

OHIO COURT OF APPEALS, TENTH APPELLATE DISTRICT

Thompson v. Knobeloch

2017-Ohio-66 (Ohio Ct. App. 2017) · No. 16AP-809 · Decided January 10, 2017

SUMMARY

The Tenth District Court of Appeals of Ohio sua sponte dismissed the plaintiffs' cross-appeal. The court held that the notice of cross-appeal was ineffective because it was filed with the appellate court rather than the clerk of the trial court, as required by Ohio Appellate Rule 3(A), and the filing period had expired.

CASE DETAILS

COURT	Ohio Court of Appeals, Tenth Appellate District
WRITING FOR THE COURT	Luper Schuster, J.; Tyack, P.J.; Sadler, J.
JURISDICTION	Ohio
DECIDED	January 10, 2017
DOCKET	16AP-809
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiffs attempted to cross-appeal from a final judgment of the Franklin County Court of Common Pleas after defendants filed a timely notice of appeal. The appellate court sua sponte dismissed the cross-appeal for lack of jurisdiction.
STANDARD OF REVIEW	De novo jurisdictional review
PRECEDENTIAL VALUE	published
PARTIES	William Knobeloch, M.D., et al. v. Skyelar Thompson, Scott Thompson, Rebecca Thompson

TOPICS

[appellate jurisdiction](#) [appellate procedure](#) [civil procedure](#)

PRACTICE AREAS

[appellate procedure](#) [civil procedure](#)

QUESTIONS PRESENTED

1. Whether a notice of cross-appeal filed with the clerk of the court of appeals, rather than the clerk of the trial court, complies with Ohio App.R. 3(A).
2. Whether the appellate court had jurisdiction to consider the alleged errors raised in the cross-appeal after the time for filing an effective notice had expired.

HOLDINGS

1. A notice of cross-appeal must be filed with the clerk of the trial court within the time allowed by the appellate rules. Filing the notice with the clerk of the court of appeals does not comply with App.R. 3(A).
2. Because plaintiffs did not file an effective notice of cross-appeal before the filing period expired, the appellate court lacked jurisdiction to address the alleged errors raised in the cross-appeal.

KEY QUOTATIONS

“App.R. 3(A) requires that a notice of appeal (which includes a notice of cross-appeal) “shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by [App.R.] 4.”” (¶ 2)

“Without an effective notice of appeal this court lacks jurisdiction to address the alleged errors raised by plaintiffs.” (¶ 3)

FACTUAL BACKGROUND

Defendants timely filed a notice of appeal from judgments entered by the Franklin County Court of Common Pleas. Plaintiffs then attempted to file a notice of cross-appeal within the additional ten-day period allowed for a cross-appeal, but filed it with the clerk of the court of appeals instead of the clerk of the trial court. The appellate court determined that the filing defect prevented the notice from vesting appellate jurisdiction.

PROCEDURAL HISTORY

Defendants filed a notice of appeal with the trial-court clerk on November 28, 2016. Plaintiffs attempted to file their notice of cross-appeal on December 8, 2016, but filed it with the clerk of the court of appeals rather than the clerk of the trial court. The Tenth District held that the filing did not comply with the appellate rules and dismissed the cross-appeal sua sponte.

DISPOSITION

dismissed

CASES CITED

- Boulware v. Chrysler Group, L.L.C., 10th Dist. No. 13AP-1061, 2014-Ohio-3398, ¶ 11

OPINION

PER CURIAM.

[Cite as Thompson v. Knobloch, 2017-Ohio-66.] IN THE COURT OF APPEALS OF OHIO TENTH APPELLATE DISTRICT Rebecca Thompson et al.,: Plaintiffs-Appellees/: Cross-Appellants, No. 16AP-809: (C.P.C. No. 14CV-4879) v.: (REGULAR CALENDAR) William Knobloch, M.D., et al., Defendants-Appellants/ Cross-Appellees.: D E C I S I O N Rendered on January 10, 2017 Hale Westfall LLP, Allan L. Hale, and Christopher McNicholas; Burg Simpson Eldredge Hersh & Jardine, P.C., Janet G. Abaray and Calvin S. Tregre, Jr., for appellees/cross-appellants.

Arnold Todaro & Welch Co., L.P.A., Grier D. Schaffer, and Gregory B. Foliano, for appellants/cross-appellees. APPEAL from the Franklin County Court of Common Pleas LUPER SCHUSTER, J. {¶ 1} Plaintiffs-appellees/cross-appellants Skyelar Thompson, Scott Thompson, and Rebecca Thompson filed a notice of cross-appeal with the clerk of this court attempting to appeal from a final judgment of the Franklin County Court of Common Pleas.

For the reasons that follow, we sua sponte dismiss their cross-appeal because their notice of appeal does not comply with the appellate rules and does not vest this court with jurisdiction. No. 16AP-809 2 {¶ 2} On November 28, 2016, defendants timely filed with the clerk of the trial court their notice of appeal from the judgments of the trial court. Plaintiffs thereafter had an additional ten days from defendants' filing, or until December 8, inclusive, to file their notice of cross-appeal under App.R.

3(C)(1). While plaintiffs did attempt to file a notice of cross-appeal on December 8, they did so with the clerk of the court of appeals. App.R. 3(A) requires that a notice of appeal (which includes a notice of cross-appeal) "shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by [App.R.] 4." (Emphasis added.)

Because plaintiffs' notice of cross-appeal was filed in the wrong court, it does not comply with App.R. 3(A). {¶ 3} The time to file an effective notice of cross-appeal has now run. Without an effective notice of appeal this court lacks jurisdiction to address the alleged errors raised by plaintiffs. Boulware v. Chrysler Group, L.L.C., 10th Dist. No. 13AP-1061, 2014-Ohio- 3398, ¶ 11.

Plaintiffs' cross-appeal is accordingly dismissed sua sponte. Plaintiffs' cross-appeal dismissed. TYACK, P.J., and SADLER, J., concur.