[Cite as *Cook v. Bell*, 2010-Ohio-3579.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

MELVIN COOK	C. A. No. 25092
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
DWIGHT BELL, et al.	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellees	CASE No. CV 2008 04 3292

DECISION AND JOURNAL ENTRY

Dated: August 4, 2010

CARR, Judge.

{¶1} Appellant, Melvin Cook, appeals the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} On April 24, 2008, Melvin Cook filed a complaint alleging that Dwight Bell negligently entrusted his vehicle to his wife Jane Doe, who negligently struck Cook's vehicle at Litchfield Middle School on April 26, 2006, causing injury to his person and damage to his vehicle. Service was properly effected on Mr. Bell but not on Jane Doe.

{¶3} On July 21, 2008, Mr. Cook filed a motion for default judgment against Mr. Bell. The trial court granted default judgment against Mr. Bell and referred the matter to the magistrate for a damages hearing. After a hearing, the magistrate dismissed Mr. Cook's complaint upon finding that Mr. Cook had failed to prove damages and had failed to prove liability. Mr. Cook filed untimely objections to the magistrate's decision, but the trial court

nevertheless agreed to consider them. On February 13, 2009, the trial court overruled the objections and stated that the magistrate's order would serve as the order of the court. Mr. Cook appealed.

{¶4} This Court issued an order directing Mr. Cook to show cause why the appeal should not be dismissed for lack of a final, appealable order based on the trial court's failure to separately enter judgment. Mr. Cook moved the trial court for a final, appealable order. He also moved to join a party and to amend his complaint. On April 10, 2009, the trial court vacated its February 13, 2009 order and, therefore, found Mr. Cook's motion for a final, appealable order moot. The trial court then ruled anew on the objections, overruling them in part and sustaining them in part. The trial court adopted the order dismissing Mr. Cook's complaint against Mr. Bell for failure to prove damages. The court ordered, however, that Mr. Cook's complaint alleging negligence against Jane Doe remained pending. It denied his motion to join appellee, Nicole Thornton-McClean, but granted his motion to amend his complaint to name her in place of Jane Doe. Mr. Cook forwarded this April 10, 2009 order to this Court in response to our show cause order. On May 4, 2009, this Court by journal entry dismissed his appeal for lack of jurisdiction. *Cook v. Bell* (May 4, 2009), 9th Dist. No. 24646.

{¶5} Mr. Cook filed an amended complaint on April 13, 2009, alleging that Ms. McClean negligently struck his vehicle with a vehicle owned by her husband Mr. Bell. On April 16, 2009, Ms. McClean filed an answer, denying the allegations in the complaint. The matter proceeded to trial before the bench on October 14, 2009. On October 16, 2009, the trial court issued its judgment in favor of Ms. McClean and dismissed Mr. Cook's complaint. Mr. Cook filed a timely appeal.

II.

{¶6} Mr. Cook argues that the trial court's judgment is against the manifest weight of the evidence. In addition, Mr. Cook argues that the trial court erred in according any credibility to Ms. McClean. This Court disagrees.

{¶7} In determining whether the trial court's decision is or is not supported by the manifest weight of the evidence, this Court applies the civil manifest weight of the evidence standard set forth in *C.E. Morris Co. v. Foley Const. Co.* (1978), 54 Ohio St.2d 279, syllabus, which holds: "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." The Ohio Supreme Court has clarified that:

> "when reviewing a judgment under a manifest-weight-of-the-evidence standard, a court has an obligation to presume that the findings of the trier of fact are correct. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80-81. This presumption arises because the trial judge had the opportunity 'to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.' Id. at 80. 'A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not.' Id. at 81." *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, at ¶24.

{¶8} To prevail on a claim of negligence, Mr. Cook must establish the existence of a duty, a breach of that duty, and an injury proximately resulting from the breach of duty. *Menifee v. Ohio Welding Prod., Inc.* (1984), 15 Ohio St.3d 75, 77.

{¶9} Pursuant to App.R. 9(B), an appellant who wishes to assert that a finding or conclusion is unsupported by the evidence or against the manifest weight of the evidence shall include in the record "a transcript of all evidence relevant to the findings or conclusion." App.R. 9(B) further provides:

> "Unless the entire transcript is to be included, the appellant, with the notice of appeal, shall file with the clerk of the trial court and serve on the appellee a description of the parts of the transcript that the appellant intends to include in the record, a statement that no transcript is necessary, or a statement that a statement pursuant to either App.R. 9(C) or 9(D) will be submitted, and a statement of the assignments of error the appellant intends to present on the appeal."

{¶10} In this case, the record contains only a partial transcript of the trial. The transcript contains an opening statement by Mr. Cook and the testimony of Ms. McClean. The transcript ends with a statement by Mr. Cook that "I'm going to testify." The record, however, does not contain a transcript of his testimony. In addition, Mr. Cook failed to include a statement pursuant to either App.R. 9(C) or 9(D) to supplement the partial transcript.

> "When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199.

Thus, in the absence of a complete record, this Court must presume regularity in the trial court's proceedings and accept its judgment. *Wozniak v. Wozniak* (1993), 90 Ohio App.3d 400, 409. Because the partial transcript does not contain all of the evidence relevant to Mr. Cook's assignments of error, this Court cannot conclude that the trial court's judgment was against the manifest weight of the evidence or that the trial court erred by rendering judgment in favor of Ms. McClean. Mr. Cook's assignments of error are overruled.

III.

{¶11} Mr. Cook's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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.

DONNA J. CARR
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

MELVIN COOK, pro se, Appellant.

NICOLE THORTON MCLEAN, pro se, Appellee.

DWIGHT BELL, pro se, Appellee.