

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

McCAULY COURT ASSOCIATION,	:	CASE NO. CA2014-06-126
Plaintiff-Appellee,	:	
	:	<u>OPINION</u>
- vs -	:	3/16/2015
	:	
DAVID G. BAKER, et al.,	:	
Defendants-Appellants.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2013-08-2293

Flagel & Papakirk, LLC, Benjamin M. Rodriguez, Summit Woods III, 50 East Business Way, Suite 410, Cincinnati, Ohio 45241, for plaintiff-appellee

David G. Baker and Teresa Baker, 8169 McCauly Court, Cincinnati, Ohio 45241, defendants-appellants, pro se

M. POWELL, J.

{¶ 1} Defendants-appellants, David and Teresa Baker, appeal, pro se, a decision of the Butler County Court of Common Pleas granting a permanent injunction to plaintiff-appellee, McCauly Court Association, ordering the Bakers to remove a fence from their property.

{¶ 2} The Bakers live in a small subdivision in Sharonville, Ohio. McCauly Court

Association is the subdivision homeowners association. The subdivision is subject to a Declaration of Covenants, Conditions, Restrictions and Reservations of Easements (Declaration). The Declaration requires homeowners to obtain the approval of the homeowners association board before building a fence on their property. In 2013, the Bakers began building a fence on their property without first obtaining approval from the homeowners association board, as required by the Declaration. Consequently, the Bakers were notified that the construction of the fence violated the Declaration. Nonetheless, they continued to build the fence.

{¶ 3} On August 14, 2013, McCauly Court Association filed a complaint for injunctive relief against the Bakers, seeking to have the Bakers remove their fence. On April 11, 2014, the trial court held a bench trial on the matter. On May 6, 2014, the trial court granted a permanent injunction to McCauly Court Association, ordering the Bakers to remove the fence from their property. The trial court found:

After considering the evidence admitted at trial, including but not limited to the testimony of the witnesses, * * * [McCauly Court Association] is entitled to a permanent injunction against Bakers to enjoin them from continuing to build the fence on the Property, and to remove the fence now-existing on the Property within 30 days of the filing of this order.

The Court finds that [McCauly Court Association] has been injured and would continue to be injured by the fence on the Property.

{¶ 4} The Bakers appeal, raising two assignments of error. The Bakers cite three decisions from other state courts in support of their assignments of error.

{¶ 5} Assignment of Error No. 1:

{¶ 6} THE TRIAL COURT ERRED BY FAILURE TO RECOGNIZE THE PLAINTIFF HAS NO PROCESS FOR APPROVAL OF PROPOSED IMPROVEMENTS.

{¶ 7} Assignment of Error No. 2:

{¶ 8} THE COURT ERRED BY FAILURE TO RECOGNIZE THE PLAINTIFF HAS NO FORMAL ARCHITECT REVIEW BOARD.

{¶ 9} We note at the outset that decisions from other state courts are not binding on this court. *Squire, Sanders & Dempsey, L.L.P.*, 8th Dist. Cuyahoga No. 82406, 2003-Ohio-4351, ¶ 9, fn. 1.

{¶ 10} We also note the Bakers have not filed a transcript of the bench trial or an alternative statement under App.R. 9(C) or (D). *Spicer v. Spicer*, 12th Dist. Butler No. CA2005-10-443, 2006-Ohio-2402, ¶ 3, 6.

{¶ 11} The duty to provide a transcript for appellate review falls upon an appellant because the appellant bears the burden of showing error by reference to the matters in the record. *Scanlon v. Pfaller*, 12th Dist. Butler No. CA2005-05-110, 2006-Ohio-2022, ¶ 11. When an appellant fails to provide a transcript of proceedings of the trial under App.R. 9(B), or a substitute statement of the evidence under App.R. 9(C) and (D), and the appellant does not file an App.R. 9(B) statement indicating that a transcript is not needed in order to consider the appeal, the appellant cannot demonstrate the error of which he complains, the reviewing court has nothing to pass upon and, thus, the court has no choice but to presume the validity of the lower court's proceedings and affirm. *Miami Valley Bank of Southwest Ohio v. McQueen*, 12th Dist. Warren No. CA91-04-038, 1991 WL 278253, *1 (Dec. 30, 1991); *Scanlon* at ¶ 12.

{¶ 12} Given the absence of an appropriate record to support the assigned errors, we presume the regularity of the proceedings and affirm the trial court's decision granting a permanent injunction to McCauly Court Association, ordering the Bakers to remove the fence from their property.

{¶ 13} We recognize that the Bakers are acting pro se on appeal and that our decision may seem harsh. However, "pro se litigants are bound by the same rules and procedures as

litigants with retained counsel," and therefore, must "accept the results of their own mistakes and errors, including those related to correct legal procedures." *Cat-The Rental Store v. Sparto*, 12th Dist. Clinton No. CA2001-08-024, 2002 WL 237359, *2 (Feb. 19, 2002); *In re M.D.D.*, 12th Dist. Butler No. CA2009-06-170, 2010-Ohio-326, ¶ 7.

{¶ 14} For the reasons set forth above, the Bakers' assignments of error are overruled.

{¶ 15} Judgment affirmed.

PIPER, P.J., and HENDRICKSON, J., concur.