[Cite as *Rochschild v. Eckstein*, 2010-Ohio-4285.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

HONEY ROTHSCHILD Appellant v. BARRY ECKSTEIN, et al. Appellees	C.A. No. 09CA009733 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE Nos. 2004 ES 01345 2008 PC 00054

DECISION AND JOURNAL ENTRY

Dated: September 13, 2010

WHITMORE, Judge.

{¶1} Appellant, Honey Rothschild, appeals from the decision of the Lorain County Court of Common Pleas, Probate Division, to grant summary judgment in favor of Appellees, Barry Eckstein and Fidelity and Deposit Company of Maryland, and to overrule her exceptions to the final account and attorney fees for administration of the estate of E. Gladys Howard. This Court affirms.

I

{¶2} This Court has twice considered matters on appeal related to Howard's estate. See *In re Estate of Howard*, 9th Dist. No. 05CA008730, 2006-Ohio-2176 ("*Howard 2006*") and *In re Estate of Howard*, 9th Dist. No. 07CA009198, 2008-Ohio-2104 ("*Howard 2008*"). In our last review of this matter, we summarized the history of the case, in pertinent part, as follows:

> "E. Gladys Howard died testate on November 21, 2004. Ms. Howard's will devised her entire estate equally among her four children, Honey Rothschild ("Rothschild"), Audrey Mendenhall ("Mendenhall"), Sam Travis and John

> Howard, Jr. [] Rothschild and *** Travis, were appointed co-fiduciaries. However, on May 11, 2005, the probate court issued an entry removing the fiduciaries and finding 'good cause that the interest of this trust demands the appointment of an impartial successor administrator to conclude the administration of this estate.' Based on the filings submitted in the case, the probate court found that the circumstances indicated distrust and hostility between one co-executrix and one heir. In addition, the probate court found acrimony between a fiduciary and an heir, which was impeding the efficient and economic administration of the estate. Rothschild appealed from that decision, and this Court affirmed the probate court's decision to appoint an impartial successor administrator.
>
> "Barry Eckstein ("Eckstein") was appointed administrator de bonis non with will annexed on May 17, 2005." *Howard 2008* at ¶2-3.

In that appeal, we held that the probate court erred by not holding a hearing on Rothschild's exceptions to Eckstein's third partial account, but that it had appropriately denied Rothschild's motion for sanctions against Eckstein. Id. at ¶13, 17.

{¶3} While that appeal was pending, Eckstein filed a fourth partial account and a second application for attorney fees in March 2008. Rothschild filed several exceptions to the fourth partial account and application for attorney fees. In April 2008, Eckstein filed an application for an in-kind distribution of property to the four heirs. Eckstein noted that the property located on Warren Avenue in Elyria was the only remaining asset in the estate. The home was subject to several housing code violations which prevented it from being sold "as is," and there were insufficient funds remaining in the estate with which to adequately repair the home in preparation for sale. Moreover, the property was the subject of another pending suit in the probate court.

{¶4} In May 2008, Rothschild filed a "motion to change venue" in which she sought to have the case reassigned to a different judge. On May 12, 2008, the probate court reassigned the case over Eckstein's objections. Rothschild then filed a combined motion seeking to remove Eckstein as administrator and requesting forfeiture of his bond based on the condition and

proposed distribution of the Warren Avenue property. Generally, Rothschild alleged that Eckstein had neglected to maintain the home and monitor its use while two of her siblings were living there, which in turn led the home to deteriorate to a point of disrepair, such that it was unsalable.

{¶5} Upon remand from this Court's decision in *Howard 2008*, the probate court held a hearing on July 29, 2008, and August 13, 2008, on Rothschild's exceptions to both the third and fourth partial accounts and Eckstein's second application for attorney fees. At that hearing, the parties entered into a settlement agreement on the record to resolve Rothschild's exceptions to both partial accounts and payment of Eckstein's attorney fees, as well as other outstanding matters. The probate court did not rule on Rothschild's motion to remove Eckstein.

