

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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|---------------------|---|-------------------------------|
| STATE OF OHIO | : | JUDGES: |
| | : | |
| | : | Hon. William B. Hoffman, P.J. |
| Plaintiff-Appellee | : | Hon. John W. Wise, J. |
| | : | Hon. Patricia A. Delaney, J. |
| -vs- | : | |
| | : | Case No. 08-CA-151 |
| DAVID GAMBREL | : | |
| | : | |
| | : | |
| Defendant-Appellant | : | <u>O P I N I O N</u> |

CHARACTER OF PROCEEDING: Appeal from the Licking County Municipal Court Case No. 08-TRC-9778

JUDGMENT: DISMISSED

DATE OF JUDGMENT ENTRY: November 10,2009

APPEARANCES:

For Plaintiff-Appellee:

JONATHAN C. DIERNBACH 0071206
Assistant Law Director
40 W. Main Street
Newark, Ohio 43055

For Defendant-Appellant:

DAVID GAMBREL, pro se
173 Bachman Avenue
Newark, Ohio 43055

Delaney, J.

{¶1} Defendant-Appellant, David Gambrel, appeals from the judgment of the Licking County Municipal Court, convicting him of one count of OVI. The State of Ohio is Plaintiff-Appellee.

{¶2} Upon review of the filings in this matter, we find Appellant’s brief not to be in compliance with the Appellate Rules.

{¶3} App. R. 16 states:

{¶4} “(A) Brief of the appellant

{¶5} “The appellant shall include in its brief, under the headings and in the order indicated, all of the following:

{¶6} “(1) A table of contents, with page references.

{¶7} “(2) A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where cited.

{¶8} “(3) A statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected.

{¶9} “(4) A statement of the issues presented for review, with references to the assignments of error to which each issue relates.

{¶10} “(5) A statement of the case briefly describing the nature of the case, the course of proceedings, and the disposition in the court below.

{¶11} “(6) A statement of facts relevant to the assignments of error presented for review, with appropriate references to the record in accordance with division (D) of this rule.

{¶12} “(7) An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.

{¶13} “(8) A conclusion briefly stating the precise relief sought.”

{¶14} Compliance with the above-stated rule is mandatory. Also, an appellate court may rely upon App.R. 12(A) in overruling or disregarding an assignment of error because of “the lack of briefing” on the assignment of error. *Henry v. Gastaldo*, 5th Dist. No. 2005-AP-03-0022, 2005-Ohio-4109, citing *Hawley v. Ritley* (1988), 35 Ohio St.3d 157, 159, 519 N.E.2d 390, 392-393; *State v. Watson* (1998), 126 Ohio App.3d, 316, 710 N.E.2d 340, discretionary appeal disallowed in (1998), 82 Ohio St.3d 1413, 694 N.E.2d 75.

{¶15} Appellant's filing captioned “Appellant’s Brief On The Merits”, fails to separately set forth any assignment(s) of error as required by App. R. 16(A)(2). Additionally, Appellant fails to set forth a single legal authority to support his contention that the trial court erred in the proceedings below. Thus, Appellant clearly did not follow the requirements of App.R. 16(A)(7). Essentially, Appellant’s merit brief is a summary of testimony and argument as to Appellant’s understanding of the law.

{¶16} Because Appellant has wholly failed to set forth any assignment(s) of error, the Appellee was “forced to extrapolate appropriate Assignments of Error in order to respond to Defendant-Appellant’s ‘brief’”. Appellee’s Brief, p. 6. Additionally, Appellant has failed to cite any case law or authority supporting any claims that he makes in his “brief.”

{¶17} Recently, this Court observed in *Musleve v. Musleve*, 5th Dist. No. 2007CA00314, 2008-Ohio-3961, ¶21 (citation omitted), “It is not the function of this court to construct a foundation for [an appellant’s] claims; failure to comply with the rules governing practice in the appellate court is a tactic which is ordinarily fatal.”

{¶18} Appellant's appeal is hereby dismissed.

By: Delaney, J.

Hoffman, P.J. and

Wise, J. concur.

HON. PATRICIA A. DELANEY

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE

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For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Licking County Municipal Court is dismissed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. WILLIAM B. HOFFMAN

HON. JOHN W. WISE