# IN THE COURT OF APPEALS
# FIRST APPELLATE DISTRICT OF OHIO
# HAMILTON COUNTY, OHIO

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| MELISSA C. MINGES, | : | APPEAL NO. C-230558<br>TRIAL NO. DR-2201803 |
| Plaintiff-Appellee, | : | |
| vs. | : | *JUDGMENT ENTRY.* |
| DANIEL P. BREWINGTON, | : | |
| Defendant-Appellant. | : | |

This court sua sponte removes this cause from the regular calendar and places it on the court's accelerated calender, Loc.R. 11.1(C)(1), and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

Plaintiff-appellant Daniel P. Brewington ("father") appeals from the judgment of the trial court which sua sponte amended its previous order registering an Indiana child-support order for enforcement in Ohio under R.C. 3115.601.

In the trial court, father contested registration of the Indiana child-support order under R.C. 3115.606 and 3115.607, arguing—among other things—that the order was obtained by fraud. After briefing by the parties and a hearing before the magistrate, the magistrate found that father failed to meet his burden to establish any of his asserted defenses to enforcement under R.C. 3115.607. Consequently, the magistrate confirmed the Indiana support order. Father objected to the magistrate's decision, challenging the magistrate's findings pertaining to his fraud defense. However, on August 29, 2023, the trial court overruled father's objections and accepted and adopted the magistrate's decision after finding that father failed to file any transcripts and the magistrate made no error in his conclusions of law.

For reasons unclear from the record, the trial court then issued what appears to be a sua sponte "amended" entry on September 20, 2023, removing certain language from the original entry indicating that father failed to file transcripts. Nevertheless, the trial court did not make any substantive changes to its merits analysis, maintaining its finding that the magistrate made no error in his conclusions of law. It is from this amended entry that father filed his notice of appeal on October 20, 2023.

However, in his briefing to this court, father raises only arguments pertaining to the trial court's findings made in the August 29 entry and does not raise any argument pertaining to the amendment of that order. Consequently, prior to oral argument, this court ordered the parties to submit supplemental briefing on the question of this court's jurisdiction over the appeal, given that August 29 order was a final, appealable order, and father failed to appeal from that order. *See generally, e.g.*, *One Energy Ents., LLC v. Ohio Dept. of Transp.*, 2019-Ohio-359, ¶ 23 (10th Dist.), citing *Price v. Jillisky*, 2004-Ohio-1221, ¶ 7 (10th Dist.) ("Appellate courts have the duty to sua sponte examine any deficiencies in jurisdiction.").

A party who wishes to appeal from an order that is final upon its entry generally must do so within 30 days of that entry. *See* App.R. 4(A)(1). "The time requirement for filing a notice of appeal is jurisdictional in nature, and may not be enlarged by an appellate court." *Hall v. Hall*, 2024-Ohio-2569, ¶ 9 (6th Dist.), citing *State ex rel. Pendell v. Adams Cty. Bd. of Elections*, 40 Ohio St.3d 58, 60 (1988); *see* App.R. 14(B).

Whether an amended entry extends the time for filing a notice of appeal depends on the nature of the amendment. *See Hall* at ¶ 11-12. If the trial court corrects a substantive mistake on its own initiative, the amended entry is a nullity since the trial court is only permitted to correct a substantive mistake through the framework of Civ.R. 60(B). (Citation omitted.) *Id.* Consequently, the time period for filing a notice of appeal is not extended in such a situation as an appeal cannot be taken from a judgment that is a nullity. *See, e.g., Burriss v. Burriss*, 2010-Ohio-6116, ¶ 15-17 (4th Dist.); *In re: Forfeiture of a 2009 Harley Davidson*, 2012-Ohio-2018, ¶ 7-9 (4th Dist.).

On the other hand, the trial court is permitted to correct a clerical mistake on its own initiative under Civ.R. 60(A). *Hall* at ¶ 12. Yet, the correction of a clerical mistake under Civ.R. 60(A) "does not ordinarily extend or reset the time to file an appeal from the judgment being amended." (Citations omitted.) *Id.* "The correction of a clerical error may only extend the time to file a notice of appeal if the correction creates new rights, denies existing rights, or resolves some genuine ambiguity." *Id.* at ¶ 13, citing *Daniels-Rodgers v. Rodgers*, 2015-Ohio-1974, ¶ 15 (10th Dist.).

Even assuming, without deciding, that father is correct and the trial court's amendment was to correct a clerical mistake under Civ.R. 60(A), the question remains of whether the amendment extended the time for father to file a notice of appeal. To do so, the amendment must have created a new right, denied an existing right, or resolved some genuine ambiguity. *Hall*, 2024-Ohio-2569, at ¶ 13 (6th Dist.). In other words, father's notice of appeal

"must raise some issue that could not have been raised before the trial court issued a corrected judgment entry." *Id.*

Father appears to argue that removal of the transcript language would permit him to now "supplement" the record with the necessary transcripts, thereby creating new rights. We disagree.

