

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

G. Lieu, Inc.,	:	
Plaintiff-Appellant,	:	No. 16AP-771
v.	:	(C.P.C. No. 10CV-16929)
E. Construction & Remodeling, LLC, et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on February 7, 2017

Sam S. Law, for appellant.

Johrendt & Holford and *Andrew Mills Holford*, for appellee
Ernest Chen.

ON MOTION TO DISMISS

LUPER SCHUSTER, J.

{¶1} Defendant-appellee Ernest Chen has filed a motion to dismiss this appeal for lack of jurisdiction. The motion is denied.

{¶2} The trial court entered a final, appealable order granting summary judgment in favor of Chen, the last remaining defendant in the case, on October 13, 2016. Counsel for plaintiff-appellant, G. Lieu, Inc., timely filed a notice of appeal with the clerk of the trial court on November 11, 2016, under the correct trial court case number. The notice of appeal reads as follows: "Now come Defendants [sic], by counsel, and hereby give notice of the filing of an appeal to the Tenth District Court of Appeals from the Final judgment of the Franklin County Common Pleas Court entered on October 13, 2016."

{¶3} As filed, this initial notice of appeal is imprecise regarding the identity of the party bringing the appeal, improperly uses the plural for a singular party, and is erroneous as to the posture of the appellant party in the trial court. Counsel attempted to cure these deficiencies by timely filing an amended notice of appeal with the clerk of this court on November 14, 2016, reading as follows: "The undersigned counsel hereby give notice that counsel represent Plaintiff, G. Lieu, Inc. and not defendants, as denoted in the original filed Notice of Appeal."

{¶4} Addressing first the attempted amendment, App.R. 3(F)(2) specifies that any attempt to amend a notice of appeal "shall be filed in both the trial court and the court of appeals." The amended notice filed by G. Lieu, Inc., although timely, was filed solely with the clerk of this court and is ineffective.

{¶5} Turning to the original notice of appeal, App.R. 3(D) specifies that the notice of appeal "*shall* specify the party or parties taking the appeal." (Emphasis added.) Despite this seemingly mandatory language, the Supreme Court of Ohio has distinguished comparable federal cases and held that acceptance of jurisdiction by an appellate court is discretionary when a timely notice of appeal presents defects in party identification:

Although the relevant portion of the version of Fed.R.App.P. 3 considered in *Torres [v. Oakland Scavenger Co.]*, 487 U.S. 312 (1987) was virtually the same as App.R. 3, we do not interpret the Ohio rule so strictly. Ohio App.R. 3(A) provides, 'Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal.' App.R. 3(A) is controlling. Pursuant to App.R. 3(A), the only jurisdictional requirement for the filing of a valid appeal is the timely filing of a notice of appeal. When presented with other defects in the notice of appeal, a court of appeals is vested with discretion to determine whether sanctions, including dismissal, are warranted, and its decision will not be overturned absent an abuse of discretion.

Transamerica Ins. Co. v. Nolan, 72 Ohio St.3d 320, 322 (1995).

{¶6} Pursuant to *Transamerica*, therefore, when this court is presented with such non-jurisdictional defects in a notice of appeal filed under the appellate rules,¹ we have discretion to determine whether sanctions, including dismissal, are warranted. *Cook v. Smith*, 10th Dist. No. 12AP-489, 2012-Ohio-4951, ¶ 22. "In determining whether dismissal is warranted, we may also consider other factors. For example, in *Transamerica*, the Supreme Court considered whether an appellant's mistake was made in good faith, whether prejudice arose as a result of the mistake, whether dismissal would constitute a disproportionate sanction, whether the client would be punished for counsel's action, and whether dismissal frustrated the overriding objective of deciding cases on their merits." *Id.*

{¶7} Indisputably, the notice of appeal in this case did not fully comply with App.R. 3. Nonetheless, it was timely filed and we have discretion to overlook the defects, particularly as there is no allegation by Chen that any prejudice resulted. The errors appear inadvertent, are solely attributable to counsel, and are not the product of any bad-faith effort to disrupt the orderly course of litigation or the effective administration of justice.

{¶8} "The purpose of a notice of appeal is to apprise the opposing party of the taking of an appeal." *Cook* at ¶ 22, citing *Maritime Mfrs., Inc. v. Hi-Skipper Marina*, 70 Ohio St.2d 257, 259 (1982). The notice of appeal in this case has served that purpose, as the opposing party was apparently able to ascertain the import of the filing based on the trial court case number and judgment date—no doubt aided by the fact that the parties are unambiguously aligned in this case. Had confusion for the court or prejudice to opposing parties resulted, the outcome might well be different, but, in the context of this case, we find no basis to impose the ultimate sanction of dismissal. We therefore deny Chen's motion to dismiss the appeal.

Motion to dismiss denied.

KLATT and BRUNNER, JJ., concur.

¹ Administrative appeals brought pursuant to statute are subject to the jurisdictional requirements therein. See, e.g., *Pryor v. Dir., Ohio Dept. of Job & Family Servs.*, ___ Ohio St.3d ___, 2016-Ohio-2907, ¶ 12, citing *Zier v. Bur. of Unemp. Comp.*, 151 Ohio St. 123 (1949); *Camper Care, Inc. v. Forest River, Inc.*, 10th Dist. No. 08AP-146, 2008-Ohio-3300.