

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
WASHINGTON COUNTY

DEBRA LYNN BRITTON, : Case No. 18CA10  
Plaintiff-Appellee,<sup>1</sup> :  
v. : DECISION AND  
ROBERT BRITTON, : JUDGMENT ENTRY  
Defendant-Appellant. : **RELEASED: 04/19/2019**

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APPEARANCES:

Paul Giorgianni, Giorgianni Law LLC, Columbus, Ohio, for appellant.

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Hess, J.

{¶1} Robert Britton appeals from the trial court’s judgment overruling his motion for relief from a divorce judgment. Robert contends that the divorce judgment is void for lack of personal jurisdiction because his former wife, Debra Britton, did not properly serve him with process. Alternatively, he contends that he is entitled to relief pursuant to Civ.R. 60(B). Robert also asserts the trial court applied improper legal standards and relied on irrelevant facts, so a new evidentiary hearing is warranted. However, because Debra complied with the civil rules on service, a rebuttable presumption of proper service arose. Robert failed to rebut the presumption and failed to show that service was not reasonably calculated to notify him of the divorce proceeding in violation of his due process rights, so the divorce judgment is not void. Moreover, Robert is not entitled to relief pursuant to Civ.R. 60(B) because he failed to establish one of the grounds for relief in that rule. We affirm the trial court’s judgment.

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<sup>1</sup> Debra Britton did not file an appellate brief and has not otherwise entered an appearance in this appeal.

## I. FACTS

{¶2} Robert and Debra married in 1986, and on November 2, 2015, Debra filed for divorce. The complaint listed Robert's address as 810 West Olin Avenue, Madison, Wisconsin, 53715. Debra filed an instructions for service form requesting that the clerk serve Robert with the summons and complaint via certified mail at that address. She also requested service via publication by posting and mail pursuant to Civ.R. 4.4(A)(2) even though the form specified that option applied only if she did not know her spouse's address. The clerk served Robert at the Olin Avenue address via certified mail, and on November 5, 2015, an individual named Ashley Linger signed the return receipt. The record contains no evidence that the clerk also served Robert pursuant to Civ.R. 4.4(A)(2).

{¶3} Robert did not file an answer to the complaint. Beginning December 11, 2015, the clerk sent him additional documents via ordinary mail which were returned as "not deliverable as addressed, unable to forward." Robert did not appear at the final divorce hearing. However, the magistrate concluded he had been properly served and recommended that the trial court grant Debra a divorce. Robert did not file objections to the magistrate's decision. On March 15, 2016, the trial court issued a final judgment of divorce, which it later altered via nunc pro tunc entry. Robert did not file a timely appeal.

{¶4} On March 17, 2017, Robert moved for relief from the divorce judgment asserting that he was never served with the summons, complaint, or other documents and did not learn of the divorce proceeding until after the court issued its final judgment. Robert argued that because "original service was improper," the court lacked

jurisdiction. He also claimed the divorce judgment contained errors regarding the parties' children and the distribution of property. He supported the motion with an affidavit averring that he was never served, that Debra requested service at an address she knew he had not resided at for "approximately" two years, and that his "correct address \* \* \* has always been on file with" the Washington County Child Support Enforcement Agency ("CSEA").

{¶5} At the hearing on the motion, Robert introduced evidence that the Olin Avenue address is the location of Chris Farley House, a substance abuse treatment facility. Robert testified that he stayed at Chris Farley House for only 60 days between June and August 2014 and introduced a Discharge Summary to support his claim. He also testified that from March 2015 until December 2015, he stayed at Safe Haven, a facility for homeless individuals suffering from mental illness located at 4006 Nakoosa Trail, Madison, Wisconsin. Robert testified that he received mail at the Off the Square Club in Madison, and CSEA had the address. He claimed that he had frequent contact with Debra around the time she filed for divorce and that she knew he was at Safe Haven. Robert's sister, Terrie Ramsey, testified that she knew Robert was living at Safe Haven around November 2015 because Debra told her.

