[Cite as *Crooksville v. Love*, 2009-Ohio-6939.]

COURT OF APPEALS
PERRY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	:	JUDGES:
VILLAGE OF CROOKSVILLE,	:	W. Scott Gwin, P.J.
	:	John W. Wise, J.
Plaintiff-Appellee	:	Julie A. Edwards, J.
	:	
-vs-	:	Case No. 09-CA-7
	:	
	:	
CHARLES L. LOVE, et al.,	:	O P I N I O N
Defendants-Appellants		

CHARACTER OF PROCEEDING:	Civil Appeal from Perry County Court of Common Pleas Case No. 08-CV-00328
JUDGMENT:	Dismissed
DATE OF JUDGMENT ENTRY:	December 28, 2009
APPEARANCES:	
For Plaintiff-Appellee	For Defendants-Appellants
JAN ALLEN BAUGHMAN 113 North Fifth Street, Suite 102 Zanesville, Ohio 43701	ROBERT E. MOORE DAVID S. PENNINGTON Wright Law Co., LPA 4266 Tuller Road Dublin, Ohio 43017

Edwards, J.

{¶1} Defendants-appellants, Charles Love and Paula Love, appeal from the April 30, 2009, Entry of the Perry County Court of Common Pleas denying their Motion for Reconsideration.

STATEMENT OF THE FACTS AND CASE

{¶2} Since 1955, appellee Village of Crooksville has been the sole owner in fee simple of real property located in Bearfield Township, Perry County, Ohio. Since 2007, appellants Charles and Paula Love have been the sole owners in fee simple of adjacent property.

{¶3} In 1955, appellee constructed a reservoir on its property for the Village of Crooksville's water supply. Appellee accesses the reservoir, which is open to the public for recreational purposes, including, but not limited to, fishing, via an easement and right of way across appellants' property. Appellee regularly uses the easement to maintain and monitor the Village's water supply. The easement was granted to appellee by Cambria Mining Company.

{¶4} After appellants erected a gate on their property that crossed appellee's easement, appellee, on July 31, 2008, filed a complaint for preliminary and permanent injunction. On the same date, appellee filed a Motion for ex Parte Temporary Restraining Order and/or Preliminary Injunction. An Ex Parte Temporary Restraining Order and Preliminary Injunction was issued on August 13, 2008, that, among other matters, ordered appellants to remove the gate and no trespassing sign that appellants had erected that "encroaches upon and prevents [appellee's] and the public's access to

[appellee's] property…" An "Agreed Temporary Restraining Order and Preliminary Injunction" was filed on September 18, 2008.

{¶5} A trial was scheduled for March 16, 2009. Both sides filed trial briefs in February of 2009.

{¶6} As memorialized in an Agreed Entry filed on March 30, 2009, the parties agreed to submit the matter to the trial court on briefs and the trial was cancelled. The trial court ordered the briefs to be filed on or before March 31, 2009. On March 31, 2009, a document captioned "Parties Agreed Statement of Facts" was filed with the trial court. While the document was signed by appellee's counsel, it indicated that it had been submitted to appellants' counsel on March 25, 2009, but that there was no response from appellants' counsel as of March 31, 2009. The document also indicated that receipt of the same had been confirmed on March 26, 2009.

{¶7} Appellee and appellants filed briefs on March 31, 2009.

{¶8} The trial court, in an Entry filed on April 6, 2009, noted that the matter had been set for a two day trial on March 16, 2009, but that the parties had agreed "to conclude this matter by way of filing an Agreed Statement of Facts and Trial Memorandum." The trial court stated that it was accepting the March 31, 2009 Agreed Statement of Facts and incorporating the same into the Court's ruling. As memorialized in the April 6, 2009 Entry the trial court stated, in relevant part, as follows: "Wherefore, this Court hereby orders that Defendants:

{¶9} "1. Remove the gates from each end of Plaintiff's easements and thereafter be enjoined from installing gates upon Plaintiff's easement;

{¶10} "2. Are enjoined from erecting no trespassing and private property signs upon Plaintiff's easement;

{¶11} "3. Are enjoined from restricting or preventing use of Plaintiff's easement by Plaintiff's guest, invitees, and the public;

{¶12} "4. Are enjoined from interfering with the Plaintiff's renewal of any fishing or other agreements pertaining to plaintiff's own property;

{¶13} "5. Provide and permit Plaintiff and its agents access through a gate and fence Defendants erected across or along the railroad bed in Bearfield Township, so the Plaintiff and its agents will have ready access to Crooksville's raw water line that services the Village of Crooksville water supply;

{¶14} "6. Are enjoined from any and all conduct or action whatsoever that interferes with Plaintiff's peaceful and quiet enjoyment of Plaintiff's own property and/or that interferes with Plaintiff's water operations and/or that interferes with Plaintiff's provision of public fishing, hiking, geocaching and other outdoor activities available to the public on Plaintiff's property commonly known as Sayre Reservoir No. 3; and

{¶15} "7. Fence or otherwise enclose their livestock to prevent the running or grazing of the cattle or other livestock upon the easement and right of way of the Plaintiff."

