

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

State of Ohio

Court of Appeals No. H-11-012

Appellant

Trial Court No. CRB 110782

v.

Gabriel S. Greaves

DECISION AND JUDGMENT

Appellee

Decided: October 5, 2011

* * * * *

G. Stuart O'Hara, Jr., Law Director, and T. Douglas Clifford, Assistant Law Director, for appellant.

Thomas H. Freeman, for appellee.

* * * * *

PER CURIAM.

{¶ 1} This matter is before the court on defendant-appellee Gabriel Greaves' motion to strike the documents contained in "Appendix B"¹ to plaintiff-appellant state of Ohio's brief, and any reference to those documents. Appellee argues that the documents contained in "Appendix B" were not filed in the trial court, and thus are not part of the

¹The parties use "Appendix B" interchangeably with "Exhibit B." We will refer to the documents in issue solely as "Appendix B."

record on appeal. Appellant filed a response to the motion to strike arguing that an essential element of the appeal is the context in which certain statements and actions of appellee occurred, and that the documents provide that context.

{¶ 2} App.R. 9 states in relevant part:

{¶ 3} "(A) Composition of the record on appeal * * *

{¶ 4} "(1) The original papers and exhibits thereto filed in the trial court, the transcript of proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court shall constitute the record on appeal in all cases."

{¶ 5} Here, the materials contained in "Appendix B" were not filed in the trial court or included as exhibits to any proceeding. Thus, they were not made part of the record. Instead, appellant argues that the materials are necessary to aide this court in ruling upon the issues on appeal. However, it is well established that "[a] reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter." *State v. Ishmail* (1978), 54 Ohio St.2d 402, paragraph one of the syllabus. Therefore, because appellant's "Appendix B" is not a part of the record below, those materials cannot be considered on appeal. See App.R. 12(A)(1)(b).

{¶ 6} Accordingly, appellee's motion to strike is granted. The court orders "Appendix B" attached to appellant's brief filed on August 30, 2011, and all references to

the contents of "Appendix B" contained in appellant's brief, stricken from the record.

"Appendix B" shall not be considered in deciding this appeal.

{¶ 7} It is so ordered.

MOTION GRANTED.

Peter M. Handwork, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

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>.