{¶6} Debra testified that she did not know Robert's address when she initially went to file for divorce. She testified that Robert would give her some information about his whereabouts: "He said, Chris Farley House, and he said Safe Haven, Safe Harbor. There [were] a couple of different [men's] shelters. He was sleeping on a bench. He was sleeping in a park. He had no roof over his head. He slept in a storage building." However, he never gave her a physical address because he had outstanding warrants

in Washington County. According to Debra, the clerk's office requested his address, so she "went across the hall" to CSEA and someone from that office gave her the Olin Avenue address. Debra testified that if Robert "wanted to participate [in the divorce], he could have. He was very much well aware that I filed for divorce, because he even texted me and – and ran me down and made ugly, rude comments about me being divorced from him."

{¶7} The magistrate summarily denied the motion for relief, and the court adopted that decision. Robert filed objections and requested findings of fact and conclusions of law, which the magistrate provided. The magistrate found that Robert presented no evidence to show his "purported residence at the time of service" except his own testimony which "lacks credibility." The magistrate observed that Robert "testified that he had been gone from the Chris Farley House for 15 months at the time the initial pleadings were mailed by certified mail to the address, not two years as asserted in his pleadings." The magistrate noted that his testimony "was confusing and at times contradictory" and some of his answers were "nonresponsive." The magistrate found the Discharge Summary "shed no light on the issue of where [Robert] was residing" in November 2015. The magistrate found that Debra "reasonably believed that service at Chris Farley House was likely to put [Robert] on notice of the divorce" and stated that "[t]he Court is not convinced that [Robert] lacked actual notice of the divorce." The magistrate also stated that Robert "failed to meet his burden of proof that granting his relief from judgment would result in an outcome different from that of the final divorce hearing." The court adopted the magistrate's decision, and Robert filed additional objections.

{¶18} The court overruled the objections, concluded the magistrate “properly determined the factual issues” and “appropriately applied the law,” and again adopted the magistrate’s decision to deny the motion for relief from judgment. The court noted that at the time of the divorce Robert “had active warrants for his arrest and, therefore, was not willing to keep [Debra] informed of his address.” It also noted Debra testified that she “believed that she had the correct address which she received from” CSEA and testified that Robert “was aware of the divorce proceeding.” The court found Robert “was properly served in this case and chose not to participate in his divorce due to his homelessness, arrest warrants and mental condition.”

## II. ASSIGNMENTS OF ERROR

{¶19} Robert assigns the following errors for our review<sup>2</sup>:

- I. The court overruled Robert’s motion for relief from the divorce judgment.
- II. The court applied an incorrect legal standard, placing on Robert the burden of proving that he was *not* at Chris Farley House in November 2015.
- III. The court applied an incorrect legal standard, placing on Robert the burden of proving that he lacked actual knowledge of the complaint.
- IV. The court applied an incorrect legal standard, placing on Robert the burden of proving that relief from judgment “would result in an outcome different from that of the final divorce hearing.”
- V. The court relied on irrelevant facts as bases for overruling Robert’s motion for relief from the divorce judgment.

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<sup>2</sup> The assignments of error are taken from pages ii and iii of Robert’s brief; some are stated differently on page viii of his brief.

### III. MOTION FOR RELIEF FROM JUDGMENT

{¶10} In the first assignment of error, Robert asserts that he is entitled to relief from judgment because the divorce judgment is void or because he met the requirements for relief pursuant to Civ.R. 60(B). Alternatively, Robert asserts that he is entitled to a new evidentiary hearing “due to multiple, material errors of law and fact committed by the trial court” which the second, third, fourth, and fifth assignments of error address. Because the assignments of error are related, we consider some of them together.

