[Cite as *State v. French*, 2006-Ohio-7115.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2005 CA 126
v.	:	T.C. NO. 2005 TRC 01569
KATHY E. FRENCH	:	(Criminal Appeal from Fairborn Municipal Court)
Defendant-Appellant	:	
	:	

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DECISION AND ENTRY

Rendered on the 14th day of December, 2006.

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PER CURIAM:

{¶ 1} This matter comes on for determination of appellant's motion for reconsideration of this court's October 24, 2006 judgment dismissing the appeal for lack of jurisdiction.

{¶ 2} Rarely is the Court of Appeals presented the task of trying to unravel a case with as

many procedural problems as this case presents. First, the error that has been assigned involves a defendant who was deprived of her liberty and committed to jail on a "sentence" by a magistrate before the sentence had been adopted by the court. See Crim.R. 19(D)(3)(a) which provides that "[n]o sentence by a magistrate shall be enforced until the court has entered judgment." Next, this court, upon reviewing the error assigned, discovers that no judgment entry of conviction and sentence is a part of the record on appeal, and consequently this court dismissed the appeal on jurisdictional grounds for lack of a final appealable order. This court is without jurisdiction to consider a case where there is no final appealable order. App.R. 4(A) provides that a notice of appeal must be filed within 30 days of the entry of the judgment appealed. App.R. 4(D) further defines when a judgment is entered by referral to, inter alia, Crim.R. 32(C). In order to constitute a final appealable order, Crim.R. 32(C) requires a judgment of conviction to "set forth the plea, the verdict or findings, * * *" and that "[t]he Judge shall sign the judgment and the Clerk shall enter it upon the journal. A judgment is effective only when entered on the journal by the clerk."

{¶ 3} Appellant has attached to the within motion to reconsider, a photocopy of the file jacket with what purports to reflect a judgment entry of conviction and sentence notated on the front of the jacket. The file jacket reflects a file stamp allegedly containing a date of October 13, 2005, although it is stamped on top of other printed material on the file jacket that makes it nearly impossible to decipher. Upon considering the motion for reconsideration, it is necessary for this court to review the Transcript of Docket and Journal Entries filed by the trial court to determine whether this purported document has ever been entered on the journal of the trial court.

{¶ 4} The purported judgment entry, which still is not a part of the record on appeal, has apparently not been journalized since it is not one of the numbered documents comprising the record.

The Transcript recites that there was a notice of the sentencing hearing filed on October 5, 2005 (docket #46); that on October 13, 2005, there was a probation referral slip filed (docket #47) and a bond receipt filed (docket #48). The next entry on the Transcript is the Notice of Appeal, filed October 24, 2005 (docket #49). Thereafter, the Transcript reflects no judgment entries being journalized.

{¶ 5} Finally, this court discovers that, in fact, no Transcript has been properly filed in the within case because the Clerk of the trial court has not certified the transcript. App. R. 10(B) requires the Clerk of the trial court to prepare and certify the docket and journal entries, among other things, and to transmit this record to the clerk of the court of appeals.

{¶ 6} Ignoring the other defects present, we must look at the photocopy of the purported "judgment entry" in order to determine whether this court might have had jurisdiction to entertain the appeal in the first instance. In order for an entry of judgment to be effective, it must contain (1) the plea, (2) the verdict or findings, (3) the sentence, (4) the signature of the trial judge, and (5) it must have been entered in the trial court's journal. Crim.R. 32(C); *Cuyahoga Falls v. Foster*, 2004-Ohio-2662; *Akron v. Branham* (May 26, 1999), 9th Dist. No. 19342, at 2, citing *State v. Morrison* (Apr. 1, 1992), 9th Dist. No. 2047, at 3. Handwritten notations made by the judge on a case file jacket are not sufficient to serve as a judgment entry unless those notations have been filed with the clerk. *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 337, 1997-Ohio-340, citing *William Cherry Trust v. Hoffman* (1985), 22 Ohio App.3d 100, 105.

{¶ 7} The photocopy of the file jacket in this case shows the following: (1) the defendant pled G 6/28/05; (2) the defendant was found G; however the jacket does not reflect whether she was found guilty of 4511.19(A)(1)(H) or of 4549.02, or of both; (3) Defendant's sentence was: to pay a

fine in the amount of $500.00 and costs in the amount of $(check mark), and 180 no good time days in jail, suspended 90 days on credit 3 served condition no OVI convictions within 6 yrs, 3 yrs prob to monitor D's compliance with all treatment recom.OL is suspended 3 years eff 3/1/05 ODP granted per court standards. Special conditions not working now. If request made later, must have restricted plates. This purported judgment entry is signed CMB Judge/Magistrate. Below the signature is a notation terminate ALS. There are four additional notations on the front of the file jacket: (1) Dismissed w/out CC, with no date and no signature; (2) EMHA prob 3 yrs, with no date and no signature; (3) 8/12/05 mag's sentence overruled by court in entry, signed CMB; and (4) Dismissed w/CC, dated presumably 6/20/05. There are two file stamps on the front of the file jacket, one we presume to be July 23, 2005, and the other that we presume is October 13, 2005, but both are illegible due to being stamped over printed material on the jacket. The trial court's Transcript of Docket and Journal Entries, however, does not reflect any judgment entries being journalized on or near either file stamp date.

