

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

DERRICK MARTIN KING

C.A. No. 30293

Appellant

v.

BUDGET CAR MART, LLC

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 2021-07-2074

Appellee

DECISION AND JOURNAL ENTRY

Dated: August 9, 2023

CARR, Judge.

{¶1} Plaintiff-Appellant Derrick Martin King appeals, pro se, the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} On April 28, 2021, after a short test drive around the dealer parking lot, Mr. King purchased a used 2010 Chevy Malibu with 138,867 miles on it for \$4,635.01 from Defendant-Appellee Budget Car Mart, LLC (“BCM”).¹ The purchase agreement signed by Mr. King states that:

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALER[’S] AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES UNLESS DEALER FURNISHES PURCHASE[R] WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF.

¹ BCM asserts the correct entity is CTTT Enterprises, LLC, dba Budget Car Mart. However, Mr. King disputed this in the trial court and the trial court declined to resolve the issue. For ease of discussion, we will refer to Defendant-Appellee as “BCM.”

DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE VEHICLE AND ANY RELATED PRODUCTS AND SERVICES SOLD BY DEALER. DEALER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE SALE OF THE VEHICLE AND THE RELATED PRODUCTS AND SERVICES. IN THE EVENT THAT A WARRANTY IS PROVED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE TERM OF THE WRITTEN WARRANTY IS PROVIDED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF. ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE TERM OF THE WRITTEN WARRANTY/SERVICE CONTRACT.

{¶3} In addition, a document titled “BUYER[’S] GUIDE” was attached to the window of the car Mr. King purchased. It states that the warranties for the vehicle are “AS IS – NO DEALER WARRANTY[.]” The document also indicates that “[s]poken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.” Mr. King was also provided an “as-is” disclosure form. That form provides that the “Company makes no express warranties or implied warranties about the conditions of the vehicle. It also means that you, as the buyer, take all risks as to the quality of the vehicle.” It goes on to advise that “[a]ll customers are encouraged to have a mechanic of their choice inspect the vehicle before a decision is made to purchase it. Once it is sold, it is owned by the purchaser, and the sale is final. The Company will not repair the vehicle or offer a refund.” Mr. King also initialed 5 statements, indicating that he acknowledged them and agreed to them. Those statements were: (1) “The Company has recommended that I/We inspect the vehicle or have an automobile service professional inspect the vehicle prior to purchase. If the vehicle was inspected, the party that inspected is the only party that described the condition of the vehicle, not an employee of The Company[;.]” (2) “I, the customer buying the vehicle, understand I should not rely on any verbal representations about this

vehicle[,]” (3) “[i]f the vehicle was test driven, [n]o employee of the Company has attempted to diagnose any issue that was noticed concerning the vehicle. All vehicle inspections must be made by a professional of the customer’s choice[;]” (4) “[o]nce the vehicle leaves the lot after the purchase is agreed to, any and all problems relating to the vehicle are my/our responsibility. For example, if the car will not start I/we must have it fixed at my[] own expense[;]” and (5) “I understand that I am buying a vehicle ‘As Is[,]’ and after I leave the dealership today, anything that goes wrong or needs repaired on the vehicle, I am buying will be at my expense.”

{¶4} Approximately 30 days after the purchase, Mr. King noticed a noise whenever he applied the brakes. TireChoice Auto Service Centers concluded that the car needed brake rotors and pads and provided an estimate of \$685.95.

{¶5} In July 2021, Mr. King filed his initial complaint against BCM. He alleged violations of the Ohio Consumer Sales Practices Act, Breach of Express Warranty of Condition/Breach of Contract, Breach of Implied Warranties of Merchantability and Fitness for Ordinary Purpose/Warranty of Fitness for a Particular Purpose, Fraud and Misrepresentation/Concealment/Negligent Misrepresentation, Unconscionability, and Breach of Express or Implied Contract/Breach of Covenants of Good Faith and Fair Dealing.

{¶6} On September 15, 2021, Mr. King had the vehicle repaired at L.A. Motors. The repairs totaled \$1,281.01 and included replacement of brake pads, rotors, hardware, calipers, hoses, and wheel bearings. Later that month, L.A. Motors replaced the air conditioner compressor and belt for \$320.25.