{¶6} Following the hearing, Rothschild was unwilling to sign the journal entry memorializing the resolutions reached at the August 13, 2008 hearing. In turn, Eckstein filed a motion to enforce the settlement agreement and attached a transcript from the hearing. On September 9, 2008, the probate court entered the order approving the third and fourth accounts and payment of Eckstein's fees, consistent with the parties' agreement at the August hearing. On September 12, 2008, the probate court granted Eckstein's application to transfer the Warren Avenue property in equal shares to Howard's four children.

{¶7} On September 26, 2008, Eckstein filed a fifth and final account and third application for attorney fees. Rothschild, in turn, filed exceptions to the final account and Eckstein's request for attorney fees. Eckstein responded to Rothschild's motion and both matters were heard by the court on December 18, 2008. Rothschild voluntarily dismissed three of her six exceptions at the hearing. On June 3, 2009, the probate court overruled Rothschild's remaining three exceptions to the final account and approved Eckstein's third application for attorney fees.

On July 2, 2009, Rothschild filed a "response to decision" in which she took issue with the probate court's June 2009 decision. Eckstein then filed a motion to strike Rothschild's response, to which Rothschild responded. On July 29, 2009, the probate court entered judgment, finding, in relevant part, that: (1) the final account had been lawfully administered; (2) the estate had been fully and lawfully administered; (3) the assets had been properly distributed; and (4) the fiduciary and surety were to be discharged. The preceding summary describes, in pertinent part, the history of what is collectively termed "the estate case" for purposes of our analysis of Rothschild's appeal.

{¶8} Shortly after the December 18, 2008 hearing on the final account in the estate case, Rothschild filed a separate action in the probate court on December 26, 2008 (collectively termed "the negligence case"). In that suit, Rothschild named Eckstein and LL Taylor Surety, Inc. ("Taylor Surety") as defendants and sought damages and recovery against Eckstein's bond based on various allegations that Eckstein breached his fiduciary duties with respect to maintaining the Warren Avenue property. Both Eckstein and Taylor Surety filed motions to dismiss for failure to state a claim. In January 2009, Rothschild amended her complaint to incorporate additional allegations to support her negligence claims and named Fidelity and Deposit Company of Maryland ("Fidelity") as a defendant in place of Taylor Surety. Both defendants answered, and Eckstein filed a third-party complaint against the remaining three heirs of Howard's estate seeking indemnification for any judgment that might be awarded in Rothschild's favor.

{¶9} On September 1, 2009, just over a month after the probate court filed its judgment on Eckstein's final account and concluded the administration of Howard's estate, Eckstein and Fidelity filed a joint motion for summary judgment. They argued that summary judgment was

proper in the negligence case because the probate court had already determined in its July 29, 2009 order, after review of the multiple exceptions to the final account, that the estate had been lawfully administered and, therefore, discharged Eckstein and Fidelity from any further service in the estate case. Accordingly, Eckstein and Fidelity argued that res judicata barred Rothschild's negligence action. Rothschild filed a memorandum in opposition and a cross-motion for summary judgment in which she recounted her allegations of breach and appended her own affidavit in support of the condition of the Warren Avenue property. Both Eckstein and Fidelity opposed Rothschild's motion, with supporting affidavits, asserting that the matters advanced in her complaint had already been fully litigated in the estate case and were consequently barred by res judicata. On November 20, 2009, the probate court granted Eckstein and Fidelity's motion for summary judgment and denied Rothschild's motion for the same. Eckstein's third-party complaint was dismissed as moot.

{¶10} Rothschild filed only one notice of appeal, but challenged both the July 29, 2009 order entered in the estate case and the November 20, 2009 order entered in the negligence case. Eckstein filed a motion to dismiss Rothschild's appeal in the estate case, arguing it was untimely. Because the July 29, 2009 order in the estate case did not contain a notation of service, we determined that Rothschild's appeal time had not yet expired. Consequently, we denied Eckstein's motion to dismiss. *In re Estate of Howard* (Feb. 19, 2010), 9th Dist. No. 09CA09733. We further ordered that the two cases would be consolidated for review on appeal. For purposes of analysis, however, the appeals will be addressed separately. Some of Rothschild's assignments of error have been rearranged and consolidated to facilitate our review.

