[Cite as *Salas v. Velez*, 2010-Ohio-702.]

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

SAMUEL F. SALAS	C. A. No. 09CA009627
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
ISMAEL VELEZ	OBERLIN MUNICIPAL COURT COUNTY OF LORAIN, OHIO
Appellant	CASE No. 09CV100401

DECISION AND JOURNAL ENTRY

Dated: March 1, 2010

CARR, Judge.

{¶1} Appellant, Ismael Velez, appeals the judgment of the Oberlin Municipal Court. This Court affirms.

I.

{¶2} Appellee, Samuel Salas, and Velez had a contract for the purchase of personal property under which Salas agreed to sell certain items to Velez for $15,000.00 upon the completion of Velez' purchase of Salas' real property. On May 15, 2009, Salas filed a complaint for money due from Velez for failing to pay the entire $15,000.00. Velez did not file an answer. The trial court held a hearing on the complaint. On June 17, 2009, the trial court issued its opinion. The trial court found that there was no dispute that Velez agreed to pay $15,000.00 for the property, but that he paid only $13,000.00, claiming that he was entitled to an offset of $2,000.00. The trial court concluded that Velez failed to prove his alleged defenses to payment and that he was not entitled to any offset. The trial court entered judgment in favor of Salas in

the amount of $2,000.00, plus interest and costs. Velez filed a timely appeal, raising three assignments of error, which this Court consolidates for purposes of review.

II.

ASSIGNMENT OF ERROR I

"THE TRIAL COURT ERRED AS A MATTER OF LAW BY FAILING TO APPLY THE DOCTRINE OF EQUITABLE SUBROGATION."

ASSIGNMENT OF ERROR II

"THE TRIAL COURT'S DECISION WAS AN ABUSE OF DISCRETION."

ASSIGNMENT OF ERROR III

"THE TRIAL COURT'S DECISION WAS AGAINST THE WEIGHT OF THE EVIDENCE."

{¶3} Velez argues that the trial court erred by awarding judgment in favor of Salas on Salas' complaint. This Court disagrees.

{¶4} Velez filed his notice of appeal on July 15, 2009. He noted on the docketing statement that the record would consist of the original papers and exhibits filed in the trial court, a certified copy of the docket and journal entries, and either a statement of the evidence or proceedings pursuant to App.R. 9(C), or an agreed statement of the case pursuant to App.R. 9(D). On August 4, 2009, Velez filed a statement of the proceedings pursuant to App.R. 9(C). This Court ordered the statement stricken from the record because it had not been approved by the trial court and, therefore, failed to comply with App.R. 9(C). The Clerk of Courts subsequently notified this Court that the record, consisting of "a transcript of docket and journal entries together with all original papers[,]" had been filed in the court of appeals on August 27, 2009. On August 31, 2009, a "Settlement and Approval of App.R. 9 Statement," signed by the trial court judge, was filed.

{¶5} App.R. 9(C) states:

> "If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee no later than twenty days prior to the time for transmission of the record pursuant to App.R. 10, who may serve objections or propose amendments to the statement within ten days after service. The statement and any objections or proposed amendments shall be forthwith submitted to the trial court for settlement and approval. The trial court shall act prior to the time for transmission of the record pursuant to App.R. 10, and, as settled and approved, the statement shall be included by the clerk of the trial court in the record on appeal."

{¶6} In this case, the purported App.R. 9(C) statement was not timely, having been filed after the transmission of the record by the clerk to this Court. Furthermore, the August 31, 2009 "Settlement and Approval of App.R. 9 Statement" is not a statement of the evidence or proceedings pursuant to App.R. 9(C). Rather, it is merely a list of exceptions adopted by the trial court to Velez' proposed statement of the evidence or proceedings, a document which is not contained in the record before this Court. Accordingly, because Velez failed to comply with the requirements of App.R. 9(C), there is no valid App.R. 9(C) statement in the record for this Court's consideration.

{¶7} Moreover, the record contains no transcript of the hearing before the trial court. On the day prior to oral argument, Velez filed a motion to supplement the record with a digital copy of the proceedings and a transcribed copy of the digital recording, which Velez "had transcribed by Registered Professional Reporter Amy Sweet." App.R. 9(A) provides that "[p]roceedings recorded by means other than videotape must be transcribed into written form." Accordingly, the motion to supplement the record with a digital copy of the proceedings is denied for failure to comply with App.R. 9(A).

{¶8} As to the transcript, Loc.R. 6(C) of the Ninth Appellate Judicial District provides:

> "No transcript of proceedings shall be considered as a part of the record on appeal unless one of the following applies:
>
> "(1) The official court reporter has certified the transcript as provided in subsection (B) of this rule;
>
> "(2) The record contains an entry of the trial court appointing the court reporter who has certified the transcript;
>
> "(3) The transcript is part of the original papers and exhibits filed in the trial court;
>
> "(4) The transcript has been incorporated into an App.R. 9(C) statement that has been approved by the trial court; or,
>
> "(5) The court of appeals has granted a motion to supplement the record with a transcript that was filed in a prior appeal."

{¶9} Velez has not asserted that the transcript was prepared and certified by an official court reporter. Rather, he indicates that he had the transcript prepared by an independent "Registered Professional Reporter." The record does not include a journal entry by the trial court appointing Ms. Sweet as an official court reporter. There is no dispute that the transcript is not part of the original papers and exhibits filed in the trial court. Moreover, the transcript has not been incorporated into an App.R. 9(C) statement that has been approved by the trial court. As this Court has determined, there is no valid App.R. 9(C) statement in the record. Finally, there has been no prior appeal of this matter and, therefore, no prior transcript. Accordingly, this Court is precluded from considering Velez' proffered transcript pursuant to Loc.R. 6(C). The motion to supplement the record is denied.

{¶10} An appellant is responsible for providing this Court with a record of the facts, testimony, and evidentiary matters necessary to support the assignments of error. *Volodkevich v. Volodkevich* (1989), 48 Ohio App.3d 313, 314. Specifically, it is an appellant's duty to transmit the transcript of proceedings. App.R. 10(A); Loc.R. 5(A). "When portions of the transcript

which are necessary to resolve assignments of error are not included in the record on appeal, the reviewing court has 'no choice but to presume the validity of the [trial] court's proceedings, and affirm.'" *Cuyahoga Falls v. James*, 9th Dist. No. 21119, 2003-Ohio-531, at ¶9, quoting *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199.

{¶11} Because a review of the trial transcript, or valid App.R. 9(C) statement, is necessary for a determination of Velez' assignments of error, this Court must presume regularity in the trial court's proceedings and affirm the judgment of the trial court. See *Knapp*, 61 Ohio St.2d at 199.

{¶12} Velez' assignments of error are overruled.

III.

{¶13} Velez' assignments of error are overruled. The judgment of the Oberlin Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Oberlin Municipal Court, 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.

DONNA J. CARR
FOR THE COURT

MOORE, J.
CONCURS

BELFANCE, P. J.
DISSENTS

APPEARANCES:

ROBERT CABRERA, Attorney at Law, for Appellant.

SAMUEL SALAS, pro se, Appellee.