{¶7} On November 8, 2021, Mr. King filed an amended complaint against BCM. Mr. King alleged violations of the Ohio Consumer Sales Practices Act, Fraud and Misrepresentation/Concealment/Negligent Misrepresentation, and Breach of Express or Implied

Contract/Breach of Covenants of Good Faith and Fair Dealing. In December 2021, BCM filed an answer.

{¶8} On January 31, 2022, BCM filed a motion for summary judgment as to all of Mr. King's claims. In support of the motion, BCM filed the transcript of Mr. King's deposition and the accompanying exhibits and an affidavit along with exhibits mentioned in the affidavit. Mr. King filed a motion to strike the filing of his deposition because the notary public did not appear in person, and instead appeared via Zoom. BCM opposed the motion, and the motion was ultimately denied. Mr. King filed a brief in opposition to BCM's motion for summary judgment and also a motion for summary judgment. BCM opposed the motion and also filed a motion to strike certain exhibits Mr. King filed in support of his brief in opposition to BCM's motion for summary judgment. BCM argued that the exhibits were hearsay and improper summary judgment evidence. Mr. King opposed the motion, but the trial court ultimately granted the motion to strike.

{¶9} In March 2022, Mr. King filed a motion seeking, inter alia, a protective order preventing BCM from questioning Mr. King about a prior criminal offense and preventing it from inquiring into areas Mr. King previously objected to. Mr. King also filed a motion to disqualify counsel for BCM based upon what Mr. King viewed as personal attacks against him by one of the attorneys representing BCM and the other attorney's failure to prevent the personal attacks. BCM opposed the motion to disqualify. It was subsequently denied.

{¶10} In April 2022, the trial court granted BCM's motion for summary judgment and denied Mr. King's motion for summary judgment.

{¶11} Mr. King has appealed, raising five assignments of error, some of which will be addressed out of sequence to facilitate our review. Mr. King has additionally filed a motion for this Court to take judicial notice of certain disciplinary filings related to one of BCM's attorneys.

Counsel for BCM does not oppose this Court doing so. Given the foregoing, the Court takes judicial notice of the filings. *See Davis v. Marcotte*, 10th Dist. Franklin No. 10AP-361, 2011-Ohio-1189, ¶ 33 (noting that “courts routinely take judicial notice of disciplinary proceedings and dispositions[]”).

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED IN GRANTING BCM’S MOTION TO STRIKE THE DOCUMENTS FROM THE BBB OF AKRON AND THE OHIO ATTORNEY GENERAL.

{¶12} Mr. King argues in his first assignment of error that the trial court erred in granting BCM’s motion to strike documents from the BBB and the attorney general.

{¶13} “This Court applies an abuse of discretion standard in reviewing a trial court’s determination regarding a motion to strike.” *Wicks v. Lover’s Lane Market*, 9th Dist. Summit No. 30019, 2022-Ohio-2652, ¶ 7. An abuse of discretion implies that the trial court’s decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶14} On appeal, Mr. King argues that BCM waived any objection to the use of the documents because BCM did not timely file a motion to quash the subpoena for those documents as provided for by Civ.R. 45(C)(3). However, we fail to see how BCM’s failure to file a motion to quash, assuming it was proper for it to do so, limited its ability to later object to the materials once Mr. King submitted them in support of his opposition to BCM’s motion for summary judgment.

{¶15} Civ.R. 26(B)(1) establishes a broad scope for pretrial discovery; it provides that, “[u]nless otherwise limited by court order, * * * [p]arties may obtain discovery regarding any

nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Civ.R. 26(B)(1). Nonetheless, it also indicates that "[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable." Civ.R. 26(B)(1). In other words, the documents that can be obtained under discovery are most often more extensive than the documents that are admissible. Thus, the fact that BCM did not object to Mr. King's discovery of the documents did not mean that it waived its right to object to Mr. King's subsequent attempt to introduce those documents as evidence.

{¶16} As Mr. King does not challenge the trial court's ruling on any other basis within this assignment of error, we overrule his assignment of error.

{¶17} Mr. King's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED IN DENYING KING'S MOTION TO STRIKE
THE FILING OF THE JANUARY 12, 2022 DEPOSITION TRANSCRIPT.