{¶ 8} If the only procedural problems presented here related to the failure of the trial court to file either a complete Transcript of Docket and Journal Entries, or to the failure of the trial court clerk to file a certified Transcript, this court would be required, in the interests of fairness and justice, to allow or to order the correction of the deficient trial court record. We recognize that those kinds of failures are not the fault of the litigants, and that innocent victims of the trial court's failures to abide by the rules should not be penalized. See: *In re: Holmes*, 104 Ohio St.3d 664, 2004-Ohio-7109; *Cobb v. Cobb* (1980), 62 Ohio St.2d 124.

{¶ 9} Nonetheless, if the purported judgment entry fails in its essential purpose, and is therefore a nullity, this court lacks jurisdiction to address the substantial issues here on appeal.

Crim.R. 32(B) reflects the axiom that "[a] court of record speaks only through its journal and not by oral pronouncement or mere written minute or memorandum." See also: *State ex rel. Hanley v. Roberts* (1985), 17 Ohio St.3d 1, 4. In *State v. Tripodo* (1977), 50 Ohio St.2d 124, 126 the Supreme Court of Ohio stated that "[a] document not labeled a judgment nor unequivocally intended to be a judgment does not constitute a judgment * * *." Furthermore, "handwritten 'notations' by a municipal judge on a case file-envelope or case jacket do not rise to the dignity and finality of a 'judgment' from which an appeal will lie, in the absence of evidence that it has been filed with the clerk of the trial court." *State ex rel. White v. Junkin* (1997), 80 Ohio St.3d 335, 337, quoting *William Cherry Trust v. Hofmann* (1985), 22 Ohio App.3d 100, 105.

{¶ 10} The mere placement of a file date stamp on the file jacket is not tantamount to journalization of the decision. Dockets and journals are distinct records that are required to be kept by clerks. See: R.C. § 1901.31(E).[1]

{¶ 11} In *State v. Ginocchio* (1987), 38 Ohio App.3d 105, the Twelfth District addressed a similar problem and stated as follows:

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[1]R.C. 1901.31(E): " * * * The clerk shall do all of the following: file and safely keep all journals, records, books, and papers belonging or appertaining to the court; record the proceedings of the court; perform all other duties that the judges of the court may prescribe; and keep a book showing all receipts and disbursements, which book shall be open for public inspection at all times.

"The clerk shall prepare and maintain a general index, a docket, and other records that the court, by rule, requires, all of which shall be the public records of the court. In the docket, the clerk shall enter, at the time of the commencement of an action, the names of the parties in full, the names of the counsel, and the nature of the proceedings. Under proper dates, the clerk shall note the filing of the complaint, issuing of summons or other process, returns, and any subsequent pleadings. The clerk also shall enter all reports, verdicts, orders, judgments, and proceedings of the court, clearly specifying the relief granted or orders made in each action. * * *"

{¶ 12} "Much to our dismay, this court has noted an increasing tendency on the part of some municipal and county courts to rely upon handwritten forms such as the one involved here, or even upon brief notations on the case file or jacket, as their judgment entries. Such conduct clearly deviates from Crim. R. 32(B) and M.C. Sup. R. 7, and can no longer be tolerated." Id, at 106.

{¶ 13} We agree with the sentiment expressed therein, and find this practice to be disturbing. While this court recognizes that the press of business in these courts makes such shortcuts convenient, these courts are reminded that the same basic procedural formalities must be followed in all instances, such that all parties, and especially all criminal defendants are afforded the procedural due process that they are entitled to under both the Constitution of the United States and of the Constitution of the State of Ohio.

{¶ 14} While this court declines to mandate a specific procedure that all courts must adhere to in the preparation and filing of final judgment entries, we express that the better practice is for a court to prepare and file a separate document which contains the case caption and case number, a designation as a decision or a judgment entry or both, a clear pronouncement of the court's judgment, including the plea, the verdict or findings, sentence and the court's rationale if the judgment entry is combined with a decision or opinion, the judge's full signature, and a time stamp indicating the filing of the judgment with the clerk for journalization. And, we further cannot emphasize strongly enough the duty of the clerk of any court to properly journalize and docket all such judgments once they have been signed and file stamped.

{¶ 15} Based upon the record and other extraneous material before us, we find that the purported judgment entry does not constitute a final judgment from which an appeal may be taken. While the notations on the file jacket contain some of the material required by Crim. R. 32(B), it is

deficient in other respects, and the evidence is undisputed that the notation, while apparently file stamped, was never properly journalized by the clerk. Therefore, we cannot permit the appellant to supplement the record, because there is no final judgment entry that would be entitled to journalization.

{¶ 16} We find that the motion for reconsideration fails to call to the attention of the court an obvious error in its decision or raise an issue that was not properly considered in the first instance. See: *Garfield Hts. City School Dist. v. State Bd. of Edn.* (1992), 85 Ohio App.3d 117; *Columbus v. Hodge* (1987), 37 Ohio App.3d 68. This court has no discretion to disregard the jurisdictional requirement of a final appealable order. App.R. 4(A). Accordingly, the motion is not well taken.

{¶ 17} It is therefore ORDERED that Appellant's motion for reconsideration be and the same is hereby denied.

SO ORDERED.

JAMES A. BROGAN, Judge

MIKE FAIN, Judge

SUMNER E. WALTERS, Judge
(Sitting by assignment of the Chief
Justice of the Supreme Court of Ohio)

Copies mailed to:

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