

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

Dowzell M. Swayngim

Court of Appeals No. E-12-082

Appellee

Trial Court No. 2009-DR-0189

v.

Brenda K. Swayngim

**DECISION AND JUDGMENT**

Appellant

Decided: June 14, 2013

\* \* \* \* \*

Gary S. Ferber, for appellee.

Kevin J. Zeiher, for appellant.

\* \* \* \* \*

**JENSEN, J.**

{¶ 1} This is an appeal from a judgment of the Erie County Court of Common Pleas, Domestic Relations Division, ordering Brenda K. Swayngim to serve 25 days in jail and pay a \$125 fine for indirect criminal contempt of court.

{¶ 2} Dowzell M. Swayngim and Brenda K. Swayngim were married on July 18, 2005. In time, the parties became incompatible and separated. Dowzell filed a complaint

for divorce on November 16, 2009. At the time, Dowzell was residing in a fully furnished boathouse at 514 Nantucket Drive, Sandusky, Ohio. Brenda was residing in a fully furnished home at 3414 Fox Road, Huron, Ohio. Both residences had belonged to Dowzell before the parties married.

{¶ 3} Shortly after the complaint was filed, the trial court issued initial restraining orders enjoining, among other things, each party from “selling, transferring, withdrawing, conveying, assigning, spending, encumbering, pledging, bequeathing, divesting, wasting, concealing or otherwise disposing of any of the property of the parties.”

{¶ 4} Temporary orders dated March 9, 2010, required Dowzell to pay the utilities, insurance, mortgage, and real estate taxes on both residences. The order further required Dowzell to pay Brenda \$2,600 per month in spousal support and to continue to provide her medical insurance coverage. Brenda was allowed to remain in the Fox Road home, but was required to pay her cell phone bill, unreimbursed medical expenses, and her own living expenses.

{¶ 5} After numerous delays and continuances, the first day of trial testimony was taken on October 25, 2011. The second day of trial testimony was taken on December 6, 2011.

{¶ 6} On December 7, 2011, trial stipulations were executed by the parties and filed with the clerk. The parties agreed that Dowzell would retain ownership interest in the Fox Road home and certain personal property. The parties disagreed how the remaining personal property would be divided. Dowzell made an oral motion to remove

Brenda from the Fox Road home and requested suspension of the temporary spousal support.

{¶ 7} A magistrate's order dated December 8, 2011, allowed Brenda to retain sole control of the Fox Road residence, but required Brenda to pay all utilities associated with the residence. The order suspended the temporary spousal support and set forth a number of conditions under which Dowzell could conduct walk-through inspections of the Fox Road residence. Brenda objected, but her objections were overruled.

{¶ 8} Dowzell conducted a walk-through inspection of the Fox Road residence on December 23, 2011. He took numerous photographs. At the time, Dowzell found "all items of furniture, household items and furnishings were functional and undamaged."

{¶ 9} The third day of trial testimony was taken on February 8, 2012.

{¶ 10} On February 14, 2012, Dowzell moved the court to issue an order requiring Brenda to vacate the Fox Road residence. Dowzell wanted to obtain exclusive use of the property so that he could prepare it for sale. Brenda filed a memorandum in opposition stating that an order requiring her to leave the Fox Road home "without giving her a sufficient portion of the personal property" would be "inequitable and unfair."

{¶ 11} At 10:57 a.m. on February 21, 2012, the magistrate issued an order instructing Brenda to vacate the Fox Road residence by noon on March 19, 2012.

Paragraph 3(e) enabled Brenda to remove certain items from the Fox Road property to

assist her in “establishing a new residence.”<sup>1</sup> Paragraph 3(d) prohibited Brenda from damaging, destroying, or devaluing the Fox Road property. Paragraph 3(b) prohibited Brenda from taking any furniture, household items, or furnishings that were not listed in paragraph 3(e). At paragraph 3(c), the order required Brenda to maintain a detailed written and photographic inventory of the items she removed from the Fox Road home. This paragraph further required Brenda to provide a copy of the inventory to opposing counsel on or before March 20, 2012.