{¶18} Mr. King asserts in his second assignment of error that the trial court erred in failing to strike the filing of his deposition transcript. Specifically, he argues that the deposition violated Civ.R. 28 as it did not take place in the physical presence of a notary public.

{¶19} As discussed above, "[t]his Court applies an abuse of discretion standard in reviewing a trial court's determination regarding a motion to strike." *Wicks*, 2022-Ohio-2652, at ¶ 7.

{¶20} Here, at the time of the deposition, Mr. King did not object to the fact that the notary public was appearing by Zoom and was not physically present in the room. While Mr. King did

later complete an errata sheet objecting to the deposition on the grounds that it did not take place in the physical presence of the notary, he did not raise any issue at the time of the deposition. Civ.R. 32(D)(3)(b) provides that “[e]rrors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.”

{¶21} While the trial court additionally cited to administrative actions of the Supreme Court of Ohio in response to the COVID-19 pandemic in support of its decision to deny Mr. King’s motion, the fact that Mr. King failed to object to the absence of the notary in the room at the time of his deposition was a sufficient basis for the trial court to overrule his motion. Accordingly, this Court need not address any constitutional challenges Mr. King attempts to raise in this assignment of error related to those administrative actions and the pandemic. *See State v. Talty*, 103 Ohio St.3d 177, 2004-Ohio-4888, ¶ 9 (“It is well settled that this court will not reach constitutional issues unless absolutely necessary.”). Mr. King has not demonstrated that the trial court abused its discretion.

{¶22} Mr. King’s second assignment of error is overruled.

ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED IN DENYING KING’S MOTION TO DISQUALIFY [BCM’S COUNSEL].

{¶23} Mr. King argues in his third assignment of error that the trial court erred in failing to disqualify BCM’s counsel.

{¶24} A trial court’s ruling on a motion to disqualify counsel is reviewed for an abuse of discretion. *Ceccoli v. Budd*, 9th Dist. Medina No. 19CA0086-M, 2020-Ohio-4176, ¶ 10. An abuse

of discretion means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore*, 5 Ohio St.3d at 219.

{¶25} “[A] court has inherent authority to supervise members of the bar appearing before it; this necessarily includes the power to disqualify counsel in specific cases. However, disqualification of a party’s attorney is a drastic measure [that] courts should hesitate to impose except when absolutely necessary because it deprives a party of the attorney of their choosing. The trial court should disqualify counsel if, and only if, the [c]ourt is satisfied that real harm is likely to result from failing to [disqualify].” (Internal quotations and citations omitted.) *Sherwood v. Eberhardt*, 9th Dist. Lorain No. 18CA011286, 2019-Ohio-4213, ¶17.

{¶26} On appeal, Mr. King argues that BCM’s counsel’s personal attacks against Mr. King warranted that counsel be disqualified. This Court does not condone personal attacks against other litigants or attorneys. Nonetheless, Mr. King has not demonstrated that the trial court abused its discretion in denying his motion as he has not shown that failing to disqualify BCM’s counsel would likely result in real harm. *See id.* The trial court, in its ruling denying Mr. King’s motion, noted that both Mr. King and BCM’s counsel had inserted unnecessary commentary into the litigation. The trial court also directed all parties to conduct themselves with civility and to refrain from further unnecessary commentary. Mr. King has not demonstrated that the trial court’s ruling was unreasonable under the circumstances. Moreover, the record does not demonstrate that Mr. King has been prejudiced by any failure of the trial court to disqualify BCM’s counsel. *See Civ.R.* 61.

{¶27} Mr. King’s third assignment of error is overruled.

ASSIGNMENT OF ERROR V

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF BCM AND DENYING THE MOTION FOR A SUMMARY JUDGMENT IN KING'S FAVOR.

{¶28} Mr. King argues in his fifth assignment of error that the trial court erred in granting summary judgment in favor of BCM and denying his motion for summary judgment.

{¶29} This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). This Court applies the same standard as the trial court, viewing the facts in the case in the light most favorable to the non-moving party and resolving any doubt in favor of the non-moving party. *Viocck v. Stowe-Woodward Co.*, 13 Ohio App.3d 7, 12 (6th Dist.1983).

{¶30} Pursuant to Civ.R. 56(C), summary judgment is proper if:

(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327 (1977).

