[Cite as *State v. Riggs*, 2009-Ohio-6821.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	:	JUDGES:
STATE OF OHIO	:	W. Scott Gwin, P.J.
	:	William B. Hoffman, J.
Plaintiff-Appellee	:	Julie A. Edwards, J.
	:	
-vs-	:	Case No. 2009 CA 00041
	:	
	:	
TERESA G. RIGGS	:	O P I N I O N

Defendant-Appellant

CHARACTER OF PROCEEDING:	Criminal Appeal from Licking County Court of Common Pleas Case No. 08 CR 369
JUDGMENT:	Dismissed
DATE OF JUDGMENT ENTRY:	December 21, 2009

APPEARANCES:

For Plaintiff-Appellee

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Edwards, J.

{¶1} Defendant-appellant, Teresa Riggs, appeals her conviction and sentence from the Licking County Court of Common Pleas on one count of misuse of credit cards. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On June 2, 2008, the Licking County Grand Jury indicted appellant on one count of misuse of credit cards (over $5,000.00) in violation of R.C. 2913.21(B)(2), a felony of the fourth degree, and one count of theft of credit cards in violation of R.C. 2913.02(A)(1) and/or (2), a felony of the fifth degree. At her arraignment on June 16, 2008, appellant entered a plea of not guilty to the charges.

{¶3} Subsequently, a jury trial commenced on February 19, 2008. The following testimony was adduced at trial.

{¶4} Daniel A. Neel, Jr. testified that he was employed at Ross's Granville Market and that he met appellant when he was a statistician for the Granville football team while appellant was photographing the games. According to Neel, in late 2007, appellant was shopping at the Granville Market when appellant came up to him and gave him her telephone number. Neel testified that the two went out a couple of times and that he went over to her house three or four times for dinner.

{¶5} During the middle of January of 2008, Neel was hospitalized for leukemia. He was in the hospital for a total of 27 days at that time and, upon release, stayed at appellant's house for four (4) days before he was readmitted to the hospital for another 27 days. Neel then went to stay with appellant again so that she could help him. Neel

testified that at one point when he was in the hospital, he and appellant had talked about maybe living together.

{¶6} Testimony was adduced at trial that before Neel entered the hospital in mid-January of 2008 for the first time, he asked appellant if she could take care of his apartment and his cat and that he gave her a key to his apartment. When asked, Neel testified that no one else had a key. Neel testified that appellant was supposed to pick up his mail and take it to his brother, who had a power of attorney, and to check his telephone messages. Neel testified that he never made arrangements to pay appellant for these services because she was helping him out as a friend. He further testified that he never made an agreement with appellant to pay any of her bills. He testified that their relationship was platonic.

{¶7} At trial, Neel testified that before he left for the hospital the first time in mid-January, he hid his credit cards underneath T-shirts in a chest of drawers in his apartment. He testified that he did not see the cards again until the end of March or mid-April of 2008. The second time that appellant was released from the hospital, he went and stayed with appellant again for between a week and ten (10) days until she asked him to leave immediately for allegedly saying something inappropriate to her daughter. Neel testified that the day he was asked to leave was the same day that he found out that he was in remission. Neel then went and stayed with a cousin.

{¶8} When Neel eventually moved back into his apartment, he started receiving credit card bills containing charges for purchases that he had not made. After he was unable to locate the credit cards, Neel called appellant, who told him that the cards were in a manila envelope by a reclining chair in his apartment. Neel found the four cards in

the envelope that appellant mentioned. Neel then filed a police report. When asked, Neel testified that he never gave permission to appellant to take any of the four credit cards and that he never gave permission to appellant or anyone else to use the same. Neel further testified that the charges were made while he was in the hospital.[1]

{¶9} Neel testified that he never agreed to pay appellant's daily expenses or rent while he was staying with her, but that he did pay her rent twice when she said that she could not afford to do so. Neel testified that his brother, who was his power of attorney, wrote a check for the rent and that appellant went and picked it up. According to Neel, "[t]he understanding was that she would pay me back whenever she had- - was able to." Transcript at 83. Neel also testified that, early January of 2008, he paid a utility bill for appellant before he went into the hospital because he did not want appellant and her daughter to have the utilities cut off.

{¶10} On cross-examination, Neel testified that, after he was released from the hospital, appellant changed his dressings and made sure that he took his medications at the right times.

{¶11} At the trial, Richard McCoy, the manager for Agland Co-op, testified that appellant placed a $216.03 order for heating oil on January 25, 2008, using a credit card. McCoy testified that appellant told him that the credit card belonged to her mother and that she used appellant's billing address, stating that it was her mother's.