{¶ 12} At 2:20 p.m. on February 21, 2012, Brenda filed a motion under Civ.R. 53(D)(2) seeking the permanent division of the parties’ marital personal property located at the Fox Road residence. In her motion Brenda states:

[Dowzell] has asked the Magistrate to issue an order requiring the Defendant to vacate the real estate at 3414 Fox Road, Huron, Ohio on or before March 16, 2012. It seems only fair that if she is to vacate the residence that she be permitted to receive her fair share of items of personal property listed on the attached Exhibit in the Fox [R]oad home.

Detailed lists of the items Brenda wanted to keep and items she proposed to leave at the residence were attached to the motion. Dowzell filed a memorandum in opposition asserting that it was premature to issue a decision permanently dividing the parties’

---

<sup>1</sup> The items permitted to be taken from the Fox Road property included: (1) the queen bedroom set from the master bedroom; (2) one sofa; (3) one chair; (4) two end tables; (5) two lamps; (6) the 40” TV from the master bedroom; (7) the TV stand from the master bedroom; (8) one half of the home’s dishes, pots, pans; (9) one half of the home’s towels; (10) bedding for the queen bed; and (11) one vacuum cleaner.

marital personal property because all of the evidence had not been heard in the divorce action.

{¶ 13} On March 19, 2012, Brenda relinquished control of the Fox Road residence. Later that day, Dowzell conducted a walk-through inspection of the home. Upon arrival, Dowzell noticed numerous items were missing. Of the items that remained in the home, many were either damaged or inoperable. Dowzell recognized no signs of forced entry. He telephoned the Erie County Sheriff's Department and filed a report.

{¶ 14} On March 21, 2012, Dowzell filed a motion to show cause on "D.R. Form 8.00" alleging Brenda had violated the February 21, 2012 magistrate's order. In the final paragraph of the form motion, Dowzell requested the court find Brenda in contempt. He further requested that Brenda be fined, incarcerated, ordered to comply with court orders, and ordered to pay the cost of the motion.

{¶ 15} A show cause hearing was held April 11, 2012. When called to the stand, Brenda denied damaging any personal property or devaluing the Fox Road home. Brenda also denied removing from the home any of the items paragraph 3(e) of the February 21, 2012 magistrate's order permitted her to remove to assist her in establishing a new residence. When asked whether she took any items other than those items listed in paragraph 3(e), Brenda invoked her Fifth Amendment right against self-incrimination. Brenda also invoked her Fifth Amendment right against self-incrimination when asked whether she maintained a detailed written inventory of the items she removed from the Fox Road property.

{¶ 16} When Dowzell testified at the show cause hearing, he indicated that upon his arrival at the Fox Road home on March 19, 2012, all of the items listed in paragraph 3(e) of the February 21, 2012 magistrate's order had been removed from the property. Dowzell further indicated that furniture, household items and furnishings other than those listed in paragraph 3(e) had also been removed from the property. When asked how he would categorize such items, Dowzell stated, "Every item that wasn't previously stipulated by us as being premarital property was removed. Any items that remained were broken and inoperable."

{¶ 17} Dowzell explained the missing items had been present when he did the walk through in December 2011. He presented numerous photographs to support his testimony. The following are examples from Dowzell's testimony of items that were missing from the home Fox Road home. In the laundry room, the laundry sink, shelving, washer, dryer, hampers, mops, brooms, and detergent were all gone. In the downstairs kitchen, the refrigerator and stove were gone, the dishwasher remained, but it was inoperable. In the upstairs balcony above the living room, a sofa, loveseat, and rocking chair were gone. The tanning bed was missing. Missing from the living room was a television, a television stand, a coffee table, sofa, chair, ottoman, lamps, miscellaneous decorations, a curio glass cabinet, and all of its contents. Missing from the sun room was a table and a wicker lounge chair. Missing from the master bedroom was a jewelry cabinet, a stereo cabinet, the fireplace screen, and numerous decorative items. Everything in the dining room was missing, except for a small roll top desk and chair.

Various items were missing from the garage including two propane heaters, a four wheel all-terrain vehicle, and a refrigerator. A lawnmower remained, but it was inoperable.