#### A. Relief from Void Judgment

{¶11} In the first assignment of error, Robert asserts in part that the divorce judgment is void for lack of personal jurisdiction due to Debra’s failure to properly effect service of process. Specifically, he argues that (1) Debra had to, but did not, serve him by publication by posting and mail pursuant to Civ.R. 4.4(A)(2)(a); (2) even if she could have served him via certified mail pursuant to Civ. 4.1(A)(1)(a), service at Chris Farley House violated his due process rights because it was not reasonably calculated to reach him; and (3) he rebutted any presumption of proper service, and Debra failed to prove he actually received the summons. In the second assignment of error, Robert asserts the trial court applied an incorrect legal standard by placing the burden on him to prove that he was not at Chris Farley House in November 2015. He maintains that to rebut any presumption of proper service, he had to only produce evidence that he was not there and did so, i.e., his sworn statements, the Discharge Summary, and the documents that were returned to the clerk as not deliverable.

{¶12} “ ‘It is rudimentary that in order to render a valid personal judgment, a court must have personal jurisdiction over the defendant.’ ” *State ex rel. Doe v. Capper*, 132 Ohio St.3d 365, 2012-Ohio-2686, 972 N.E.2d 553, ¶ 13, quoting *Maryhew v. Yova*, 11 Ohio St.3d 154, 156, 464 N.E.2d 538 (1984). “ ‘It is axiomatic that for a court to acquire jurisdiction there must be a proper service of summons or an entry of appearance, and a judgment rendered without proper service or entry of appearance is a nullity and void.’ ” *State ex rel. Ballard v. O’Donnell*, 50 Ohio St.3d 182, 183, 553 N.E.2d 650 (1990), quoting *Lincoln Tavern, Inc. v. Snader*, 165 Ohio St. 61, 64, 133 N.E.2d 606 (1956). “A court possesses inherent power to vacate a void judgment. Thus, a party seeking to vacate a default judgment due to a lack of jurisdiction need not comply with Civ.R. 60(B), which governs relief from voidable—not void—judgments.” (Citation omitted.) *Detty v. Yates*, 4th Dist. Ross No. 13CA3390, 2014-Ohio-1935, ¶ 11.

{¶13} “An appellate court reviews a trial court’s determination of whether personal jurisdiction over a party exists under a de novo standard of review.” *State ex rel. Athens Cty. Dept. of Job & Family Servs. v. Martin*, 4th Dist. Athens No. 07CA11, 2008-Ohio-1849, ¶ 13. Also, “ ‘[w]hether the trial court applied the correct legal standard is a legal issue that we review de novo.’ ” *E.W. v. T.W.*, 10th Dist. Franklin No. 16AP-88, 2017-Ohio-8504, ¶ 13, quoting *Martin v. Mahr Machine Rebuilding, Inc.*, 11th Dist. Lake No. 2015-L-101, 2017-Ohio-1101, ¶ 14. However, “[a] reviewing court will not disturb a trial court’s finding regarding whether service was proper unless the trial court abused its discretion.” *Beaver v. Beaver*, 4th Dist. Pickaway No. 18CA5, 2018-Ohio-4460, ¶ 8. “An abuse of discretion occurs when a decision is unreasonable,

arbitrary, or unconscionable.” *State ex rel. Wegman v. Ohio Police & Fire Pension Fund*, \_\_\_ Ohio St.3d \_\_\_, 2018-Ohio-4243, \_\_\_ N.E.2d \_\_\_, ¶ 15.

{¶14} “The plaintiff bears the burden of obtaining proper service on a defendant.” *Beaver* at ¶ 9. “ ‘ “A [rebuttable] presumption of proper service arises when the record reflects that a party has followed the Civil Rules pertaining to service of process.” ’ ” (Bracketed material added in *Hendrickson*.) *Id.* at ¶ 10, quoting *Hendrickson v. Grider*, 2016-Ohio-8474, 70 N.E.3d 604, ¶ 32 (4th Dist.), quoting *Poorman v. Ohio Adult Parole Auth.*, 4th Dist. Pickaway No. 01CA16, 2002 WL 398721, \*2 (Mar. 6, 2002). Evid.R. 301 states “a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast.” However, “the rule does not resolve difficult issues as to sufficiency of evidence necessary to rebut a presumption,” which are “left to case law analysis.” 1980 Staff Note, Evid.R. 301.

