

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, COUNTY DOG WARDEN	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. John W. Wise, J.
Plaintiff-Appellee	:	Hon. Patricia A. Delaney
	:	
v.	:	Case No. CT2010-0023
	:	
MARGARET E. OCHOA	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil Appeal from the County Court, Case No. CRB 1000190

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: December 1, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Wise, J.

{¶1} Appellant Margaret E. Ochoa appeals the April 27, 2010, decision of the Muskingum County Court , finding her guilty of one count of Dog at Large.

STATEMENT OF FACTS AND LAW

{¶2} On March 18, 2010, Appellant Margaret E. Ochoa was cited for a “Dog at Large”, in violation of R.C. 955.22, a non-specified misdemeanor.

{¶3} On April 9, 2010, a bench trial was held in this matter.

{¶4} By Judgment Entry filed April 27, 2010, the trial court found Appellant guilty as charged. Appellant was ordered to pay court costs

{¶5} On May 19, 2010, Appellant timely filed a Notice of Appeal of the trial court’s decision.

{¶6} On June 8, 2010, the trial court docketed a Nunc Pro Tunc Judgment and Sentencing Entry, again ordering Appellant to pay court costs.

{¶7} Appellant now appeals the trial court's decision.

{¶8} Initially, we must begin by noting that Appellant has failed to comply with App.R. 16., which provides:

{¶9} “(A) Brief of the appellant

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

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

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

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

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

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

{¶16} “(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.

{¶17} “(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.

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

{¶19} Appellant's brief does not satisfy the majority of the requirements of App.R. 16, not the least of which it does not present this Court with a stated assignment of error. Such deficiency is tantamount to the failure to file a brief. Although this Court has the authority under App.R. 18(C) to dismiss an appeal for failure to file a brief, we shall not do so here.

{¶20} Instead of an Assignment of Error, Appellant has listed the following under the heading “State of Questions Presented”:

{¶21} “I. WHETHER THE TRIAL COURT ERRED AS A MATTER OF FACT.”

{¶22} Based on such statement, we find that Appellant appears to be arguing that the trial court's decision is against the manifest weight of the evidence.

{¶23} As an appellate court, we neither weigh the evidence nor judge the credibility of the witnesses. Our role is to determine whether there is relevant, competent and credible evidence upon which the fact finder could base its judgment. *Cross Truck v. Jeffries* (Feb. 10, 1982), Stark App. No. CA-5758, 1982 WL 2911. Accordingly, judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578.

{¶24} Upon review, we find that Appellant failed to file a transcript in compliance with App.R. 9(B). An appellant has the duty to provide this Court with the necessary transcripts of the record below in order to demonstrate any claimed error. See, App.R. 9; *State v. Feazel* (July 17, 2000), Delaware App. 00CA01001, unreported. When parts of the record necessary for the resolution of the assigned errors are omitted, there is nothing for the reviewing court to pass upon. *Id.* (Citations omitted). Thus, the reviewing court must presume the regularity of proceedings below and affirm. *Knapp v. Edwards Lab.* (1980), 61 Ohio St.2d 197, 199, 400 N.E.2d 384.

{¶25} Because the record lacks a transcript of the trial which would reflect whether the trial court's decision was against the manifest weight of the evidence, we must presume the validity of the lower court's proceedings and affirm.

{¶26} For the foregoing reasons, Appellant's sole assignment of error is overruled, and the judgment of the County Court of Muskingum County, Ohio, is affirmed.

By: Wise, J.

Farmer, P. J., and

Delaney, J., concur.

JUDGES

JWW/d 1118

[Cite as *State v. Ochoa*, 2010-Ohio-5860.]

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
v.	:	JUDGMENT ENTRY
	:	
MARGARET E. OCHOA	:	
	:	
Defendant-Appellant	:	CASE NO. CT2010-0023

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Muskingum County Court is affirmed.

Costs assessed to Appellant.

JUDGES