II

The Estate Case

Assignment of Error Number Two

"THE PROBATE COURT ABUSED ITS DISCRETION BY ITS JULY 29, 2009 ORDER THAT APPROVED ECKSTEIN'S FIFTH AND FINAL ACCOUNT OVERRULING ROTHSCHILD'S EXCEPTIONS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

Assignment of Error Number Three

"THE PROBATE COURT ABUSED ITS DISCRETION BY ITS JULY 29, 2009 ORDER THAT APPROVED ECKSTEIN'S THIRD APPLICATION FOR ATTORNEY FEES AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO THE RULES OF SUPERINTENDENCE[.]"

{¶11} Rothschild separately captioned her second and third assignments of error, but combined her arguments in support these alleged errors, asserting several different grounds upon which she maintains the probate court erred. Her arguments, however, focus exclusively on the probate court's decision to grant Eckstein's third application for attorney fees. Rothschild does not specifically challenge the probate court's decision to overrule her exceptions to the final account within the body of her argument.

{¶12} A probate court's decision to award attorney fees is reviewed for an abuse of discretion. *In re Guardianship of Bess*, 9th Dist. No. 23411, 2007-Ohio-5032, at ¶14. An abuse of discretion means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Rothschild argues that the probate court abused its discretion in granting Eckstein's third application for attorney fees because it relied on the previous testimony of attorney Kurt Sarringhaus as to the reasonableness of Eckstein's fees. Rothschild argues that Sarringhaus was not properly qualified as an expert at the July 2008 hearing on Eckstein's second application for fees because she was unable to cross-

examine him due to a medical condition which prevented her from attending the hearing. Rothschild also alleges that the probate court abused its discretion when it took judicial notice at the December 2008 hearing as to the appropriateness of Eckstein's fees based on testimony adduced at the July 2008 hearing, where Sarringhaus' testimony went unchallenged. Rothschild further argues that the probate court erred when it failed to require Sarringhaus to reappear at the December 2008 hearing despite Rothschild having issued a subpoena for him to do so.

{¶13} To the extent that Rothschild challenges Sarringhaus' testimony as to the propriety of Eckstein's attorney fees, the record reveals that during the August 13, 2008 hearing, Rothschild withdrew her objections to Eckstein's attorney fees and agreed that Eckstein's second request for attorney fees should be paid in full. Despite Rothschild's unwillingness to later sign an agreed order consistent with the representations she made at that hearing, the probate court's September 9, 2008 order included a finding that Eckstein's fees were reasonable and necessary and should be paid in full. Moreover, Rothschild did not appeal from that order. For these reasons, Rothschild is precluded from now attempting to challenge Sarringhaus' testimony from the July 2008 hearing in support of Eckstein's second application attorney fees.

{¶14} To the extent Rothschild challenges the probate court's decision to approve Eckstein's third application for attorney fees, the record reveals that a hearing was held on the application on December 18, 2008. Despite Rothschild's references to matters argued at the December 2008 hearing, a transcript from that hearing has not been made a part of the record on appeal. We have previously stated an appellant bears the "burden of producing a transcript of the proceedings from which she claims error." *Hunter Real, Inc. v. Edwards*, 9th Dist. No. 24216, 2009-Ohio-839, at ¶5; App.R. 9(B). Because Rothschild has failed to sustain this burden, we must presume regularity with respect to the December 2008 proceedings.

{¶15} For the foregoing reasons, we conclude that the probate court did not abuse its discretion in approving the final account and granting Eckstein's third application for attorney fees. Accordingly, Rothschild's second and third assignments of error in the estate case are overruled.