{¶15} To rebut the presumption of proper service, “ ‘the other party must produce evidentiary-quality information demonstrating that he or she did not receive service.’ ” *Hendrickson* at ¶ 32, quoting *McWilliams v. Schumacher*, 8th Dist. Cuyahoga Nos. 98188, 98288, 98390, 98423, 2013-Ohio-29, ¶ 51. “In general, ‘[i]n determining whether a defendant has sufficiently rebutted the presumption of valid service, a trial court may assess the credibility and competency of the submitted evidence demonstrating non-service.’ ” (Alteration in *Boggs*.) *Boggs v. Denmead*, 2018-Ohio-2408, 115 N.E.3d 35, ¶ 31 (10th Dist.), quoting *Bowling v. Grange Mut. Cas. Co.*, 10th Dist. Franklin No. 05AP-51, 2005-Ohio-5924, ¶ 33. *See also Lauver v. Ohio Valley*



*Selective Harvesting, LLC*, 12th Dist. Clermont No. CA2016-11-076, 2017-Ohio-5777, ¶ 18. “A trial court is not required to give preclusive effect to a movant’s sworn statement that [the movant] did not receive service of process when the record contains no other indication that service was ineffectual.” *TCC Mgt., Inc. v. Clapp*, 10th Dist. Franklin No. 05AP-42, 2005-Ohio-4357, ¶ 15.

{¶16} “Even when service of process complies with the applicable rules, it will be invalid if it does not comply with due process requirements.” *In re A.G.*, 4th Dist. Athens No. 14CA28, 2014-Ohio-5014, ¶ 24, citing *Akron-Canton Regional Airport Auth. v. Swinehart*, 62 Ohio St.2d 403, 406 N.E.2d 811 (1980), syllabus. “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950). “A party may show that service did not comply with due process by establishing that service was not made to an address where it would be ‘reasonably calculated’ to reach the intended person or entity.” *In re A.G.* at ¶ 24, quoting *Mullane* at 314.

{¶17} Civ.R. 4.3(A) provides: “Service of process may be made outside of this state, as provided in this rule, in any action in this state, upon a person who, at the time of service of process, is a nonresident of this state or is a resident of this state who is absent from this state.” Civ.R. 4.3(B)(1) authorizes service pursuant to Civ.R. 4.1(A)(1)(a), which states:

Service by United States Certified or Express Mail. Evidenced by return receipt *signed by any person*, service of any process shall be by United

States certified or express mail unless otherwise permitted by these rules. The clerk shall deliver a copy of the process and complaint or other document to be served to the United States Postal Service for mailing at the address set forth in the caption or at the address set forth in written instructions furnished to the clerk as certified or express mail return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

(Emphasis added.)

{¶18} Here, a rebuttable presumption of proper service arose because pursuant to Civ.R. 4.1(A)(1)(a), Robert was served via certified mail at the address in the caption of the complaint and the instructions for service form, and the return receipt was “signed by any person” as required by the rule. The assertion that Debra had to effect service via Civ.R. 4.4(A)(2)(a) is not well-taken. The rule applies only when “the residence of the party upon whom service is sought is unknown.” Civ.R. 4.4(A)(2)(a)(i). Civ.R. 4.4(A)(2)(a) mandates that the party requesting service submit an affidavit containing the same averments required by Civ.R. 4.4(A)(1), i.e., “that service of summons cannot be made because the residence of the party to be served is unknown to the affiant \* \* \* and that the residence of the party to be served cannot be ascertained with reasonable diligence.” Debra could not have served Robert pursuant to Civ.R. 4.4(A)(2)(a) when she filed the complaint because she had presumably ascertained his address.