{¶ 18} Dowzell testified that some items remained in the house, but many were non-functional. For example Dowzell testified that the basement's 50-inch television had a large break in the screen, "it was the diameter of the head of a hammer and \* \* \* radiating fractures in the screen throughout the remainder of the screen, so it was – it's non-usable."

{¶ 19} Dowzell testified that during the divorce trial, Brenda had submitted a detailed list of personal property that she wanted to keep. When asked whether any of the items on Brenda's list were present when he arrived at the Fox Road home on March 19, 2012, Dowzell indicated none were present. Finally, Dowzell testified that in the twenty-five years he lived in the house, there had never been a break-in.

{¶ 20} On April 20, 2012, the magistrate issued a 16-page decision finding that the testimony and evidence had established beyond a reasonable doubt that Brenda was in indirect contempt of court for failing to comply with paragraphs 3(b) and 3(c) of the February 21, 2012 magistrate's order. The magistrate admitted that in fashioning a remedy for Brenda's contempt, he had strongly considered imposing a sanction that would allow Brenda to purge her contempt. However, the magistrate was "appalled by the pervasive and wide scale nature of [her] disregard for" the court's orders. He explained,

It was not a situation where there were one or two disputed items that had been removed from the Fox Road property, instead the house was completely cleaned out from top to bottom. The only items that remained were things that [Brenda] did not want (likely because they were broken and damaged – ie did not have much if any value) or they were previously stipulated upon by the parties that it \* \* \* was going to be awarded to [Dowzell].

The magistrate found Brenda knowingly and willfully acted in complete disregard to the February 21, 2012 magistrate's order and that Brenda's actions were "intentional and designed to thwart and/or subvert" the court's authority to establish a fair and even-handed approach to apportioning the marital assets. The magistrate recommended Brenda be sentenced to serve 25 days in jail, pay a \$125 fine to the Erie County Clerk of Courts, reimburse Dowzell the \$100 deposit made to file the motion to show cause, and satisfy all court costs associated with the motion to show cause beyond the \$100 deposit.

{¶ 21} On May 2, 2012, Brenda filed objections to the April 20, 2012 magistrate's decision. Dowzell filed a response. Brenda filed a reply. On November 29, 2012, the trial court issued a 27-page judgment entry adopting the April 20, 2012 magistrate's decision and ordering Brenda to report to the Erie County Jail on January 7, 2013 to commence her 25-day jail sentence.

{¶ 22} Brenda appealed. We granted Brenda's motion to stay execution of the jail sentence pending appeal.



{¶ 23} Brenda presents three assignments of error for our review:

I. The Trial Court abused its discretion to the prejudice of the Appellant Brenda K. Swayngim by finding beyond a reasonable doubt that Appellant willfully violated the terms and conditions of the Magistrate's Order of February 21, 2012 by removing items of personal property/household furnishings from the marital home located on Fox Road in Erie County, Ohio.

II. The Trial Court abused its discretion, to the prejudice of the Appellant Brenda K. Swayngim by finding beyond a reasonable doubt Appellant was in Indirect Criminal Contempt of Court after the filing of a Motion for a Show Cause Hearing for Civil Contempt by Appellee Dowzell M. Swayngim.

III. Even if this Court concurs with the trial court's finding of criminal contempt, the punishment is unreasonable, excessive, and disproportionate to the alleged contemptuous act.

#### **First Assignment of Error**

{¶ 24} In her first assignment of error, Brenda argues the trial court erred when it overruled her objections, adopted the April 20, 2012 magistrate's decision, and found her in indirect criminal contempt of court.

{¶ 25} A trial court's ruling on objections to a magistrate's decision is reviewed under an abuse of discretion standard. *Gobel v. Rivers*, 8th Dist. No. 94148, 2010-Ohio-

4493, ¶ 16. A trial court's finding of contempt is also reviewed under an abuse of discretion standard. *State ex rel. Celebreeze v. Gibbs*, 60 Ohio St.3d 69, 75, 573 N.E.2d 62 (1991).

{¶ 26} An abuse of discretion connotes that the trial court's attitude is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). "A review under the abuse-of-discretion standard is a deferential review. It is not sufficient for an appellate court to determine that a trial court abused its discretion simply because the appellate court might not have reached the same conclusion or is, itself, less persuaded by the trial court's reasoning process than by the countervailing arguments." *State v. Turner*, 6th Dist. No. WD-11-025, 2012-Ohio-3863, ¶ 19, quoting *State v. Morris*, 132 Ohio St.3d 337, 972 N.E.2d 528, 2012-Ohio-2407, ¶ 14.

