement appears in Loc.R. 59 of the Court of Common Pleas of Franklin County, General Division. That rule requires appellants in administrative appeals to file a brief ten weeks after the filing of the notice of appeal.

{¶ 12} Courts of common pleas have inherent power to make reasonable rules regulating the practice and procedure before the court where such rules do not conflict with the Ohio Constitution or any valid statute. *Cassidy v. Glossip*, 12 Ohio St.2d 17 (1967), paragraph three of the syllabus. Here, a briefing requirement is neither unreasonable nor inconsistent with R.C. 4141.26. As we stated above, R.C. 4141.26 does not address briefing at all, so nothing in R.C. 4141.26 conflicts with Loc.R. 59's briefing requirement. Briefing provides the trial court with a full account of the errors the appellant complains of, as well as the appellee's response. Through briefing, the parties direct the trial court to the evidence and law relevant to their arguments. Given the heavy case load that trial courts labor under, briefing of administrative appeals is not only reasonable, it is essential to the functioning of those courts. Consequently, parties appealing pursuant to R.C. 4141.26 are subject to the briefing requirement of Loc.R. 59, and they must abide by it or face possible sanction. *See* Loc.R. 39.05(C) and (D).

{¶ 13} Slats & Nails' next two arguments accept the validity of Loc.R. 59, but posit that its application should not have resulted in the dismissal of the appeal. By the first

argument, Slats & Nails contends that it satisfied the briefing requirement of Loc.R. 59 by filing the "Brief Summary of Arguments of Appellant." We disagree.

{¶ 14} A "brief" is "[a] written statement setting out the legal contentions of a party in litigation, esp[ecially] on appeal; a document prepared by counsel as the basis for arguing a case, consisting of legal and factual arguments and the authorities in support of them." *Black's Law Dictionary* (10th Ed.2014). Here, Slats & Nails' three-paragraph "Brief Summary of Arguments of Appellant" does not constitute a brief. While the summary sets forth the error the Commission allegedly committed, it lacks the citations to the record and legal authorities that are necessary in a brief.

{¶ 15} Moreover, an examination of Slats & Nails' notice of appeal reveals that Slats & Nails did not consider the "Brief Summary of Arguments of Appellant" a brief, either. In its notice of appeal, Slats & Nails requested that the trial court set a briefing schedule; a request that, logically, Slats & Nails would not make if it believed that the "Brief Summary of Arguments of Appellant" was its brief. Additionally, Slats & Nails' notice of appeal does not contain a recounting of the alleged errors in the Commission's decision. R.C. 4141.26 requires that a notice of appeal state "the errors in [the Commission's decision that the appellant] complains of." Given the absence of this information in the notice of appeal, it appears that Slats & Nails intended the "Brief Summary of Arguments of Appellant"—filed at the same time as the notice of appeal—to satisfy that requirement. In light of the intended purpose of the "Brief Summary of Arguments of Appellants" and the deficiencies in it, we conclude that the summary is not a brief.

{¶ 16} Slats & Nails' final argument is that the Commission's delay in filing the record excused Slats & Nails from filing a brief. The original case schedule set May 13, 2014 as the deadline for filing the record. The trial court received the record on May 21, 2014—eight days late.

{¶ 17} The eight-day delay in the filing of the record gave Slats & Nails grounds to request an extension for filing its brief or, even, to strike the record. However, the delay did not permit Slats & Nails to unilaterally decide to abandon the case schedule and ignore the order to show cause for its failure to timely file a brief. We, therefore, find no merit in Slats & Nails' argument that a late-filed record justified its actions.

{¶ 18} Having rejected all of Slats & Nails' arguments regarding the dismissal of its appeal, we turn to the argument that the trial court erred in denying Slats & Nails' motion to vacate. Slats & Nails appealed from the dismissal judgment and moved to vacate that judgment on the same date. The trial court ruled on the motion to vacate while the appeal from the dismissal judgment was pending before this court.

{¶ 19} Once a party has appealed an underlying judgment, a trial court loses jurisdiction to consider Civ.R. 60(B) motions for relief from judgment. *Howard v. Catholic School Serv. of Cuyahoga Cty., Inc.*, 70 Ohio St.3d 141, 147 (1994). The trial court only acquires jurisdiction to consider a Civ.R. 60(B) motion if the appellate court remands the matter to the trial court. *Id.*

{¶ 20} Here, the trial court recognized that it lacked jurisdiction to consider the Civ.R. 60(B) motion, but considered and denied it anyway. This was error. Because the trial court rendered its judgment without jurisdiction, the judgment is void. *Wiltz v. Clark Schaefer Hackett & Co.*, 10th Dist. No. 11AP-64, 2011-Ohio-5616, ¶ 39. This determination moots all the arguments that Slats & Nails asserts regarding the Civ.R. 60(B) judgment.

{¶ 21} For the foregoing reasons, we overrule Slats & Nails' assignment of error to the extent that it challenges the August 5, 2014 judgment that dismissed Slats & Nails' appeal, and we affirm that judgment. We overrule as moot Slats & Nails' assignment of error to the extent that it challenges the October 8, 2014 judgment denying the motion to vacate. As we have determined that the Franklin County Court of Common Pleas lacked jurisdiction when it rendered the October 8, 2014 judgment, we vacate that judgment and remand this cause to that court for further proceedings consistent with law and this decision.

*August 5, 2014 judgment affirmed;
October 8, 2014 judgment vacated;
cause remanded.*

SADLER and BRUNNER, JJ., concur
