

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

State of Ohio

Court of Appeals No. L-11-1050

Appellee

Trial Court No. CR0201001845

v.

Michael Cunningham

DECISION AND JUDGMENT

Appellant

Decided: August 31, 2011

* * * * *

Adam Houser, for appellant.

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OSOWIK, P.J.

{¶1} Appellant has filed a motion for reconsideration of our August 23, 2011 order which struck his July 25, 2011 motion for extension of time because it does not

contain a proper proof of service. Prior to striking the motion, the court entered a decision in which it informed appellant that his motion for extension of time did not have a proper proof of service and that he had until August 5, 2011, to file a proper proof of service or his motion would be stricken. Appellant did not file a proper proof of service and the court subsequently struck the motion, as stated above, on August 23, 2011.

{¶2} In his motion for reconsideration, appellant states that his motion for extension of time did contain a proof of service. He states that he filed his motion for extension of time by fax and surmises that the page containing the proof of service was not successfully sent, explaining why this court held there was no proper proof of service.

{¶3} The record of this case shows that appellant's July 25, 2011 motion for extension contains the following statement, "I certify that I have served a copy of the attached Motion via facsimile to the Appellant [sic] Clerk to the Office of the Lucas County Prosecutor at 700 Adams St. Toledo, Ohio 43604 on July 22, 2011."

{¶4} We read this to say that appellant faxed to the court of appeals clerk a copy of the motion to be passed on to the Lucas County Prosecutor. This service is deficient in two ways: first, service must be either personal or by mail, App.R. 13(C), and second, the prosecutor must be served directly; the clerk of court is not a courier who receives filed documents and transmits them to the opposing counsel.

{¶5} Finding that the July 25, 2011 motion for extension of time was not properly served, we deny the motion to reconsider.

MOTION DENIED.

Thomas J. Osowik, P.J.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.