{¶ 27} On November 29, 2012, the trial court issued a 27-page judgment entry overruling Brenda's objections and adopting the April 20, 2012 magistrate's order. The trial court held beyond a reasonable doubt that Brenda knowingly and willfully neglected to produce inventories she was required to produce in paragraph 3(c) of the order. The court further held beyond a reasonable doubt that Brenda knowingly and willfully removed from the Fox Road home property the order specifically prohibited her from removing in paragraph 3(b) of the order. The court found Brenda's actions intentional and designed to thwart and subvert the court's authority to properly apportion the marital assets. Rather than allowing Brenda an opportunity to purge her contempt, the court

found her disregard for the magistrate's authority a defiant act intended to impede the administration of justice and criminal in nature. It felt the sanction imposed was necessary to vindicate the court's authority.

{¶ 28} “Contempt of court is defined as disobedience of an order of a court. It is conduct which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions.” *Windham Bank v. Tomaszczyk*, 27 Ohio St.2d 55, 271 N.E.2d 815 (1971), paragraph one of the syllabus. In a criminal contempt proceeding, “the order in contempt is in the form of a penalty or sanction, generally for the violation of a prior court order which prohibited the doing of an act which had been performed by the contemnor.” *Smith v. Smith*, 10th Dist. No. 93AP-958, 1994 WL 9055, \*3 (Jan. 13, 1994). “Criminal contempt must be proven beyond a reasonable doubt.” *Midland Steel Products Co. v. U.A.W. Local 486*, 61 Ohio St.3d 121, 127, 573 N.E.2d 98 (1991). “[I]ntent to defy the court is an essential element of indirect criminal contempt.” *State v. Komadina*, 9th Dist. No. 03CA008325, 2004-Ohio-4962, at ¶ 11. Intent may be proven by circumstantial evidence. *State v. Huffman*, 131 Ohio St. 27, 41, 1 N.E.2d 313 (1936). *See also Walker v. Birmingham*, 388 U.S. 307, 312, 87 S.Ct. 1824, 18 L.Ed.2d 2010, fn. 4 (“proof of the elements of criminal contempt may be established by circumstantial evidence”).

{¶ 29} In the instant case, there is no dispute that Brenda failed to submit the detailed written inventories on or before March 20, 2012, as required by paragraph 3(c) of the February 21, 2012 magistrate's order. And, despite the opportunity, Brenda did

not present the inventories at the hearing on the motion to show cause, nor did she raise any affirmative defense that would excuse her non-compliance with paragraph 3(c) of the order. Further, it was not arbitrary, unreasonable, or unconscionable for the court to conclude, beyond a reasonable doubt, that Brenda willfully disregarded the court order requiring her to submit a detailed written and photographic inventory of the items she was specifically authorized to remove from the Fox Road property.

{¶ 30} In affirming the magistrate's findings of fact regarding the missing personal property, the trial court stated "the circumstantial evidence is both strong, corroborative, and beyond a reasonable doubt of the fact that [Brenda's] actions took place after notice" of the February 21, 2012 magistrate's order. In its opinion, the trial court listed 15 paragraphs of mostly circumstantial evidence supporting its decision. For example, the court found relevant that on the same day the magistrate's order was issued, Brenda filed a Civ.R. 53(D)(2) motion requesting the court allow her to take certain personal property from the Fox Road property. All or most of the items on Brenda's list were missing from the home when Dowzell received keys to the property. It was reasonable for the trial court to infer that the items listed in Brenda's Civ.R. 53(D)(2) motion were either located in the home at the time her motion was filed or were in her custody or control. It was also reasonable for the trial court to infer that the removal of the items Brenda wanted to keep occurred after Brenda received notice that she was prohibited from removing any item other than those the court deemed necessary for her to establish a new residence.