{¶19} Robert had to rebut the presumption of proper service or establish that service at Chris Farley House was not reasonably calculated to reach him. Although Robert testified that he left Chris Farley House in August 2014 and lived at Safe Haven in November 2015, the magistrate and trial court concluded his testimony lacked credibility. They also implicitly concluded his sister’s testimony lacked credibility. As noted above, the court could assess the credibility and competency of Robert’s

evidence of non-service in determining whether he sufficiently rebutted the presumption of proper service; it did not improperly shift the burden of proof to him in doing so. See *Boggs*, 2018-Ohio-2408, at ¶ 31; *Lauver*, 2017-Ohio-5777, at ¶ 18. “We generally defer to the trier of fact on \* \* \* credibility issues because the trier of fact is better positioned to view the witnesses and to observe their demeanor, gestures and voice inflections and then to use those observations to weigh witness credibility.” *Combs v. Hobstetter-Hall*, 4th Dist. Lawrence No. 16CA2, 2016-Ohio-7407, ¶ 18.

{¶20} Robert presented no other evidence regarding where he lived in November 2015. The Discharge Summary is silent on this point, and the fact that documents mailed to Robert at Chris Farley House in December 2015 were returned as not deliverable does not indicate that service there in November 2015 was improper. He also presented no other evidence to contradict Debra’s testimony that the address CSEA had for him in November 2015 was Chris Farley House’s address. Because Robert was a party to an administrative child support order when Debra filed for divorce, pursuant to R.C. 3121.24(A), he had a duty to notify CSEA of his current mailing address and residence address and to “immediately” notify CSEA of any change “[u]ntil further notice” from the agency.

{¶21} Under these circumstances, we cannot say that the trial court abused its discretion when it implicitly concluded that service at Chris Farley House was reasonably calculated to reach Robert and that he failed to rebut the presumption of proper service. See generally *Discover Bank v. Wells*, 2d Dist. Clark No. 2018-CA-44, 2018-Ohio-4637, ¶ 17 (holding trial court did not abuse its discretion in concluding defendant’s testimony that he did not reside at the address where process was served

lacked credibility and was insufficient to overcome the presumption of service and noting he “could have easily submitted documents \* \* \* establishing that he was residing elsewhere at the time service was attempted”). Because Robert was properly served, the trial court had personal jurisdiction over him when it issued the divorce judgment. We overrule the first assignment of error to the extent it asserts the divorce judgment is void, and we overrule the second assignment of error.

B. Relief from Judgment Pursuant to Civ.R. 60(B)

{¶22} In the first assignment of error, Robert also asserts that the trial court erred when it denied him relief pursuant to Civ.R. 60(B). [Appellant’s Br. 19]

{¶23} “ ‘In an appeal from a Civ.R. 60(B) determination, a reviewing court must determine whether the trial court abused its discretion.’ ” *Harris v. Anderson*, 109 Ohio St.3d 101, 2006-Ohio-1934, 846 N.E.2d 43, ¶ 7, quoting *State ex rel. Russo v. Deters*, 80 Ohio St.3d 152, 153, 684 N.E.2d 1237 (1997). To prevail on a Civ.R. 60(B) motion

the movant must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceeding was entered or taken.

*GTE Automatic Elec., Inc., v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus.

{¶24} Regarding the second prong, Robert asserts that he is entitled to relief on the grounds stated in either Civ.R. 60(B)(1), i.e., “excusable neglect,” or Civ.R. 60(B)(5), “any other reason justifying relief from judgment,” because he was not served with the summons and was unaware of the divorce proceeding. However, as we explained in Section III.A., Robert was properly served. Also, the magistrate and trial court did not

believe Robert's claim that he was unaware of the divorce proceeding until after the final judgment, and we defer to that credibility determination. See *Combs*, 2016-Ohio-7407, at ¶ 18.

{¶25} Robert did not satisfy the second prong of the *GTE* test, and the trial court's decision to deny him Civ.R. 60(B) relief was not unreasonable, arbitrary, or unconscionable. This decision renders moot the fourth assignment of error in which Robert asserts the trial court applied the wrong legal standard to the first prong of the *GTE* test. Accordingly, we overrule the first assignment of error to the extent it asserts the trial court erred in denying relief pursuant to Civ.R. 60(B) and overrule as moot the fourth assignment of error.

