[Cite as *Debt Recovery Solutions of Ohio, Inc. v. Lemon*, 2009-Ohio-799.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DEBT RECOVERY SOLUTIONS OF OHIO, INC.

Plaintiff-Appellee

-vs-

RODNEY LEMON, et al.

Defendants-Appellants

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

Case No. 08 CA 53

O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal from the Mansfield Municipal Court, Case No. 2007 CVH 1680
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	February 20, 2009

APPEARANCES:

For Plaintiff-Appellee	For Defendants-Appellants
JOHN ALLEN HOLMES 28 Park Avenue West 10th Floor Mansfield, Ohio 44902	RODNEY G. LEMON PRO SE 4459 State Route 13 North Shiloh, Ohio 44878

Wise, J.

{¶1} Defendant-Appellant Rodney Lemon appeals the April 14, 2008, decision entered in the Mansfield Municipal Court granting judgment in favor of Plaintiff-Appellee Debt Recovery Solutions of Ohio, Inc.

STATEMENT OF THE FACTS AND CASE

{¶2} On or about August 5th or 6th, 2005, Linda Lemon underwent an emergency appendectomy.

{¶3} Subsequently, Rodney and Linda Lemon received an invoice in the amount of $212.99 from Dr. Kuensen Lew for the interpretation of two radiographic studies performed on Linda Lemon at the MedCentral Health System facility in Shelby, Ohio.

{¶4} On May 15, 2007, Plaintiff-Appellant Debt Recovery Solutions of Ohio, Inc. filed a Complaint naming Rodney Lemon and Linda Lemon as defendants. In said Complaint, Count One sought payment, as an assignee, for medical services allegedly provided by Dr. Keunsun Lew to defendants on or about August 5, 2005. Count Two sought payment, as an assignee, for professional services provided by Express Imaging Center. This second count was subsequently dismissed after defendants paid same.

{¶5} On March 17, 2008, this matter came on for trial before a Magistrate.

{¶6} By Magistrate's decision filed April 14, 2008, the trial court found in favor of Plaintiff-Appellant Debt Recovery Solutions of Ohio, Inc. and ordered Defendants-Appellees to pay the sum of $212.99 to Appellant plus interest accrued

to that date in the amount of $22.08 plus interest from the date of judgment at the rate of 8%.

{¶7} By Judgment Entry docketed May 6, 2008, the trial court adopted the Magistrate's Decision.

{¶8} On May 7, 2008, Defendant-Appellant Rodney Lemon filed his Notice of Objections to the Magistrate's Decision.

{¶9} By Judgment Entry filed May 12, 2008, the trial court struck Defendant-Appellant's Objections as being untimely as same were filed twenty-two (22) days after the Magistrate's Decision was docketed.

{¶10} Appellant now appeals, raising the following assignments of error:

ASSIGNMENTS OF ERROR

{¶11} "I. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN THAT THE JUDGMENT ENTRY STATED, PLAINTIFF ALLEGES THAT DR. LEW INTERPRETED RADIOLOGY SLIDES/X-RAY, ETC. ON THE NIGHT THAT MRS LEMON HAD AN EMERGENCY APPENDECTOMY.

{¶12} "II. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN THAT THE JUDGMENT ENTRY STATED, ALL THE OFFICIAL RECORDS OF MEDCENTRAL HEALTH SYSTEMS LISTS DR [SIC] LEW AAS [SIC] THE INTERPRETING RADIOLOGIST. THERE IS NO DOUBT THAT HE READ THESE X-RAYS AT SOME POINT, BASED UPON THE RECORDS, IT APPEARS THAT THERE MUST BE AN INTERPRETING RADIOLOGIST WHO READS THE X-RAYS, ETC. AT SOME POINT TO DOUBLE CHECK THE DIAGNOSIS OF THE TREATING PHYSICIAN.

{¶13} "III. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN STATING, THE COURT FINDS THAT THERE IS CLEAR EVIDENCE AND THEIR BURDEN OF PROOF BY WAY OF OFFICIAL RECORSD AND ACCOUNTINGS KEPT IN THE NORMAL COURSE OF BUSINESS THAT THE DEFENDANTS ARE RESPONSIBLE FOR THE BILLING FOR PROFESSIONAL SERVICES BY DR [SIC] LEW.

{¶14} "IV. THIS COURT FINDS NOTHING UNUSUAL THAT A RADIOLOGIST MAY "DOUBLE CHECK" THE DIAGNOSIS OF THE TREATING PHYSICIAN, EVEN IF IT IS WITHIN 24 HOURS OR SO AFTER AN EMERGENCY PROCEDURE."

