

STATE OF OHIO                     )  
                                              )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

CHRISTOPHER VALES

C.A. No.       24818

Appellant

v.

AKRON METROPOLITAN HOUSING  
AUTHORITY

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.       CV 2009-01-0204

Appellee

DECISION AND JOURNAL ENTRY

Dated: December 31, 2009

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MOORE, Presiding Judge.

{¶1} Appellant, Christopher Vales, appeals the decision of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} On January 9, 2009, Christopher Vales filed his notice of an R.C. 2506 administrative appeal in the Summit County Court of Common Pleas. His appeal stemmed from an administrative hearing officer's decision to uphold the Akron Metropolitan Housing Authority's ("AMHA") decision to terminate his housing assistance benefits. Along with his notice of appeal, he filed a praecipe with AMHA to file a complete transcript of the administrative hearing. AMHA filed the transcript on April 1, 2009. On April 29, 2009, Vales filed a motion seeking an order from the court requiring AMHA to file a complete transcript of the hearing. Vales argued that the transcript filed by AMHA did not correspond with the audiotape of the hearing. On May 5, 2009, the trial court denied his motion. On May 13, 2009,

AMHA filed a motion to dismiss the appeal, stating that Vales had failed to timely file his appellant's brief. On May 18, 2009, Vales sought to file his brief instant. On May 19, 2009, the trial court granted AMHA's motion to dismiss, concluding that Vales failed to comply with the Summit County Local Rules with regard to the timeframe in which to file his appeal. Vales timely appealed this decision. He has raised two assignments of error for our review.

## II.

### **ASSIGNMENT OF ERROR I**

“THE COURT OF COMMON PLEAS COURT (SIC) COMMITTED PREJUDICIAL ERROR WHEN IT GRANTED [AMHA'S] MOTION TO DISMISS [VALES'] ADMINISTRATIVE APPEAL FOR A FAILURE TO PROSECUTE THE APPEAL.”

{¶3} In his first assignment of error, Vales contends that the trial court erred when it granted AMHA's motion to dismiss. We do not agree.

{¶4} In the instant case, the trial court granted AMHA's motion to dismiss based upon Vales' failure to comply with Summit County Local Rule 19.03, which required him to file his appellant's brief within 30 days of the filing of the completed transcript. Loc.R. 19.03(a) and (d) of the Court of Common Pleas of Summit County, General Division. We review the trial court's interpretation or application of its local rules for an abuse of discretion. *Michaels v. Michaels*, 9th Dist. No. 07CA0058-M, 2008-Ohio-2251, at ¶13. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

{¶5} Pursuant to R.C. 2506.02, upon praecipe filed by Vales, AMHA bore the burden to file a complete transcript. Once the transcript was filed, Summit County Local Rule 19.03(a)

required Vales to file his appellant's brief within 30 days. In the instant case, AMHA filed the transcript on April 1, 2009. Therefore, Vales' brief was due on May 1, 2009. On April 29, 2009, Vales filed a motion with the trial court requesting AMHA to file a complete transcript. He argued that the transcript was defective. Specifically, he stated that the transcript

“misidentified the name of a key witness in a manner that confuses the testimony of another witness concerning this same person. \*\*\* It fails to include the response of a witness to a question asked by the hearing officer. \*\*\* In a number of places, it states that the testimony of various witnesses is ‘inaudible’ when it is not; thus, it makes the testimony confusing and hard to follow. \*\*\* In other cases, the wrong words are used causing either confusion or a change in the meaning of what was actually said. \*\*\* There are also words omitted.”

{¶6} Due to these defects, Vales argued, the transcript that was filed was not a complete record of the administrative record. Vales contends that because AMHA did not file a complete transcript, his time to file his brief did not commence, and therefore, the trial court's dismissal was in error. We do not agree.

{¶7} We must first review the trial court's decision regarding Vales' motion requesting AMHA to file a complete transcript, as it appears his arguments are based upon the trial court's May 5, 2009 disposition of this motion. Initially, we note that R.C. 2505.44 does allow a trial court to “compel transcripts of actions or proceedings, that relate to a final order, judgment, or decree sought to be reversed, to be furnished, completed, or perfected.” Therefore, it appears that Vales' motion requesting AMHA file the transcript was a proper motion. However, there is nothing in the record before this Court or below to support Vales' contention that the transcript was incomplete. He argued that the filed transcript did not accurately reflect the proceedings as heard on the audiotape. He stated that he compared the transcript to the audiotape and found a myriad of discrepancies. However, he neglected to make the audiotape a part of the record before the trial court. Therefore, the trial court had nothing to review to support Vales'

contention that the filed transcript was incomplete. Accordingly, we conclude that the trial court did not err when it denied Vales' motion and that absent any evidence to the contrary, Vales' brief was due on May 1, 2009.

{¶8} On May 18, 2009, Vales filed a motion for leave to file his brief instant and his reply to AMHA's motion to dismiss. In his response to AMHA's motion to dismiss, Vales relied solely upon his previous contention that the record filed by AMHA was incomplete. However, as we explained above, the record did not support this contention. Therefore, presenting the trial court with no other reason for his delay in filing, we conclude that the trial court did not abuse its discretion when it granted AMHA's motion to dismiss based upon the fact that Vales' brief was filed over two weeks late. See *Chapman v. Housing Appeals Bd.* (Aug. 13, 1997), 9th Dist. No. 18166, at \*2.