{¶12} After her Crim.R. 29 motion for judgment of acquittal was denied, appellant testified in her own defense. Appellant testified that she and Neel had been involved in a romantic relationship since late October early November of 2007, and that they saw each other frequently until the relationship ended in March of 2008. Appellant

[1] Neel testified that there were a few charges on his credit cards that were automatic monthly deductions.

testified that she was struggling financially at the time and that appellant helped her with utility bills and rent. She testified that she considered appellant's financial help to be a gift and that "our understanding was that he was helping me out and we would work it out in some way." Transcript at 212.

{¶13} Appellant testified that when Neel was first hospitalized, she visited him two or three times a week, but that her visits phased off to once or twice a week. She testified that while Neel was in the hospital, she talked to his family daily and met with his doctors and other health care providers. She also testified that she took care of his apartment and his cat, picked up his mail and met with his employer a few times to make sure that there was no lapse in his insurance coverage.

{¶14} Appellant testified that Neel gave her permission to use his credit cards and that he told her where they were and how there were to be used. The following testimony was adduced when she was asked if there was any discussion about what was being purchased on them**:**

{¶15} "A. At times there were, when it was something that what I considered to be large. He didn't always consider what I thought was large large, but what I considered to be large, there were discussions about them. As far as miscellaneous things, as far as groceries, gas and things like that, no, we didn't discuss it outside of, you know, we were doing that, but we didn't talk about, okay, it was this much, this much, this much. But such things as a utility bill or the phone, my Verizon cell phone, you know, heat, anything like that, then we did talk about the amount on that." Transcript at 222-223.

{¶16} Appellant testified that one of those things was heating oil for her house.

{¶17} Appellant also testified that Neel was aware that she used his credit cards to pay for his prescription medications both at the hospital and at pharmacies. She also testified that she used Neel's credit cards to purchase special soaps and mouthwashes for Neel, to purchase gloves for him and to purchase Neel certain foods based on his medical restrictions.

{¶18} On cross-examination, appellant admitted that she never shared the same bed with Neel. She admitted that she made the purchase at Agland Co-op for $216.00, that she paid her Verizon cell phone bill with Neel's credit cards on at least seven occasions, and that she used his credit cards to pay her electric bills, one of which was over $500.00. Appellant also admitted that she used Neel's credit cards to purchase a mattress and on multiple occasions at Certified Oil in Granville. Several times, appellant used the credit cards at Certified Oil more than once a day. According to appellant, she charged several thousand dollars on Neel's credit cards.

{¶19} Appellant also testified that she used Neel's credit cards to have DirecTV hooked up to her house, although she testified that Neel wanted the same installed. Appellant also used Neel's credit cards to make three purchases at Wal-Mart, including one purchase on January 25, 2008, which was a few days after Neel entered the hospital. Appellant testified that most of the purchases made at Wal-Mart were for space heaters to keep her drafty, old house warm for Neel.

{¶20} At the conclusion of the evidence and the end of deliberations, the jury, on February 20, 2009, found appellant guilty of misuse of credit cards. The jury specifically found that the value of the property or services involved was $500.00 or more and less

that $5,000.00. The jury was unable to reach a verdict as to the theft count and such count was dismissed pursuant to an Entry filed on February 27, 2009.

{¶21} Pursuant to a Judgment Entry filed on March 27, 2009, appellant was sentenced to six months in prison. The trial court, in its entry, stated that appellant "shall pay restitution for damages caused in this case. The Court retains jurisdiction over the amount of restitution owed."

{¶22} Appellant then filed a Notice of Appeal on April 8, 2009.

{¶23} On April 28, 2009, an Agreed Entry was filed stating that the proper amount of restitution was $3,822.19 and ordering appellant to pay such amount.

{¶24} Appellant now raises the following assignments of error:

{¶25} "I. THE TRIAL COURT ERRED WHEN IT DID NOT INSTRUCT THE JURY ON A NECESSARY ELEMENT OF THE CRIME OF MISUSE OF CREDIT CARD.

{¶26} "II. THE JURY'S VERDICT FINDING RIGGS GUILTY OF MISUSE OF CREDIT CARD IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶27} "III. THE TRIAL COURT ERRED WHEN IT DID NOT SPECIFY THE AMOUNT OF RESTITUTION AT SENTENCING."

{¶28} As an initial matter, we must address whether the March 27, 2009, Judgment Entry that appellant appealed from is a final, appealable order in light of *State v. Baker,* 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163.