Civ.R. 53(D)(3)(b)(iii) requires an objecting party to support any objection to a magistrate's factual finding with "a transcript of all the evidence submitted to the magistrate relevant to that finding." The objecting party is required to file such a transcript within 30 days after filing objections "unless the court extends the time *in writing* for preparation of the transcript or other good cause." (Emphasis added.) Civ.R. 53(D)(3)(b)(iii). Despite removal of the transcript language from the trial court's entry, nothing in the record indicates that father was ever granted a *written* extension to file transcripts or that father ever actually filed the transcripts in the record before the trial court.[1] Rather, the record reflects that the transcripts were prepared by the court reporter for purposes of appeal on January 20, 2024, which was several months after father filed his notice of appeal of the September 20 amended entry. Consequently, it is unclear what the purpose was for removing the transcript language from the trial court's order as it had no practical effect. The record and the entry itself still show that the trial court limited its review to questions of law based on the lack of available transcripts. *See generally Edje v. Holmes*, 2024-Ohio-1663, ¶ 62 (1st Dist.), citing *Gregory v. Gregory*, 2019-Ohio-5210, ¶ 22 (1st Dist.) ("[W]hen an objecting party fails to file a transcript, the trial court must accept the magistrate's factual findings and apply the law to those facts."). Thus, we fail to see how the amendment created any new rights. *See generally State ex rel. Pallone v. Ohio Court of Claims*, 2015-Ohio-2003, ¶ 11 ("In plain terms, the court of appeals cannot consider evidence that the trial court did not have when it made its decision.").

Beyond that, father does not argue that the amendment denied any existing right or resolved any genuine ambiguity, and we fail to see how the order did either of those things as, for the reasons already explained, the amendment had no practical effect. Further, father

[1] We note that, relying on App.R. 9(B)(6)(f)-(g), the court in *Robinson v. Rehfus*, 2022-Ohio-4679 (7th Dist.), said that "trial exhibits are to be submitted on appeal as part of a properly filed transcript, which memorializes their introduction and admission into evidence." *Robinson* at ¶ 11. The court stated, "Without the transcript, the context and related testimony are lacking." *Id.* Further, this court, as well as others, have held generally that, under App.R. 9, exhibits are a part of the transcripts of proceedings. *See, e.g.*, *State v. Hendrix*, 2018-Ohio-3754, ¶ 8 (1st Dist.); *Meros v. Protec Auto Body & Restoration LLC*, 2023-Ohio-3020, ¶ 6 (11th Dist.).

does not raise any argument in his merit brief related to the correction. *See Daniel-Rodgers*, 2015-Ohio-1974, at ¶ 15 (10th Dist.), quoting *Perfection Stove Co. v. Scherer*, 120 Ohio St. 445 (1929) (" 'While this court will not permit a nunc pro tunc entry to so operate as to deprive a litigant of a right to appeal or prosecute error, on the [other] hand it will not allow a nunc pro tunc entry to so operate as to extend the period within which an appeal or error proceeding may be prosecuted, unless additional rights are created or an existing right denied by such nunc pro tunc entry, or unless the appeal or error proceeding grows out of such nunc pro tunc entry, as distinguished from the original order or entry.' "). Therefore, we hold that, even assuming that the amendment was to correct a clerical mistake, the amendment did not extend the time for father to file his notice of appeal.

Accordingly, because father only raises arguments in his merit brief pertaining to the trial court's findings made in the August 29 entry and did not file a notice of appeal of that order within 30 days of the entry, we must dismiss the appeal for lack of jurisdiction. *See, e.g.*, *Jackson v. Jackson*, 2020-Ohio-3517 (1st Dist.) (holding that an appeal must be dismissed for lack of jurisdiction where the appellant did not appeal from the final order and instead appealed from a subsequent order that was a legal nullity).

In doing so, we note that, even if this court had jurisdiction over the appeal, we would be unable to find merit in father's assignments of error due to this court's limited review in this case. Both of father's arguments on appeal are dependent upon this court holding—in contravention of the magistrate's decision—that the Indiana proceedings were not impartial, and/or were unfair and/or bias based on his claim of unfair errors that occurred in the Indiana proceedings. Yet, at a minimum, such a determination would require a review of the evidence before the magistrate, and, because father did not file a transcript of all the evidence in the trial court upon objection, our review—like the trial court's—would be limited to questions of law. *See, e.g., Cargile v. Ohio Dept. of Adm. Servs.*, 2012-Ohio-2470, ¶ 10 (10th Dist.) ("On appeal of a judgment rendered without the benefit of a transcript or affidavit, an appellate court only considers whether the trial court correctly applied the law to the facts set forth in the magistrate's decision."); *Hammond v. Hammond*, 2019-Ohio-1219, ¶ 14 (1st Dist.) (Recognizing that, where an appellant did not file the necessary evidence for the trial court to review the magistrate's factual determinations, the trial court had to accept the magistrate's factual findings and determine whether the magistrate erred in his legal conclusions and this court's review of the trial court's decision is then limited to whether the trial court's application of law to the factual findings constituted an abuse of discretion). And

father did not advance any argument that, based solely on the magistrate's factual findings, the trial court abused its discretion in applying the law to the facts.

Nevertheless, for the reasons previously mentioned, we do not reach the merits of this appeal as we lack jurisdiction over the untimely appeal. Consequently, the appeal is dismissed for lack of jurisdiction.

The court further orders that 1) a copy of this Judgment constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App.R. 27.

Costs are taxed under App.R. 24.

**ZAYAS, P.J., BERGERON** and **WINKLER, JJ.**

**To the clerk:**
**Enter upon the Journal of the Court on 8/9/2024 per Order of the Court.**

**By:_____**
**Administrative Judge**