{¶9} It is important to note that Vales was not without remedy with regard to his allegation that the record filed by AMHA was incomplete. He never requested, pursuant to Summit County Local Rule 19.03(d), an extension of time to file his appellant's brief. *Chapman*, supra. Vales did not file a motion to supplement the record, pursuant to Summit County Local Rule 19.04. Finally, pursuant to R.C. 2506.03, the trial court was confined to the transcript of the proceedings filed by AMHA "unless it appears, on the face of that transcript or by affidavit filed by the appellant, that \*\*\* [t]he transcript does not contain a report of all evidence admitted or proffered by the appellant." Therefore, Vales could have also provided the trial court with an affidavit that the transcript was incomplete, thus requesting the trial court to review evidence outside the transcript. However, Vales did not pursue this remedy.

{¶10} Accordingly, we conclude that the trial court did not abuse its discretion when it granted AMHA's motion to dismiss because Vales failed to timely file his appellant's brief.

## **ASSIGNMENT OF ERROR II**

“THE COURT OF COMMON PLEAS COURT (SIC) COMMITTED PREJUDICIAL ERROR WHEN IT DENIED [VALES’] CIVIL RULE 6(B) REQUEST TO FILE HIS ASSIGNMENTS OF ERROR AND BRIEF INSTANTER.”

{¶11} In his second assignment of error, Vales contends that the trial court erred when it denied his request to file his assignments of error and brief instanter. We do not agree.

{¶12} Vales argues that the trial court erred in denying his motion for leave to file his appellant’s brief instanter. Specifically, he contends that pursuant to Civ.R. 6(B), the trial court should have allowed him to file his untimely brief because he showed that the failure to timely file his appellant’s brief was the result of excusable neglect. We do not agree.

{¶13} At the outset, we note that Vales’ reply to AMHA’s motion to dismiss and motion for leave to file his brief instanter did not specifically rely upon Civ.R. 6(B). Instead, Vales asserted that his appellant’s brief was delayed due to the uncertainty on how to proceed in the face of an “incomplete” transcript and because his counsel could not previously enter a notice of appearance due to concerns of time and resources to handle the matter. Because “[i]t is now clear that the matter will need to be fully litigated, and Mr. Vales is a disabled, low-income person who is totally incapable of drafting a brief with assignments of error in a case like this[.],” counsel entered a notice of appearance and request that the appellant’s brief be filed instanter. Vales’ did not point the trial court to any specific rule upon which it should grant his motion. The argument with respect to Civ.R. 6(B) was first articulated before this Court on appeal. We have “consistently held that arguments which are not raised below may not be considered for the first time on appeal.” *State v. Schwarz*, 9th Dist. No. 02CA0042-M, 2003-Ohio-1294, at ¶14, citing *Belvedere Condominium Unit Owners’ Assn. v. R.E. Roark Cos., Inc.* (1993), 67 Ohio St.3d 274, 279. Therefore, we decline to address Vales’ contention that the trial court abused its

discretion when, pursuant to Civ.R. 6(B), it denied his request to file his appellant's brief instanter.

{¶14} Further, we reiterate that the trial court expressly dismissed Vales' appeal pursuant to Summit County Local Rule 19.03(d). According to this section, “[f]or good cause shown, the Court may, upon motion, extend or otherwise modify the foregoing times. If the appellant fails to file its brief and assignments of error within the time provided, the Court may dismiss the appeal or otherwise dispose of the case as justice requires.” (Emphasis added.) As we explained above, we review the trial court's interpretation and application of a Local Rule for an abuse of discretion. *Michaels*, supra, at ¶13.

{¶15} Vales contends that the trial court should have granted his motion to file his brief instanter because the transcript AMHA filed was incomplete. This is the same argument he made with regard to AMHA's motion to dismiss, as discussed above. Again, we conclude that there is nothing in the record to support Vales' contention that the transcript was faulty. Accordingly, we conclude that the trial court did not abuse its discretion when it denied his request to file his appellant's brief instanter. Vales' second assignment of error is overruled.

### III.

{¶16} Vales' assignments of error are overruled. The judgment of the Summit County Court of Common pleas is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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CARLA D. MOORE  
FOR THE COURT

DICKINSON, J.  
CONCURS

BELFANCE, J.  
CONCURS, SAYING:

I concur in the judgment of the majority. However, I write to point out that the trial court's decision to deny Appellant's request to file his brief is accompanied by a harsh and inequitable result. Because the trial court in its discretion could have appropriately allowed the Appellant to file his brief late pursuant to Local Rule 19.03(d) of the Rules of Practice and Procedure of the Common Pleas Court, its decision unnecessarily prevented Appellant from having his day in court. While Appellant, who is pro se, did not avail himself of the some the remedies potentially available concerning the incomplete transcript, Appellant did try to bring

the matter to the trial court's attention. It is apparent that the failure to timely file the brief was not due to any lack of diligence or due to a deliberate disregard of the rules on Appellant's part. Furthermore, Appellee would not have suffered any prejudice had Appellant been permitted to file his brief. Thus, under the circumstances of this case, it would have been reasonable for the trial court to allow the Appellant to file his brief instant for good cause shown. Nonetheless, because we review the trial court's decision for an abuse of discretion, I feel bound to conclude that the trial court did not err. It is well settled that when applying the abuse of discretion standard, this Court may not substitute its judgment for that of the trial court. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

APPEARANCES:

GREGORY R. SAIN, Attorney at Law, for Appellant.

JAMES D. CASEY, Attorney at Law, for Appellee.