

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JAMES A. HENRY, SR.

Plaintiff-Appellee

-VS-

ANNA M. GASTALDO

Defendant-Appellant

: JUDGES:
: Hon. John F. Boggins, P.J.
: Hon. Sheila G. Farmer, J.
: Hon. John W. Wise, J.

: Case No. 2005 AP 03 0022

: O P I N I O N

CHARACTER OF PROCEEDING:

Civil appeal from Tuscarawas County
Common Pleas Court, No. 1999 DC 03
0073

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

AUGUST 3, 2005

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JAMES A. HENRY, SR.
1020 Dummermuth Road
New Philadelphia, OH 44663

ANNA M. GASTALDO
275 South Wardell Street
Urichsville, OH 44683

Boggins, P.J.

{¶1} Defendant-Appellant Anna M. Gastaldo appeals the February 24, 2005, decision of the Tuscarawas County Court of Common Pleas overruling her objections and adopting the Findings of Fact and Recommendations contained in the Magistrate's Decision dated September 28, 2004.

{¶2} Plaintiff-Appellee James A. Henry, Sr. has not filed a brief or otherwise appeared in this appeal.

{¶3} Upon review of the filings in this matter, we find same not to be in compliance with the Appellate Rules. Appellant's filing captioned "Appellant Briefing", fails to separately set forth any assignment(s) of error as required by App. R. 16(A). Additionally, Appellant fails to set forth a single, legal authority to support her contention that the trial court erred by not granting her objections. Thus, appellant clearly did not follow the requirements of App.R. 16(A)(7).

{¶4} "The court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or *fails to argue the assignment separately in the brief*, as required under App. R. 16(A)." [Emphasis added].

{¶5} App. R. 16 states:

{¶6} "(A) Brief of the appellant

{¶7} "The appellant shall include in its brief, under the headings and in the order indicated, all of the following:

{¶8} "(1) A table of contents, with page references.

{¶9} “(2) A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where cited.

{¶10} “(3) A statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected.

{¶11} “(4) A statement of the issues presented for review, with references to the assignments of error to which each issue relates.

{¶12} “(5) A statement of the case briefly describing the nature of the case, the course of proceedings, and the disposition in the court below.

{¶13} “(6) A statement of facts relevant to the assignments of error presented for review, with appropriate references to the record in accordance with division (D) of this rule.

{¶14} “(7) An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.

{¶15} “(8) A conclusion briefly stating the precise relief sought.”

{¶16} An appellate court may rely upon App.R. 12(A) in overruling or disregarding an assignment of error because of "the lack of briefing" on the assignment of error. *Hawley v. Ritley* (1988), 35 Ohio St.3d 157, 159, 519 N.E.2d 390, 392-393; *State v. Watson* (1998), 126 Ohio App.3d, 316, 710 N.E.2d 340, discretionary appeal disallowed in (1998), 82 Ohio St.3d 1413, 694 N.E.2d 75.

{¶17} As stated above, appellant has failed to properly brief her issues on appeal. App.R. 16(A)(7) states that an appellant shall include in her brief "[a]n argument

containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contention, with citations to the authorities, statutes and parts of the record on which appellant relies."

{¶18} In the case sub judice, Appellant has wholly failed to set forth any assignment(s) of error nor has she cited any specific place in the trial court's record where any of the errors are alleged to have occurred.

{¶19} An appellate court is empowered to disregard an assignment of error presented for review due to lack of briefing by the party presenting that assignment. *State v. Watson* (1998), 126 Ohio App.3d, 316, 710 N.E.2d 340, discretionary appeal disallowed in (1998), 82 Ohio St.3d 1413, 694 N.E.2d 75, *Hawley v. Ritley* (1988), 35 Ohio St.3d 157, 159, 519 N.E.2d 390, 392- 393. "Errors not treated in the brief will be regarded as having been abandoned by the party who gave them birth." *Uncapher v. Baltimore & Ohio Rd. Co.* (1933), 127 Ohio St. 351, 356, 188 N.E. 553, 555.

{¶20} Appellant's appeal is hereby dismissed.

By: Boggins, P.J.

Farmer, J. and

Wise, J. concur

JUDGES

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JUDGMENT ENTRY

CASE NO. 2005 AP 03 0022

For the reasons stated in our accompanying Memorandum-Opinion on file, the appeal of the judgment of the Tuscarawas County Common Pleas Court, Tuscarawas County, Ohio is dismissed. Costs assessed to Appellants.

JUDGES