

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
GALLIA COUNTY

STATE OF OHIO,	:	
	:	Case No. 14CA10
Plaintiff-Appellee,	:	
	:	
vs.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
WALTER BREWER,	:	
	:	
Defendant-Appellant.	:	<b>Released: 05/28/15</b>

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APPEARANCES:

Thomas E. Saunders, Gallipolis, Ohio, for Appellant.

Adam R. Salisbury, Gallipolis City Solicitor, Gallipolis, Ohio, for Appellee.

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McFarland, A.J.

{¶1} Appellant, Walter Brewer, appeals the restitution order imposed by the trial court after he entered into a negotiated plea agreement whereby he pled no contest to one count of animal cruelty in exchange for the dismissal of ten other related counts of animal cruelty. On appeal, Appellant contends that the trial court abused its discretion by ordering him to pay restitution on a charge that was previously dismissed by the court. However, we do not reach the merits of the argument raised by Appellant in light of our decision that no final, appealable order exists. Accordingly, this appeal is dismissed for lack of jurisdiction.

## FACTS

{¶2} Appellant was cited for multiple counts of misdemeanor animal cruelty involving horses, mares, cows, bulls and a dog. In total, the charges against Appellant included eleven counts, labeled (A) through (K).

Appellant initially pled not guilty but later entered into plea negotiations whereby he would plead no contest to the (H) count, which involved a horse, in exchange for the dismissal of the remaining counts. Upon entering his plea of no contest, the trial court dismissed the remaining counts and set the matter for a restitution hearing. The sentencing entry issued on June 5, 2014, did not include restitution, but it did include a handwritten notation that a restitution hearing would be held on July 3, 2014. After conclusion of the restitution hearing, the trial court, over the objection of Appellant, ordered \$1272.00 to be paid to the Gallia County Animal Shelter for expenses related to the care of Appellant's dog, which was the subject of count (G). The trial court issued another order on July 10, 2014, that included a handwritten note indicating the amount of restitution that was determined, however that order did not include the details of Appellant's conviction or sentence. Appellant now brings his appeal, setting forth a single assignment of error for our review.

## ASSIGNMENT OF ERROR

“I. THE TRIAL COURT ABUSED ITS DISCRETION BY ORDERING WALTER BREWER TO PAY RESTITUTION ON A CHARGE THAT WAS PREVIOUSLY DISMISSED BY THE COURT.”

## LEGAL ANALYSIS

{¶3} In his sole assignment of error, Appellant contends that the trial court abused its discretion by ordering him to pay restitution on a charge that was previously dismissed by the court. However, before we reach the merits of Appellant’s appeal, we must determine whether a final, appealable order exists. “A court of appeals has no jurisdiction over orders that are not final and appealable.” *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, ¶ 6; citing Ohio Constitution, Article IV, Section 3(B)(2); see also R.C. 2505.02. “If a court's order is not final and appealable, we have no jurisdiction to review the matter and must dismiss the appeal.” *State v. Darget*, 4th Dist. No. 09CA3306, 2010-Ohio-3541, ¶ 4; citing *Eddie v. Saunders*, 4th Dist. No. 07CA7, 2008-Ohio-4755, ¶ 11. “If the parties do not raise the jurisdictional issue, we must raise it sua sponte.” *Darget* at ¶ 4; citing *Sexton v. Conley*, 4th Dist. No. 99CA2655, 2000 WL 1137463, \*2 (Aug. 7, 2000); *Whitaker–Merrell v. Geupel Constr. Co.*, 29 Ohio St.2d 184, 186, 280 N.E.2d 922 (1972).

{¶4} “ ‘A judgment that leaves issues unresolved and contemplates that further action must be taken is not a final appealable order.’ ” *State v. Savage*, 4th Dist. Meigs No. 11CA7, 2012-Ohio-2276; quoting *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, 843 N.E.2d 164, ¶ 20; quoting *Bell v. Horton*, 142 Ohio App.3d 694, 696, 756 N.E.2d 1241 (4th Dist. 2001). Here, the June 5, 2014, sentencing entry clearly contemplated that further action was required in the form of a restitution hearing. Although the trial court’s subsequent July 10, 2014, order addressed the unresolved issue of restitution, it contained no information related to Appellant’s conviction or sentence.

{¶5} This Court cannot create a final, appealable order by combining the June 5, 2014, and July 10, 2014, entries. *Savage*, supra, at ¶ 6. “For crimes that are not capital offenses, the Supreme Court of Ohio has held that ‘[o]nly one document can constitute a final appealable order.’ ” *Savage* at ¶ 6; quoting *Baker* at ¶ 17. See generally *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9, ¶ 17-18 (distinguishing *Baker* and finding that “in aggravated-murder cases subject to R.C. 2929.03(F), the final, appealable order consists of the combination of the judgment entry and the sentencing opinion”); see also *State v. Thompson*, 4th Dist. Ross No. 10CA3177, 2011-Ohio-1564, ¶ 11 (finding we could not create a final,

appealable order by combining the judgment entry of sentence and the restitution entry); *State v. Gilmore*, 7th Dist. Mahoning No. 11MA30, 2014-Ohio-5059, ¶ 4-6 (referencing the substantive defects in the orders at issue in both *Savage* and *Thompson*, supra). Therefore, we cannot combine the trial court's multiple entries in an effort to create jurisdiction.

{¶6} As a result, we find that no final appealable order exists in the present case. Accordingly, we must dismiss Appellant's appeal for lack of jurisdiction.

**APPEAL DISMISSED.**

**JUDGMENT ENTRY**

It is ordered that the APPEAL BE DISMISSED. Costs herein are assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Gallipolis Municipal Court to carry this judgment into execution.

**IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT**, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hoover, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: \_\_\_\_\_  
Matthew W. McFarland,  
Administrative Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**