#### C. Actual Knowledge

{¶26} In the third assignment of error, Robert maintains that the trial court improperly placed a burden on him to prove that he lacked actual knowledge of the complaint because the magistrate stated that “[t]he Court is not convinced that [Robert] lacked actual notice of the divorce.” Robert argues that “[w]hen there is failure of service of process, actual knowledge of the complaint is irrelevant[.]” He also asserts that there is “no probative evidence that [he] had actual knowledge of the complaint prior to final judgment” and that the trial court erred in relying on Debra's testimony to support the conclusion that he did.

{¶27} Robert did not challenge the magistrate's statement on actual notice in his objections and has forfeited all but plain error for this claim. *Sarchione-Tookey v. Tookey*, 4th Dist. Athens No. 17CA41, 2018-Ohio-2716, ¶ 35, citing Civ.R. 53(D)(3)(b)(iv). “And because he does not claim plain error for this contention we need

not address it.” *Id.* But even if his claim were properly before us, Robert has not met “his heavy burden of establishing plain error.” *Id.* at ¶ 36. In *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997), the Supreme Court of Ohio explained:

In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.

*Id.* at syllabus.

{¶28} Nothing in the decisions of the magistrate or trial court suggest they considered actual knowledge to be a substitute for proper service of process, and in Section III.A., we concluded service was proper in this case. Moreover, Robert relies on his alleged lack of knowledge as a basis for relief pursuant to Civ.R. 60(B), and it is his burden to establish entitlement to such relief. See *GTE Automatic Elec., Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113, at paragraph two of the syllabus. And contrary to Robert’s contention, Debra’s testimony supports a finding that he knew about the divorce proceeding prior to the final judgment. Although her statement that Robert knew about the divorce because he “texted me and – ran me down and made \* \* \* comments about me being divorced from him” could be construed to refer to post-divorce events, Debra also testified that if Robert “wanted to participate, he could have,” indicating he knew about the divorce proceeding while it was pending.

{¶29} We overrule the third assignment of error.

#### D. Reliance on Irrelevant Facts

{¶30} In the fifth assignment of error, Robert maintains the trial court relied on irrelevant facts as reasons for denying his motion.

{¶31} Robert complains about the magistrate’s findings that (1) he testified that he left Chris Farley House 15 months before the summons was sent there but averred that he left approximately two years before then; (2) he had outstanding warrants during the pendency of the divorce proceeding; and (3) Debra reasonably believed that service at Chris Farley House was likely to put him on notice of divorce. He asserts that these facts are immaterial and that the third fact suggests mistaken use of a subjective standard to analyze his due process argument.

{¶32} Robert forfeited all but plain error by not challenging these specific findings in his objections, and because he does not assert plain error, we need not address his claims. *Sarchione-Tookey*, 2018-Ohio-2716, at ¶ 35. Even if the claims were properly before us, Robert did not establish plain error. The approximate nine-month difference in his sworn statements about when he left Chris Farley House is relevant to his credibility. The warrants are relevant to why Debra obtained his address from CSEA, and as the trial court found, help explain why he did not participate in the divorce proceeding despite being properly served. Also, in Section III.A. we held that Robert did not establish a due process violation.

{¶33} Robert also complains that the trial court found that he “was not willing to keep [Debra] informed of his address” and found that Debra “testified that she believed” she received Robert’s correct address from CSEA. He asserts that Debra knew he was at Safe Haven, that she failed to exercise reasonable diligence to obtain his address, and that service at Chris Farley House was not reasonably calculated to reach him. He essentially makes a due process claim, but again, we concluded in Section III.A. that he did not establish a due process violation.

{¶34} We overrule the fifth assignment of error.

IV. CONCLUSION

{¶35} Having overruled each of the assignments of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.



**JUDGMENT ENTRY**

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

Abele, J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: \_\_\_\_\_  
Michael D. Hess, Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**