{¶16} On April 16, 2009, appellants filed a Motion for Reconsideration. Appellants, in their motion, stated that while the trial court appeared to have based its decision, in part, on the Agreed Statement of Facts, "[t]his document was not agreed to by the [appellants] and [appellee] acknowledges that the document was not agreed to in the signature line." Pursuant to an Entry filed on April 17, 2009, the trial court ordered

appellants to provide the trial court with specific objections to the Agreed Statement of Facts and also to explain why appellants had not responded to the Agreed Statement of Facts submitted by appellee prior to March 31, 2009.

{¶17} Appellee filed an objection to appellants' Motion for Reconsideration on April 20, 2009. On April 24, 2009, appellants filed a reply to the trial court's April 17, 2009, Entry. Appellants, in their reply, indicated that they did not agree with paragraphs 13, 14 and 20 of the Agreed Statement of Facts and argued that the Agreed Statement of Facts should be stricken in its entirety because it was not agreed to by appellants. Appellants further indicated in their reply that appellee knew that there was no agreement and that they had no idea that appellee would file a document captioned "Parties Agreed Statement of Facts."

{¶18} As memorialized in an Entry filed on April 30, 2009, the trial court denied appellants Motion for Reconsideration after striking paragraphs 13, 14 and 20 from the Agreed Statement of Facts.

{¶19} On May 21 2009, appellants filed a Notice of Appeal from the trial court's April 30, 2009, Entry. Appellants specifically raise the following assignments of error on appeal:

{¶20} "I. THE TRIAL COURT ERRED WHEN IT INTERPRETED THE 'ANY PURPOSE RELATING THERETO' LANGUAGE IN THE EASEMENT TO APPLY TO AND GRANT THE PUBLIC ACCESS THE RESERVOIR THROUGH THE APPELLANTS' PROPERTY FOR RECREATIONAL PURPOSES AND THEREBY DETERMINED THAT APPELLANTS' GATES WERE AN UNREASONABLE INTERFERENCE WITH PUBLIC'S ACCESS.

{¶21} "II. THE TRIAL COURT ERRED WHEN IT DETERMINED THAT THE APPELLANTS'/DEFENDANTS' REQUEST TO LOCK THE GATE ON THEIR PROPERTY AND TO PROVIDE APPELLEE/PLAINTIFF VILLAGE WITH A KEY TO THE GATE WAS AN UNREASONABLE INTERFERENCE.

{¶22} "III. THE TRIAL COURT ERRED WHEN IT DETERMINED THAT THE APPELLANTS'/DEFENDANTS' GATE ON THEIR PROPERTY WAS AN UNREASONABLE INTERFERENCE WITH APPELLEE VILLAGE'S EASEMENT."

{¶23} However, we find that we have no jurisdiction to address the merits of appellants' assignments of error. Appellants appealed from the trial court's April 30, 2009, decision regarding their Motion for Reconsideration. However, the Ohio Rules of Civil Procedure do not provide for motions for reconsideration. Such motions are considered a nullity. *McCullough v. Catholic Diocese of Columbus* (March 13, 2000), Fairfield App. No. 99CA77, 2000 WL 329658 at 1, citing *Pitts v. Dep. of Transportation* (1981), 67 Ohio St.2d 378, 423 N.E.2d 1105. It follows that a judgment entered on a motion for reconsideration is also a nullity and a party cannot appeal from such a judgment. *Id.* citing *Kauder v. Kauder* (1974) 38 Ohio St.2d 265, 313 N.E.2d 797; *George v. Parker* (Sept. 10, 1999), Fairfield App. No. 99CA3, 1999 WL 770221.

{¶24} Even assuming, arguendo, that appellants' intention was to appeal from the trial court's April 6, 2009, Entry, appellants failed to timely file their notice of appeal. Pursuant to App. R. 4(A) "[a] party shall file the notice of appeal required by App. R. 3 within 30 days of the later of entry of the judgment or order appealed ..." Appellants' Motion for Reconsideration did not extend the appeal time. *Kauder,* 38 Ohio St.2d at 267, 313 N.E.2d 797. A review of the dates involved reveals that appellants did not file

their notice of appeal within 30 days of the April 6, 2009, Entry. Therefore, this Court is without jurisdiction to determine the merits of appellants' appeal. See App. R. 3.

{¶25} Accordingly, appellants' appeal is dismissed.

By: Edwards, J.

Gwin, P.J. and

Wise, J. concur

s/Julie A. Edwards

s/W. Scott Gwin

s/John W. Wise

JUDGES

JAE/d1015

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IN THE COURT OF APPEALS FOR PERRY COUNTY, OHIO

FIFTH APPELLATE DISTRICT

VILLAGE OF CROOKSVILLE	:	
	:	
Plaintiff-Appellee	:	
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	:	
-vs-	:	JUDGMENT ENTRY
	:	
CHARLES L. LOVE, et al.,	:	
	:	
Defendants-Appellants	:	CASE NO. 09-CA-7

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

s/Julie A. Edwards

s/W. Scott Gwin

s/John W. Wise

JUDGES