{¶31} The party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and pointing to parts of the record that show the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293 (1996). Specifically, the moving party must support the motion by pointing to some evidence in the record of the type listed in Civ.R. 56(C). *Id.* Once a moving party satisfies its burden of supporting its motion for summary judgment with acceptable evidence pursuant to Civ.R. 56(C), Civ.R. 56(E) provides that the non-moving party may not rest upon the mere allegations or denials of the moving party's pleadings. *Id.* at 293. Rather, the non-moving party has a reciprocal burden of responding by

setting forth specific facts, demonstrating that a “genuine triable issue” exists to be litigated at trial. *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449 (1996).

{¶32} First, Mr. King asserts that the exhibits that were stricken were proper evidence as they were business records and thus admissible. While this argument is outside the stated scope of his assignment of error, we will nonetheless briefly address it.

{¶33} “To qualify for admission under Evid.R. 803(6), a business record must manifest four essential elements: (i) the record must be one regularly recorded in a regularly conducted activity; (ii) it must have been entered by a person with knowledge of the act, event or condition; (iii) it must have been recorded at or near the time of the transaction; and (iv) a foundation must be laid by the custodian of the record or by some other qualified witness.” (Internal quotations and citations omitted.) *Fed. Natl. Mtge. Assn. v. McFerren*, 9th Dist. Summit No. 28814, 2018-Ohio-5319, ¶ 16. “In order to be admissible under this hearsay exception, the business records must be authenticated by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be[.]” (Internal quotations and citations omitted.) *Id.* at ¶ 17. “A witness authenticating a business record must be familiar with the operation of the business and with the circumstances of the preparation, maintenance, and retrieval of the record in order to reasonably testify on the basis of this knowledge that the record is what it purports to be, and was made in the ordinary course of business. Evid.R. 803(6) does not require personal knowledge of the exact circumstances of the preparation and production of the document or of the transaction giving rise to the record.” (Internal quotations and citations omitted.) *Id.*

{¶34} Here, Mr. King has not demonstrated that the alleged business records were properly authenticated and thus he has not established that they were admissible under Evid.R. 803(6). Additionally, we note that some of these documents accompanied Mr. King’s deposition

transcript as exhibits as well as his own motion for summary judgment. There was no motion to strike those documents; thus, some of them are part of the record.

{¶35} Mr. King's amended complaint contained three causes of action: (1) alleged violations of the Ohio Consumer Sales Practices Act; (2) fraud, misrepresentation, concealment, and/or negligent misrepresentation; and (3) breach of express or implied contract and/or breach of covenants of good faith and fair dealing. In the amended complaint, Mr. King asserted that the salesperson stated the vehicle was in excellent condition, while at his deposition, Mr. King maintained that the salesperson said the car was perfect. With respect to the Ohio Consumer Sales Practices Act claim, Mr. King asserted that misrepresentations were made that the vehicle had performance characteristics, uses or benefits it did not and that the vehicle was of a particular standard, quality, grade, or model when it was not. Additionally, he claimed that the vehicle was sold with knowledge that the consumer would be unable to receive a substantial benefit from it, that a misleading statement of opinion was made which the consumer was likely to rely upon to his detriment, and that the vehicle sold was known to be in an unsafe or unreliable condition. As to Mr. King's fraud claim, Mr. King maintained that BCM, through its employees, made statements indicating that the vehicle would provide Mr. King with reliable transportation. Mr. King further alleged that BCM failed to disclose that the vehicle was in need of major repair and that it had received information from Fred Martin Superstore, operated by Fred Martin Motor Company, about the condition of the vehicle. With respect to Mr. King's third cause of action, Mr. King asserted that BCM breached its duty to act in good faith by breaching the express and implied warranties and misrepresenting the condition of the vehicle.

{¶36} Essentially, Mr. King contended below that representations by the salesperson that the vehicle was excellent or perfect were actionable as the vehicle developed problems beginning

30 days after purchase. The vehicle ultimately had repairs made to the braking system and air conditioning system. Additionally, Mr. King argued that BCM failed to share with him inspection records from Fred Martin Superstore concerning the vehicle and that conduct was also actionable. Mr. King asserted that Fred Martin Superstore performed an inspection on the vehicle prior to selling it to BCM and that BCM would have access to those inspection records from Fred Martin Superstore because Fred Martin Superstore and BCM are related entities. A representative from BCM averred that BCM acquired the vehicle from Fred Martin Motor Company, and it received no service records or inspection reports from Fred Martin Motor Company regarding the vehicle.