{¶29} In *Baker,* the Ohio Supreme Court held that "[a] judgment of conviction is a final appealable order under R.C. 2505.02 when it sets forth (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the

sentence; (3) the signature of the judge; and (4) the time stamp showing journalization by the clerk of court." *Id.* at the syllabus. The *Baker* decision is based upon an interpretation of Crim.R. 32(C). Crim.R. 32(C) requires that a judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. The court in *Baker* stated that a more logical interpretation of this Crim.R. 32(C) language is that a "trial court is required to sign and journalize a document memorializing the sentence and the manner of the conviction: a guilty plea, a no contest plea upon which the court has made a finding of guilt, a finding of guilt based upon a bench trial, or a guilty verdict resulting from a jury trial." *Baker* at paragraph 14. The *Baker* court specifically rejected any rationale that would allow two separate judgment entries to constitute a final, appealable order, as there can be only one final order. *Baker,* supra.

{¶30} In the case sub judice, the trial court, pursuant to a Judgment Entry filed on March 27, 2009, sentenced appellant to prison and stated that appellant "shall pay restitution for damages caused in this case. The Court retains jurisdiction over the amount of restitution owed." This entry was not a final, appealable order because a judgment entry ordering restitution is not final and appealable if the entry fails to provide the amount of restitution. See *State v. Russell*, Licking App. No.2006-CA-0071, 2006-Ohio-6012**.** We note that an order of restitution imposed by the sentencing court on an offender for a felony is part of the sentence. See syllabus of *State v. Danison,* 105 Ohio St.3d 127, 2005-Ohio-781, 823 N.E.2d 444.

{¶31} Subsequently, an Agreed Entry was filed on April 28, 2009 setting forth the amount of restitution. Such Entry, however, did not qualify as a final, appealable order under *Baker* because it did not contain the jury verdict or the remainder of

appellant's sentence. See *State v. Baker*, Butler App. No. CA2007-06-152, 2008-Ohio-4426.[2] The March 27, 2009 Judgment Entry and the April 28, 2009, Agreed Entry could not be considered together because, under the Ohio Supreme Court *Baker* decision, only one document could constitute a final, appealable order. Id at paragraph 44.

{¶32} Accordingly, we find that there is no final, appealable order in this case.

{¶33} Appellant's appeal, therefore, is dismissed.

By: Edwards, J.

Gwin, P.J. and

Hoffman, J. concur

s/Julie A. Edwards

s/W. Scott Gwin

s/William B. Hoffman

JUDGES

JAE/d0928

[2] In *Baker*, the Butler County Court of Appeals stated in paragraphs 43-44, in relevant part, as follows: "The trial court's May 31, 2007 judgment entry of conviction did not satisfy all four of the *Baker* requirements. In accordance with the first *Baker* element, it contained the guilty finding by the jury; in accordance with the third element, the judge's signature; and in accordance with the fourth element, the time stamp showing journalization. As for the second *Baker* element, the sentence, the entry ordered appellant to pay restitution in an amount "to be determined on June 19, 2007." Where a judgment entry does not settle either the amount of restitution or the method of payment, it is not a final appealable order. *State v. Kuhn,* Defiance App. No. 4-05-23, 2006-Ohio-1145, ¶ 8; *In re Zakov* (1995), 107 Ohio App.3d 716, 718, 669 N.E.2d 344; *In re Holmes* (1980), 70 Ohio App.2d 75, 77, 434 N.E.2d 747. The May 31, 2007 entry thus lacked a complete sentence and was merely interlocutory.

"The August 24, 2007 addendum entry to the judgment of conviction also did not qualify as a final appealable order under *Baker* because it contained only restitution information and not the guilty plea or the remainder of the sentence. Nor could the addendum entry be considered in conjunction with the May 31, 2007 entry to be a final appealable order after the *Baker* court declared that only one document could constitute a final appealable order."

The court further noted that the trial court's later August 14, 2008, amended judgment entry of conviction was a final, appealable order under the Ohio Supreme Court decision in *Baker* because it contained the guilty verdict, the complete sentence, the judge's signature, and a time stamp. Id. at paragraph 45.

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FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
TERESA G. RIGGS	:	
Defendant-Appellant	:	CASE NO. 2009 CA 00041

For the reasons stated in our accompanying Memorandum-Opinion on file, the appeal of the Licking County Court of Common Pleas is dismissed. Costs assessed to appellant.

s/Julie A. Edwards

s/W. Scott Gwin

s/William B. Hoffman

JUDGES