{¶ 31} A second example of circumstantial evidence utilized by the trial court in forming its opinion was the fact that Brenda never filed a police report that the personal property at issue was missing. It was reasonable for the court to infer that the subject personal property had not been removed by a thief because Brenda had filed a police report in November 2009, when her jewelry went missing from the Fox Road home.

{¶ 32} A third example of circumstantial evidence utilized by the trial court in forming its opinion was evidence that some personal property was left behind. Interestingly, Brenda had previously stipulated that many of the items left behind belonged to Dowzell. It was reasonable for the court to infer that Brenda had intentionally left behind those items and taken everything else. Under the circumstances of this case and with all due deference, it was not arbitrary, unreasonable, or unconscionable for the trial court to conclude beyond a reasonable doubt that Brenda willfully removed personal property from the home that the February 21, 2012 magistrate's order specifically prohibited her from removing.

{¶ 33} For the reasons set forth above, we find the trial court did not abuse its discretion when it issued an order holding Brenda in indirect criminal contempt. Brenda's first assignment of error is found not well-taken.

### **Second Assignment of Error**

{¶ 34} In her second assignment of error, Brenda asserts the trial court abused its discretion by issuing *criminal* contempt sanctions upon hearing evidence in support of Dowzell's motion to show cause for *civil* contempt.

{¶ 35} It has long been held that “[a] court has authority both under R.C. 2705.02(A) and on the basis of its inherent powers to punish the disobedience of its orders with contempt proceedings.” *Zakany v. Zakany*, 9 Ohio St.3d 192, 459 N.E.2d 870 (1984), syllabus. “Proceedings in contempt are sui generis in the law.” *Liming v. Damos*, 113 Ohio St.3d 509, 2012-Ohio-4783, 979 N.E.2d 297, ¶ 11, quoting *Cincinnati v. Cincinnati Dist. Council 51*, 35 Ohio St.2d 197, 201, 299 N.E.2d 686 (1973). They are neither wholly criminal nor wholly civil in nature. *Brown v. Executive 200, Inc.*, 64 Ohio St.2d 250, 253, 416 N.E.2d 610 (1980). Contempt proceedings “bear some resemblance to suits in equity, to criminal proceedings and to ordinary civil actions; but they are none of these.” *Liming* at ¶ 11, citing *Cincinnati* at 202.

{¶ 36} “Civil contempt exists when a party fails to do something ordered by the court for the benefit of an opposing party.” *In re Parker*, 105 Ohio App.3d 31, 34, 663 N.E.2d 671 (4th Dist.1995) (citations omitted). Civil contempt sanctions are remedial, or coercive; they are meant to enforce compliance. *Id.*

{¶ 37} “By contrast, criminal contempt proceedings vindicate the authority of the legal system and punish the party who offends the court.” *Id.*, citing *Scherer v. Scherer*, 72 Ohio App.3d 211, 241, 594 N.E.2d 150 (1991). Criminal contempt sanctions are imposed as punishment for a completed act of disobedience. *Id.*, citing *Executive 200, Inc.*, 64 Ohio St.2d at 250. A contemnor subject to criminal contempt sanctions is entitled to many of the rights and constitutional privileges afforded a defendant in a

criminal action. *Winkler v. Winkler*, 81 Ohio App.3d 199, 202, 610 N.E.2d 1022 (9th Dist.1991).

{¶ 38} Here, it is undisputed that Dowzell moved the court to hold Brenda in contempt for her out-of-court violation of a lawful order issued for his benefit, i.e. civil indirect contempt. The trial court ordered Brenda to appear to demonstrate why she should not be held in contempt. The order did not classify the proceeding as one for civil or one for criminal contempt. Instead, the order notified Brenda that she could be punished for contempt pursuant to R.C. 2705.02 and subject to sanctions found in R.C. 2705.05. The order also stated:

IN THIS CONTEMPT ACTION YOU HAVE THE FOLLOWING  
RIGHTS:

1. To be represented by an attorney. Because this Court may impose a sentence of incarceration for this contempt, you may request to have an attorney appointed for you at the government's expense if you can't afford one \* \* \*;
2. To require that the charge of Criminal Contempt for this cause to be proven Beyond a Reasonable Doubt, while the charge of Civil Contempt for this cause has to be proven by Clear and Convincing Evidence;
3. To obtain the presence of witnesses in you [sic] own behalf by compulsory process, if necessary;