{¶37} On appeal, Mr. King has made a very general argument that there remains a genuine dispute of fact precluding summary judgment, while also asserting that he is entitled to summary judgment. The only claim that Mr. King expressly discusses is his claim related to fraud/misrepresentation. Thus, Mr. King has not demonstrated on appeal that the trial court erred in granting summary judgment to BCM as to his Ohio Consumer Sales Practices Act or contract-related claim.

Fraud/Misrepresentation/Concealment/Negligent Misrepresentation Claim

{¶38} Mr. King asserted in this claim that BCM represented the vehicle to be dependable, knew the vehicle needed major repairs at the time of the sale, and failed to disclose the information it received from Fred Martin Superstore regarding the condition of the vehicle.

{¶39} “Fraud consists of (a) a representation or, where there is a duty to disclose, concealment of a fact, (b) which is material to the transaction at hand, (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, (d) with the intent of misleading another into relying upon it, (e) justifiable reliance upon the representation or concealment, and (f) a resulting injury

proximately caused by the reliance.” (Internal quotations and citation omitted.) *Groob v. KeyBank*, 108 Ohio St.3d 348, 2006-Ohio-1189, ¶ 47. “The elements of negligent misrepresentation are as follows: One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.” (Internal quotations and citations omitted.) *Delman v. Cleveland Heights*, 41 Ohio St.3d 1, 4 (1989).

{¶40} BCM presented Mr. King’s deposition, accompanying exhibits, and an affidavit along with exhibits in support of its motion for summary judgment. In his deposition, Mr. King acknowledged that he did not expect the brakes to be new on a car that was over 10 years old with over 130,000 miles on it. Mr. King also agreed that repairing and checking the brakes is a common part of vehicle maintenance. He also indicated that, to his knowledge, there was nothing wrong with the brakes at the time the car was sold to him by BCM and agreed that, at no point, did the brakes ever fail to stop the vehicle. Mr. King testified that when he test drove the vehicle there were no issues that he noticed and that “everything that [he] saw worked.” The car also stopped and started and was in operating order at the time of purchase. Further, despite the problems with the brakes and air conditioning that required repairs, Mr. King was able to drive the vehicle to the deposition and acknowledged that it was capable of getting him there safely.

{¶41} There is no evidence in the record that BCM knew the vehicle needed any major repairs at the time of the sale; in fact, Mr. King did not notice any issues with the vehicle until approximately 30 days later and those issues involved the brakes, a system that Mr. King himself acknowledged commonly required maintenance.

{¶42} BCM also set forth evidence that it purchased the vehicle it sold to Mr. King from Fred Martin Motor Company, and it did not receive any service records or inspection records from Fred Martin Motor Company. Mr. King did not present any evidence which contradicts that fact; instead, Mr. King has conjectured that BCM had the documents due to its affiliation with Fred Martin Superstore. Moreover, Mr. King has not detailed how the service records relate to any of the problems that he later experienced. Thus, Mr. King has not shown that he was damaged by any failure to disclose records, assuming that BCM possessed any. Overall, Mr. King has not shown on appeal that the trial court erred in granting summary judgment to BCM on his fraud claim and in denying his motion for summary judgment.

{¶43} Mr. King's fifth assignment of error is overruled.

ASSIGNMENT OF ERROR IV

THE TRIAL COURT ERRED IN DENYING KING'S MOTION FOR A PROTECTIVE ORDER.

{¶44} Mr. King argues in his fourth assignment of error that the trial court erred in denying his motion for a protective order. Given this Court's resolution of Mr. King's fifth assignment of error, this assignment of error has been rendered moot. *See* App.R. 12(A)(1)(c). We therefore decline to further address it.

III.

{¶45} Mr. King's first, second, third, and fifth assignments of error are overruled. His fourth assignment of error is moot. 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(C). 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

SUTTON, P. J.
STEVENSON, J.
CONCUR.

APPEARANCES:

DERRICK MARTIN KING, pro se, Appellant.

LAWRENCE R. BACH, Attorney at Law, for Appellee.

KRISTOPHER IMMEL, Attorney at Law, for Appellee.