

[Cite as *Cleveland v. Wagner*, 2003-Ohio-1358.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

No. 81730

CITY OF CLEVELAND,	:	
Plaintiff-Appellant	:	JOURNAL ENTRY
vs.	:	AND
LEO WAGNER,	:	OPINION
Defendant-Appellee	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION	:	MARCH 20, 2003
	:	
CHARACTER OF PROCEEDING	:	Criminal appeal from Cleveland Municipal Court Case No. TRC 028704
JUDGMENT	:	DISMISSED
DATE OF JOURNALIZATION	:	

APPEARANCES:

For Plaintiff-Appellant:	WILLIAM D. MASON Cuyahoga County Prosecutor GINA M. VILLA BRENT C. KIRVEL Assistant County Prosecutors Justice Center - 8 th Floor 1200 Ontario Street Cleveland, Ohio 44113
For Defendant-Appellee:	LINDA V. GONZALEZ

Legal Aid Society
1223 West 6th Street
Cleveland, Ohio 44113

ANNE L. KILBANE, P.J.:

{¶1} This is an appeal from an order of Cleveland Municipal Judge Sean Gallagher that suppressed evidence in the criminal prosecution of Leo Wagner. The City filed a notice of appeal within the time required by Crim.R. 12(K), but failed to certify, within the same time period, that the appeal is not for the purpose of delay and that "any reasonable possibility of effective prosecution has been destroyed." Therefore, we dismiss the appeal for lack of subject matter jurisdiction.¹

{¶2} The judge's ruling was entered on August 29, 2002, and the City filed its notice of appeal on August 30, 2002. On February 20, 2003, the City filed a motion to amend its appeal to include the required certification. Although such amendments were allowed in *State v. Moncrease*² and *In re Hester*,³ these opinions cannot be sustained under the syllabus of *State v. Buckingham*, *supra*.⁴

¹*State v. Buckingham* (1980), 62 Ohio St.2d 14, 16 O.O.3d 8, 402 N.E.2d 536, syllabus.

²(Apr. 13, 2000), Cuyahoga App. Nos. 76145, 76146, 76147.

³(1981), 1 Ohio App.3d 24, 1 OBR 85, 437 N.E.2d 1218.

⁴The author of this opinion notes that she no longer agrees with that portion of the opinion in *Moncrease* which found that amendment was allowed because only timely notice, and not timely

{¶3} The syllabus in *Buckingham* states that this court has jurisdiction over this appeal "only where the state has complied with Crim.R. 12(J) [currently Crim.R. 12(K)]." *Buckingham* does not admit a distinction between timely notice and timely certification, but instead requires compliance with all provisions of the rule before jurisdiction is obtained.

{¶4} Furthermore, Crim.R. 12(K) states that the appeal "shall not be allowed unless the notice of appeal and the certification by the prosecuting attorney are filed with the clerk of the trial court within seven days after the date of the entry of the judgment or order granting the motion." Nothing in App.R. 3(F) can cause the certification to be "filed with the clerk of the trial court" within seven days where it was not so filed originally. Even if one believed that App.R. 3(A) could overcome Crim.R. 12(K), the requirement of filing the certification with the trial court leaves no doubt that it is an inseparable part of the notice of appeal under App.R. 3(A). Therefore, jurisdiction cannot be obtained without timely certification, and this court cannot allow amendment of a notice of appeal where subject matter jurisdiction is lacking in the first instance.

Appeal dismissed.

certification, was jurisdictional.

It is ordered that appellee recover of appellant costs herein taxed.

It is ordered that a special mandate issue out of this Court directing the Cuyahoga County Cleveland Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

DIANE KARPINSKI, J., AND

TIMOTHY E. MCMONAGLE, J., CONCUR

ANNE L. KILBANE
PRESIDING JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc. App.R. 22. This decision will

be journalized and will become the judgment and order of the court pursuant to App.R. 22(E), unless a motion for reconsideration with supporting brief, per App.R. 26(A) is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).