

OHIO COURT OF APPEALS

In re Estate of Marshall, 78 Ohio App. 455

66 N.E.2d 280 (Ohio Ct. App. 1945) · Decided November 23, 1945

SUMMARY

The court overruled the appellee's motion to dismiss an appeal from an estate proceeding based on the appellant's delayed filing of assignments of error, briefs, and a bill of exceptions. The court held that dismissal was unwarranted because the appellant had exercised due care and some alleged errors could be shown by the record without a bill of exceptions, and it granted additional time to file the assignments of error and brief.

CASE DETAILS

COURT	Ohio Court of Appeals
WRITING FOR THE COURT	Hornbeck, P.J.; Miller, J.; Wiseman, J.
JURISDICTION	Ohio
DECIDED	November 23, 1945
DISPOSITION	other
PROCEDURAL POSTURE	Appellee moved to dismiss the appeal for failure to timely file assignments of error and briefs under Rule VII and for failure to timely file a bill of exceptions after denial of the motion for new trial.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Mary M. Von Schmidt v. John L. Marshall

TOPICS

- probate procedure
- appellate procedure
- preservation of error
- civil procedure

PRACTICE AREAS

- Probate
- Appellate procedure
- Civil procedure

QUESTIONS PRESENTED

1. Whether the appeal should be dismissed because appellant failed to timely file assignments of error and briefs under Rule VII.

2. Whether the expiration of the statutory period for filing a bill of exceptions required dismissal of the appeal.

HOLDINGS

1. Dismissal was not required because Rule VII permits additional time when good cause is shown, and the court determined that appellant had exercised due care and was entitled to the approved extension.
2. The expiration of the time for filing a bill of exceptions did not, by itself, require dismissal because some assigned errors could be exemplified by the record independently of the bill of exceptions.

KEY QUOTATIONS

“The spirit of Rule VII is not to penalize a party who has exercised due care in attempting to comply with the rule.” (456)

“This alone, however, does not require a dismissal of the appeal as the errors assigned, or some of them, may be exemplified upon the record independent of the bill.” (456-457)

FACTUAL BACKGROUND

Appellant Mary M. Von Schmidt sought to pursue an appeal but had not filed assignments of error and briefs within the period specified by Rule VII. The statutory period for filing a bill of exceptions had also elapsed, although the appellate court concluded that some assigned errors could be shown by the existing record without a bill of exceptions.

PROCEDURAL HISTORY

The appeal was before the Ohio Court of Appeals on appellee's motion to dismiss. The appellate court had previously approved an entry extending appellant's time to file assignments of error, a brief, and a bill of exceptions, subject to filing by December 1, 1945, but the entry had not yet been journalized because appellee objected. The court overruled the motion and journalized the extension.

DISPOSITION

other