Assignment of Error Number One

> "THE PROBATE COURT ABUSED ITS DISCRETION BY ITS JULY 29, 20009 ORDER (sic) THAT APPROVED ECKSTEIN'S FIFTH AND FINAL ACCOUNT AND IN THE PROCESS DENIED ROTHSCHILD'S MAY 28, 2008 MOTION FOR REMOVAL OF THE FIDUCIARY UNDER THE LAW OF THE CASE AND BECAUSE THE TRUST DEMANDED IT."

{¶16} In her first assignment of error, Rothschild argues that the probate court abused its discretion by not removing Eckstein as a fiduciary. Specifically, she argues that the probate court abused its discretion by failing to hold a hearing or to rule on her motion for Eckstein's removal. Rothschild further avers that the probate court's failure to remove Eckstein was against the manifest weight of the evidence because he breached his duties to the estate with respect to the Warren Avenue property. Additionally, she alleges that under the law of the case established in *Howard 2006*, she "was entitled to Eckstein's removal based on the undisputed acrimony between" the two, which was akin to the contentious relationship that existed between herself and another heir and led to Rothschild's removal as the fiduciary earlier in this case.

{¶17} This Court reviews the probate court's decision on the removal of a fiduciary for abuse of discretion. *Pio v. Ramsier* (1993), 88 Ohio App.3d 133, 136. A trial court abuses its discretion when it is unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore*, 5 Ohio St.3d at 219. Under R.C. 2109.24, "[t]he court may remove any such fiduciary *** for habitual drunkenness, neglect of duty, incompetency, or fraudulent conduct, because the property, testamentary trust, or estate that the fiduciary is responsible for administering demands it, or for

any other cause authorized by law." This Court has previously noted that R.C. 2109.24 does not require the probate court to hold a hearing when a motion for removal is filed. *In re Trust Estate of CNZ Trust*, 9th Dist. No. 06CA008940, 2007-Ohio-2265, at ¶18, quoting *Howard 2006* at ¶13. The probate court has considerable latitude in determining if a hearing is warranted, and if warranted, how the hearing will be conducted. Id. Thus, the probate court's failure to hold a hearing on Rothschild's motion was not an abuse of discretion.

{¶18} Rothschild correctly asserts that the trial court never expressly ruled on her motion for Eckstein's removal. In her motion, Rothschild argued that probate court should remove Eckstein because he neglected his duties as a fiduciary. She argued that the unsalable condition of the Warren Avenue property evidenced the fact that Eckstein neglected to inspect, maintain, and preserve the property for the benefit of the estate. She also argued that Eckstein was hostile and distrusting toward her and attached an unauthenticated letter documenting an exchange between the two.

{¶19} In circumstances where the trial court fails to expressly rule on a motion prior to entering judgment, this Court presumes on appeal that the pending motion was implicitly denied. *Ward v. Summa Health System*, 9th Dist. No. 24567, 2009-Ohio-4859, at ¶21. Therefore, we next consider whether the probate court abused its discretion in doing so. Our review of the record reveals that nearly three and a half years after Howard's death, the only remaining asset in the estate was the Warren Avenue property. Upon Eckstein's application to distribute the property and conclude the estate, none of the heirs, aside from Rothschild, had challenged Eckstein's application, or any other matters related to his role as a fiduciary in the case. The record repeatedly demonstrates that Rothschild filed various demands for discovery and multiple

exceptions to Eckstein's accounts, all of which were ultimately withdrawn and/or found to be meritless upon being heard by the probate court.

{¶20} In approving Eckstein's fees, the probate court noted that Eckstein's work was "naturally compounded" by Rothschild's opposition to every pleading Eckstein filed. In its July 29, 2009 order, the probate court approved Eckstein's final account and concluded that the estate had been lawfully administered. It necessarily follows that before doing so, the probate court considered Eckstein's conduct throughout the case, in conjunction with Rothschild's pending motion, and concluded that Eckstein's removal was not warranted. Based on the state of the record in this matter, we conclude that the trial court did not abuse its discretion in denying Rothschild's motion to remove Eckstein from his fiduciary role in this case.

{¶21} Finally, Rothschild argues that the law of the case as established in *Howard 2006* required that Eckstein be removed because of the nature of the relationship between her and Eckstein.

