

Entry orders the defendant to pay attorney fees but fails to specify the *amount*.

Specifically, the November 30, 2012 Judgment Entry orders "THE DEFENDANT IS TO PAY PUBLIC DEFENDER ATTORNEY FEES."¹

A. Law-and-Analysis

The November 30, 2012 Nunc Pro Tunc Judgment Entry fails to specify an amount to be paid in attorney fees and as a result is not a final appealable order.

It is well established law that an order that grants a party attorney fees but fails to specify the amount is not a final appealable order under R.C. 2505.02. *Ft. Frye Teachers Assn. v. Ft. Frye Local School Dist. Bd. of Edn.* (1993), 87 Ohio App.3d 840, 843, 623 N.E.2d 232; *Dayton Women's Health Ctr., Inc. v. Enix* (1993), 86 Ohio App.3d 777, 780, 621 N.E.2d 1262. An appellate court's jurisdiction is limited to final orders. Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505.01.

This remains true even in those instances where such fees have been awarded but the adjudication of an amount has been deferred. See *Pickens v. Pickens* (Aug. 27, 1992), Meigs App. No. 459, unreported, at 4, 1992 WL 209498; *State ex rel. Van Meter*

¹ See attached hereto as Exhibit A.

v. Lawrence Cty. Bd. of Commrs. (Aug. 25, 1992), Lawrence App. No. 91CA25, unreported, at 7, 1992 WL 208960; *Baker v. Eaton Corp.* (Dec. 10, 1990), Stark App. No. CA-8235, unreported, 1990 WL 200296.

The judgment the instant case fail to designate an amount of attorney fees to be awarded and, therefore, left a portion of the case undecided and is neither final nor appealable and this court may be without jurisdiction to consider the matter on its merits. See *Ft. Frye Teachers Assn. v. Ft. Frye Local School Dist. Bd. of Edn.* (1993), 87 Ohio App.3d 840, 843, 623 N.E.2d 232.

This Supreme Court of Ohio has held that "[w]hen attorney fees are requested in the original pleadings, an order that does not dispose of the attorney-fee claim * * * is not a final, appealable order." *Internatl. Bhd. of Electrical Workers, Local Union No. 8 v. Vaughn Industries, L.L.C.*, 116 Ohio St.3d 335, 2007 Ohio 6439, 879 N.E.2d 187.

A. Law-and-Analysis

The November 30, 2012 Nunc Pro Tunc Judgment Entry is not a final appealable order because it fails to comply with Ohio Revised Code § 2929.19(B)(2)(b).

The appellant respectfully submit that the November 30, 2012 Nunc Pro Tunc

Judgment Entry does not comply with Ohio Revised Code § 2929.19(B)(2)(b).

Specifically, Ohio Revised Code § 2929.19(B)(2)(b) provide in relevant part:

(B) (1) At the sentencing hearing, the court, before imposing sentence, shall consider the record, any information presented at the hearing by any person pursuant to division (A) of this section, and, if one was prepared, the presentence investigation report made pursuant to section 2951.03 of the Revised Code or Criminal Rule 32.2, and any victim impact statement made pursuant to section 2947.051 of the Revised Code.

(2) Subject to division (B)(3) of this section, *if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court "shall" do all of the following.*

(b) In addition to any other information, include in the sentencing entry the name and section reference to the offense or offenses, the sentence or sentences imposed and whether the sentence or sentences contain mandatory prison terms, if sentences are imposed for multiple counts whether the sentences are to be served concurrently or consecutively, and the name and section reference of any specification or specifications for which sentence is imposed and the sentence or sentences imposed for the specification or specifications,

A quick review of the November 30, 2012 Nunc Pro Tunc Judgment Entry reveals

that the court failed to include *the name and section reference of any specification or specifications for which sentence is imposed and the sentence or sentences imposed for the specification or specifications* as mandated by Ohio Revised Code § 2929.19(B)(2)(b).

Particular, the defendant was convicted of Felonious Assault with a Three Year Firearm Specification. However, this fact cannot be gleaned from the November 30, 2012 Nunc Pro Tunc Judgment Entry. The court stated that the defendant has been found guilty of "FELONIOUS ASSAULT WITH SPEC#2." Obviously, the November 30, 2012 Nunc Pro Tunc Judgment Entry clearly violates Ohio Revised Code § 2929.19(B)(2)(b) which provide the sentencing entry **shall** include *the name and section reference of any specification or specifications for which sentence is imposed and the sentence or sentences imposed for the specification or specifications*.

There is not *name and section reference of any specification* in the November 30, 2012 Nunc Pro Tunc Judgment Entry. There is a sentence of three years imposed, but the question is what is the name and section reference of the Ohio Revised Code

the three year sentence is imposed for?

In interpreting Ohio Revised Code § 2929.19(B)(2)(b), the paramount concern is legislative intent. See *State ex rel. United States Steel Corp. v. Zaleski*, 98 Ohio St.3d 395, 2003 Ohio 1630, 786 N.E.2d 39, P12. To determine this intent, this court read words and phrases in context according to the rules of grammar and common usage. R.C. 1.42; *State ex rel. Cincinnati Bell Tel. Co. v. Pub. Util. Comm.*, 105 Ohio St. 3d 177, 2005 Ohio 1150, 824 N.E.2d 68, P31.

Reading the applicable words of Ohio Revised Code § 2929.19(B)(2)(b) in context, it should be concluded that the trial court has an unqualified duty to comply with the strict mandates of Ohio Revised Code § 2929.19(B)(2)(b) an issue a sentencing entry that complies with Ohio Revised Code § 2929.19(B)(2)(b).

In *Dorrian v. Scioto Conservancy Dist.* (1971), 27 Ohio St.2d 102, 56 Ohio Op. 2d 58, 271 N.E.2d 834, paragraph one of the syllabus, this court stated that "the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that [it] receive a construction other than [its] ordinary usage." The

"shall" in Ohio Revised Code § 2929.19(B)(2)(b) clearly requires a mandatory construction.

Interpreting Ohio Revised Code § 2929.19(B)(2)(b) to be anything other than a unequivocal legislative intent would give no effect to the General Assembly intent in enacting Ohio Revised Code § 2929.19(B)(2)(b).

Defendants would be required to choose between being appealing a sentencing entry that is a "non final appealable order" or not appealing the sentencing entry because the trial court failed to comply with Ohio Revised Code § 2929.19(B)(2)(b). This would expose defendants to the danger of losing their right to appeal if this revised code section is not enforced uniformly across Ohio. To require a defendant to appeal a non final appealable order or not appeal the order would subject defendants to undue burdens and be inconsistent with the legal principles that the appellate court must have jurisdiction to hear the appeal.

WHEREFORE, the appellant respectfully ask this Court to determine if it has jurisdiction to hear this appeal.

Certificate of Service

I, DEONDRE ANDREWS, hereby certify that a true and accurate copy of the foregoing Notice of Appeal was sent by regular U.S. Mail, this 18 day of January, 2014, to:

Joseph T. Deters
HAMILTON COUNTY PROSECUTOR
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Deondre Andrews", is written over a horizontal line.

DEONDRE ANDREWS

Inmate No. 649110

Lebanon Correctional Institution

3791 State Route 63

Lebanon, Ohio 45036

Counsel for Appellee

Joseph T. Deters

HAMILTON COUNTY PROSECUTOR

230 East Ninth Street, Suite 4000

Cincinnati, Ohio 45202