{¶15} Initially, this Court must note that Appellants' brief does not comply with the rules for a proper brief set forth in App.R. 16(A). Appellants' brief does not include a reference to the place in the record where each is reflected, in violation of App.R. 16(A)(3). It does not include a table of cases, statutes, and other authority, in violation of App.R. 16(A)(1) and (2). In fact, it does not contain any cases, statutes, or authority as support. It does not include a statement of the issues presented for review, as required by App.R. 16(A)(4). It does not contain a brief statement of the case, as mandated by App.R. 16(A)(5). Perhaps most importantly, the "brief" does not include an argument with citations to authorities, statutes, and portions of the record on which Appellant relies, in violation of App.R. 16(A)(7).

{¶16} Pursuant to App.R. 12(A)(2), we are not required to address issues which are not argued separately as assignments of error, as required by App.R. 16(A). *Kremer v. Cox* (1996), 114 Ohio App.3d 41, 60, 682 N.E.2d 1006; *Hawley v. Ritley* (1988), 35

Ohio St.3d 157, 159, 519 N.E.2d 390. Such deficiencies permit this Court to dismiss Appellant's appeal.

{¶17} This Court has been faced with similar cases in the past. For example, in *Reco Equipment, Inc. v. Jafari* (Apr. 27, 2001), 7th Dist. No. 99-BA-45, the Appellant's brief consisted of "one paragraph of argument occupying no more than one-half of one 8 1/2 X 11 piece of paper" and presented no assignment of error. In affirming the trial court's decision, we noted:

{¶18} "Appellant, as the party asserting an error in the trial court, bears the burden to *demonstrate* error by reference to matters made part of the record in the court of appeals. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199, 400 N.E.2d 384; App.R. 9(B). More specifically, App.R. 16(A)(7) requires that an appellant include in his brief an argument containing his contentions 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.*" *Id.* (Emphasis sic.)

{¶19} Notwithstanding the omissions in Appellants' brief, in the interests of justice and finality, we elect to review the issues raised in Appellants' appeal.

I., II., III, IV.

{¶20} We shall address Appellant's errors simultaneously. In each of Appellant's assignments of error, he challenges the findings of the magistrate.

{¶21} Upon review, we find Appellant has failed to file a transcript of the lower court proceedings. An appellant is required to provide a transcript for appellate review. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199, 400 N.E.2d 384. Such

is necessary because an appellant shoulders the burden of demonstrating error by reference to matters within the record. See, *State v. Skaggs* (1978), 53 Ohio St.2d 162, 163, 372 N.E.2d 1355.

{¶22} This principle is embodied in App.R. 9(B), which states in relevant part:

{¶23} "At the time of filing the notice of appeal the appellant, in writing, shall order from the reporter a complete transcript or a transcript of the parts of the proceedings not already on file as the appellant considers necessary for inclusion in the record and file a copy of the order with the clerk. * * * If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the weight of the evidence, the appellant shall include in the record a transcript of all evidence relevant to the findings or conclusion." App.R. 9(B); see, also, *Streetsboro v. Hughes* (July 31, 1987), 11th Dist. No. 1741.

{¶24} Where portions of the transcript necessary for the resolution of assigned errors are omitted from the record, an appellate court has nothing to pass upon. As appellant cannot demonstrate those errors, the court has no choice but to presume the validity of the lower court's proceedings. *State v. Ridgway* (Feb. 1, 1999), 5th Dist. No. 1998CA00147, citing Knapp, supra.

{¶25} Under the circumstances, a transcript of the proceedings is necessary for a complete review of the errors assigned in Appellant's brief. As Appellant has failed to provide this Court with a transcript, we must presume regularity of the proceedings below and affirm.

{¶26} Additionally, Appellant’s failure to timely object to the Magistrate’s Decision results in a waiver of all but plain error. According to Civ.R. 53(D)(3)(b)(i), “[a]

party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i).” In failing to timely object to the Magistrate’s decision, Appellant waived any error. Civ.R. 53(D)(3)(b)(iv) (stating that “[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53[D][3][a][ii], unless the party has objected to that finding or conclusion as required by Civ.R. 53[D][3][b]”).

{¶27} As there is no record, there is likewise no demonstration of plain error in said record, rendering Appellant's assertions unpersuasive.

{¶28} Based on the foregoing, Appellant’s assignments of error are overruled.

{¶29} For the foregoing reasons, the judgment of the Mansfield Municipal Court, Richland County, Ohio, is affirmed.

By: Wise, J.

Hoffman, P. J., and

Delaney, J., concur.

/S/ JOHN W. WISE_____

/S/ WILLIAM B. HOFFMAN_____

/S/ PATRICIA A. DELANEY_____

JUDGES

JWW/d 22

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DEBT RECOVERY SOLUTIONS OF OHIO, INC.	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
RODNEY LEMON, et al.	:	
Defendants-Appellants	:	Case No. 08 CA 53

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Mansfield Municipal Court, Richland County, Ohio, is affirmed.

Costs assessed to Appellants.

/S/ JOHN W. WISE

/S/ WILLIAM B. HOFFMAN

/S/ PATRICIA A. DELANEY

JUDGES