4. To cross-examine the witnesses against you;
5. To remain silent – you can't be compelled to testify against yourself.

{¶ 39} It has long been held that when issuing a contempt sanction, trial courts enjoy both civil and criminal contempt powers. *Executive 200, Inc.*, 64 Ohio St.2d at 253. As such, a court is not restrained from issuing a criminal contempt sanction simply because the contemnor's disregard of a court order was brought to the court's attention through the movant's request for a civil contempt show cause hearing. A court is restrained from issuing a criminal contempt sanction, however, if the constitutional safeguards afforded criminal contemnors have not been met. For example, "constitutional due process requires that a [party] charged with contempt \* \* \* be advised of the charges against him, have a reasonable opportunity to meet those charges by way of defense or explanation, have the right to be represented by counsel, and have an opportunity to testify and call other witnesses in his behalf." *State v. Daly*, 2d Dist. No. 2007 CA 26, 2007-Ohio-5170, ¶ 36. The party's guilt must be proven beyond a reasonable doubt. *Id.* at ¶ 37, citing *Executive 200, Inc.* at 252. The party charged with contempt is entitled to a "presumption of innocence and has the right to invoke the privilege against self-incrimination." *Id.*, citing *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 444, 31 S.Ct.492, 55 L.Ed. 797 (1911).

{¶ 40} After a review of the record, we find the trial court advised Brenda of the charges against her. It also afforded her the opportunity to explain her actions and



cross-examine the witness that testified against her. She was represented by counsel. She was notified of her ability to call witnesses on her behalf. She invoked her right to remain silent. The trial court found beyond a reasonable doubt that Brenda intentionally and deliberately thwarted and subverted the court's authority. Thus, the trial court did not abuse its discretion by issuing criminal contempt sanctions. Brenda's second assignment of error is found not well-taken.

### **Third Assignment of Error**

{¶ 41} In her third assignment of error, Brenda asserts that trial court's 25-day jail sentence is "unreasonable, excessive, and disproportionate to the alleged contemptuous act."

{¶ 42} "An appellate court will not reverse a trial court's finding of contempt, including the imposition of penalties, absent an abuse of discretion." *Sansom v. Sansom*, 10th Dist. No. 05AP-645, 2006-Ohio-3909, ¶ 30, citing *Byron v. Byron*, 10th Dist. No. 03AP-819, 2004-Ohio-2143, ¶ 15. An abuse of discretion consists of more than an error of law or judgment; it implies the court's attitude is unreasonable, arbitrary, or unconscionable. *Berk v. Matthews*, 53 Ohio St.3d 161, 169, 559 N.E.2d 1301 (1990).

{¶ 43} R.C. 2705.02(A) provides that a person guilty of disobedience of a lawful order, judgment or command of a court may be punished for contempt. In turn, R.C. 2705.05 sets forth statutory limitations for contempt sanctions. With respect to a first offense, the court may impose "a fine of not more than two hundred fifty dollars, a

definite term of imprisonment of not more than thirty days in jail, or both[.]” R.C. 2705.05(A)(1).

{¶ 44} Here, the trial court sentenced Brenda to 25 days in jail, assessed a fine in the amount of \$125, and ordered Brenda to pay costs associated with the motion to show cause. Upon review of the record, we find the sanctions imposed were within the statutory limitations for Brenda’s first criminal contempt offense and reasonable in light of the contemptuous conduct. *See Carter v. Carter*, 2d Dist. Nos. 14409, 14530, 14574, 1994 WL 660811, \*14 (Nov. 23, 1994) (30-day sentence for failing to timely deliver stereo to ex-wife and 30-day sentence for refusing to pay support not an abuse of discretion); *State v. Porter*, 8th Dist. No. 57830, 1990 WL 452, \*2 (Jan. 4, 1990) (30-day sentence for first contempt offense is within the confines of the statute). In that regard, the trial court did not abuse its discretion. Brenda’s third assignment of error is found not well-taken.

### **Conclusion**

{¶ 45} For the foregoing reasons, the judgment of the Erie County Court of Common Pleas, Domestic Relations Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, 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>.