> "The law of the case doctrine provides that the decision of a reviewing court remains the law of the case in all subsequent proceedings. However, the law of the case doctrine is limited to decisions by the trial court which involve substantially the same facts and issues as were involved in the prior appeal." (Internal citations, quotations and alterations omitted.) *Schrader v. Schrader* (Sept. 29, 1999), 9th Dist. No. 2899-M, at *2.

Because *Howard 2006* dealt with Rothschild's removal as a fiduciary and the nature of the relationship between her and her siblings, the issue of Eckstein's removal was not before this Court in Rothschild's prior appeal. *Howard 2006* at ¶10-17. Therefore, the law of the case doctrine is inapplicable here.

{¶22} For the foregoing reasons, Rothschild's first assignment of error in the estate case lacks merit. Accordingly, it is overruled.

The Negligence Case

Assignment of Error Number One

"IT WAS ERROR FOR THE PROBATE COURT TO GRANT ECKSTEIN'S AND FIDELITY'S JOINT MOTION FOR SUMMARY JUDGMENT ON THE BASIS THAT ROTHSCHILD DID NOT APPEAL THE JULY 29, 2009 ORDER APPROVING THE FIFTH AND FINAL ACCOUNT IN MOTHER'S ESTATE CASE NO. 2004ES 01345 WHERE ROTHSCHILD AND THE HEIRS WERE NOT SERVED WITH SAID ORDER AND NO NOTATION OF SERVICE WAS ENTERED ON THE DOCKET AT REQUIRED BY LAW."

Assignment of Error Number Two

"THE PROBATE COURT ABUSED ITS DISCRETION BY ITS NOVEMBER 20, 2009 ORDER THAT DENIED ROTHSCHILD DUE PROCESS REGARDING HER COMPLAINT FOR SURCHARGE OF THE FIDUCIARY'S BOND AND DENIED ROTHSCHILD'S REQUEST FOR SUMMARY JUDGMENT TO WHICH SHE WAS ENTITLED AS A MATTER OF LAW."

{¶23} In her first and second assignments of error, Rothschild argues that the probate court erred in granting Eckstein and Fidelity's motion for summary judgment. Rothschild asserts that summary judgment was improper because Eckstein failed to rebut the evidence she set forth to demonstrate he had neglected his duties to inspect, maintain, and preserve the Warren Avenue property. Rothschild also argues that, because she was not properly served with the court's July 29, 2009 order approving Eckstein's final account in the estate case, it was improper for the court rely on the fact that "[n]o appeal was taken from th[at] entry" when it denied her motion for summary judgment. Rothschild further alleges that "this [C]ourt has already determined this issue *** in Rothschild's favor" because we acknowledged that the probate court's July 29, 2009 order was not properly served on all the parties in that case.

{¶24} An appellate court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. It applies the same standard as the trial court, viewing the facts of the case in the light most favorable to the non-moving party and resolving

any doubt in favor of the non-moving party. *Viock v. Stowe-Woodward Co*. (1983), 13 Ohio App.3d 7, 12. Summary judgment is proper under Civ.R. 56(C) if:

> "(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in the favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party." *Temple v. Wean United, Inc*. (1977), 50 Ohio St.2d 317, 327.

The party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and pointing to parts of the record that show the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292-93. Once this burden is satisfied, the non-moving party bears the burden of offering specific facts to show a genuine issue for trial. Id. at 293; Civ.R. 56(E). In order to prevail on a claim for breach of fiduciary duty, a plaintiff must show the existence of a duty that arose from a fiduciary relationship, a breach of that duty, and an injury proximately resulting from the breach of duty. See *Cook v. Reising*, 9th Dist. 08CA009417, 2009-Ohio-1131, at ¶24.

{¶25} In their combined motion for summary judgment, Eckstein and Fidelity argued that Rothschild's claims were barred by res judicata because the probate court issued a final order discharging both of them from the estate case. In doing so, the probate court concluded that Eckstein had acted appropriately in administering the case and had properly accounted for all funds and disbursements of the estate. Having relieved Eckstein from further responsibility or any liability to Howard's estate, Fidelity was likewise discharged from the estate case at the same time.

