

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

Wright-Patt Credit Union, Inc.

Court of Appeals No. OT-11-009

Appellee

Trial Court No. 10CV745E

v.

Kenneth Jensen, et al.

DECISION AND JUDGMENT

Appellants

Decided: May 31, 2011

* * * * *

Jason A. Whitacre, Kathryn M. Eyster, and
Laura C. Infante, for appellee.

Daniel L. McGookey, Richard Barry Hardy, III, and
Lauren McGookey, for appellants.

* * * * *

PER CURIAM.

{¶1} Appellee, Wright-Patt Credit Union, Inc., has filed a brief in opposition to appellants' "Motion for Stay and to Remand Proceeding to the Trial Court." In that

motion, appellants asked this court to stay the proceedings in this court and to remand the case to the trial court to rule on a pending Civ.R. 60(B) motion for relief from the judgment being appealed.

{¶2} The court granted the motion to remand on May 25, 2011; appellee's brief in opposition was filed on May 25, 2011. The court did not receive the brief until after its decision was released. Therefore, we will treat the brief in opposition as a motion to reconsider our decision.

{¶3} Appellee objects to the court's granting appellants' motion to stay and remand on the grounds that appellants' motion did not conform to the requirements of App.R. 7(A), which states:

{¶4} "Stay or injunction pending appeal--civil and juvenile actions

{¶5} "(A) Stay must ordinarily be sought in the first instance in trial court; motion for stay in court of appeals.

{¶6} "Application for a stay *of the judgment or order of a trial court* pending appeal, * * * must ordinarily be made in the first instance in the trial court. * * *[T]he motion shall show that application to the trial court for the relief sought is not practicable, or that the trial court has, by journal entry, denied an application or failed to afford the relief which the applicant requested." (Emphasis added.)

{¶7} Appellants' motion for stay and remand was not filed pursuant to App.R. 7; they did not request a stay of the judgment of the trial court pending appeal. Appellants'

motion asked for a stay of the proceedings in the court of appeals until the trial court rules on their Civ.R. 60(B) motion.

{¶8} Accordingly, the motion to reconsider our May 25, 2011 decision remanding this case to the trial court for it to rule on the Civ.R. 60(B) motion and staying the proceedings in this court until a ruling has been made, is not well-taken and it is denied.

MOTION DENIED.

Thomas J. Osowik, P.J.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
