

[Cite as *Bellevue v. Am. Fedn. of State, Cty. & Mun. Emp., AFL-CIO, Ohio Council 8 & Local 2571, 2003-Ohio-218.*]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

City of Bellevue, Ohio

Court of Appeals No. S-02-038

Appellee/Cross-
Appellant

Trial Court No. 02-CV-427

v.

American Federation of
State, County and Municipal
Employees, AFL-CIO, Ohio
Council 8 and Local 2571

DECISION AND JUDGMENT ENTRY

Appellant/Cross-
Appellee

Decided: January 16, 2003

* * * * *

Kim A. Massengill, counsel for appellant/cross-appellee.

John W. Ferron and Rebekah S. Sinnott, counsel for
appellee/cross-appellant.

* * * * *

{¶1} Appellee/cross-appellant, city of Bellevue, has filed a motion to strike the notice of appeal filed by appellant/cross-appellee, American Federation of State and County and Municipal Employees, AFL-CIO, Ohio Council 8 and Local 2517. Appellant/cross-appellee has filed a memorandum in opposition. The basis of appellee/cross-appellant's motion is that appellant/cross-appellee failed to include a proof of service on its notice of appeal stating that it served a copy of the notice on appellee/cross-appellant. Appellee/cross-appellant states that

this proof of service is required by App.R. 13(D) and that without it, this court cannot consider the document and it must be stricken.

{¶2} App.R. 13 states, in pertinent part:

{¶3} "(B) Service of all documents required. Copies of all documents filed by any party and *not required by these rules to be served by the clerk* shall, at or before the time of filing, be served by a party or person acting for the party on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel.

{¶4} "(C) ***

{¶5} "(D) Proof of service. Documents presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Documents filed with the court shall not be considered until proof of service is endorsed on the documents or separately filed." (Emphasis added.)

{¶6} Thus, pursuant to App.R. 13(B), if the clerk of courts is required to serve a copy of a document on the other parties, then the party filing the document need not also serve it. App.R. 3(E) requires the clerk of courts to serve a copy of the notice of appeal on the opposing party. This rule states:

{¶7} "Service of the notice of appeal. *The clerk of the trial court shall serve notice of the filing of a notice of appeal and,*

where required by local rule, a docketing statement, *by mailing, or by facsimile transmission, a copy to counsel of record of each party other than the appellant, ***. Failure of the clerk to serve notice shall not affect the validity of the appeal. ***.*" (Emphasis added.)

{¶8} Since appellant/cross-appellee is not required to serve opposing counsel with a copy of the notice of appeal pursuant to App.R. 13(B), it is also not required to include a proof of service on its notice of appeal.

{¶9} We find the motion to strike appellant/cross-appellee's notice of appeal not well-taken and it is denied.

Peter M. Handwork, P.J.

JUDGE

Richard W. Knepper, J.

JUDGE

Mark L. Pietrykowski, J.
CONCUR.

JUDGE