{¶26} Under the doctrine of res judicata, "[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.* (1995),

73 Ohio St.3d 379, syllabus. Res judicata bars the litigation of all claims that either were or might have been litigated in a first lawsuit. Id. at 382. Rothschild did not challenge the probate court's September 12, 2008 order granting Eckstein's application to distribute the Warren Avenue property to the four heirs. Furthermore, Rothschild does not dispute that the probate court's July 29, 2009 order was a valid and final order that disposed of all of the issues raised within the estate case. As previously discussed, Rothschild filed a motion in the estate case to remove Eckstein based on her assertions that he failed to properly inspect, repair, maintain, and preserve the Warren Avenue property. Our review of the estate case determined that the trial court did not abuse its discretion denying her motion for removal, and further, that the probate court correctly concluded that Howard's estate had been fully and lawfully administered as of July 29, 2009.

{¶27} Rothschild's amended complaint in the negligence case asserted six counts against Eckstein. Specifically, she alleged that Eckstein breached his duty to inspect, repair, maintain, prevent waste, distribute assets, and properly discharge his fiduciary duties with respect to the Warren Avenue property. In essence, her complaint reiterates the same allegations that Rothschild articulated in her motion to remove Eckstein, which the probate court denied. Thus, res judicata bars Rothschild from re-litigating claims related to Eckstein's handling of the Warren Avenue property, as those issues were conclusively determined in the estate case. See *Holik v. Lafferty*, 11th Dist. No. 2005-A-0005, 2006-Ohio-2652, at ¶22-23 (concluding that claims for breach of fiduciary duty, negligence, and fraud had been previously decided by the probate court in the administration the decedent's estate and were therefore barred by res judicata in a subsequent suit filed in the common pleas court).

{¶28} The probate court's July 29, 2009 entry also discharged Fidelity from the estate case. "Ohio courts have generally held that an action accrues against the surety on a bond when 'some sort of determination or adjudication of the liability of the principal has occurred.'" *In re Guardianship of Thomas*, 7th Dist. Nos. 06MO7 & 06MO8, 2008-Ohio-2409, at ¶75, quoting *Cleveland City School Dist. Bd. of Edn. v. United Pacific Ins. Co.* (June 28, 1991), 8th Dist. No. 60374, at *5.

> "The proper method of determining the liability of a fiduciary for purposes of triggering the liability of a surety on its bond is to settle the account of the fiduciary. *** Once the liability of the former fiduciary has been determined by the probate court, it is appropriate to commence a surcharge action against the surety on the former fiduciary's bond." *Thomas* at ¶75, quoting *Schraff v. Harrison* (1998), 94 Ohio Misc.2d 104, 107.

Because the probate court concluded that Eckstein was not negligent in performing his fiduciary duties, a surcharge action against Fidelity could not have accrued. *Thomas* at ¶75. Accordingly, the trial court did not err in granting Fidelity's motion for summary judgment.

{¶29} With respect to Rothschild's assertion that this Court "has already determined *** this issue in [her] favor," we note that our February 19, 2010 journal entry did not determine any of the substantive matters related to Rothschild's appeal in the probate case. Rather, our entry merely noted that, because there was no indication that the probate court's July 29, 2009 order had been served upon the parties, Rothschild's appeal time had not expired. The entry did not substantively determine whether the probate court's decision was proper. See Civ.R. 58(B) (stating that "[t]he failure of the clerk to serve notice does not affect the validity of the judgment").

{¶30} Rothschild's first and second assignments of error in the negligence case are without merit. Accordingly, they are overruled.

III

{¶31} Rothschild's five assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas, Probate Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

DICKINSON, P. J.
MOORE, J.
CONCUR

APPEARANCES:

HONEY ROTHSCHILD, pro se, Appellant.

MICHAEL A. THOMAS, Attorney at Law, for Appellee.

BARRY ECKSTEIN, Attorney at Law, for Appellee.