

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

State of Ohio, : Case No. 23CA36
Plaintiff-Appellee, : DECISION AND
v. : JUDGMENT ENTRY
Joseph L. Lewis, : **RELEASED 11/15/2024**
Defendant-Appellant. :

APPEARANCES:

Steven H. Eckstein, Washington Court House, Ohio, for appellant.

Brigham M. Anderson, Prosecuting Attorney, Ironton, Ohio, for appellee.

Hess, J.

{¶1} Joseph L. Lewis appeals from a judgment of the Lawrence County Court of Common Pleas convicting him, following a jury trial, of murder, tampering with evidence, and violating a protection order. Lewis presents two assignments of error asserting: (1) his murder conviction is against the manifest weight of the evidence, and (2) his sentence is contrary to law because the trial court ran his misdemeanor sentence for violating a protection order consecutive to his felony sentences for murder and tampering with evidence. For the following reasons, we overrule the first assignment of error and sustain the second assignment of error. We reverse the trial court’s judgment to the extent the court ordered Lewis to serve his sentence for violating a protection order consecutive to his other sentences. We remand to the trial court to issue a corrected sentencing entry

which runs the sentence for violating a protection order concurrent with the other sentences. We affirm the trial court's judgment in all other respects.

I. FACTS AND PROCEDURAL HISTORY

{¶2} In April 2023, Lewis was indicted on one count of murder in violation of R.C. 2903.02(A), an unclassified felony, one count of tampering with evidence in violation of R.C. 2921.12(A)(1), a third-degree felony, and one count of violating a protection order in violation of R.C. 2919.27(A)(1), a first-degree misdemeanor. He pleaded not guilty, and the matter proceeded to a jury trial. We summarize the evidence below.

A. 911 Call and Response

{¶3} On February 21, 2023, at 4:07 a.m., Lewis called 911, requested an ambulance, said his girlfriend was dead, and reported that he had taken an overdose. When law enforcement responded to the scene, Lewis did not answer the door but later yelled that it was open. Lewis was lying on the kitchen floor beside the victim's body, with an arm draped over her. Lewis said that he had taken Klonopin and did not know what happened to the victim. Lewis told EMS he had taken 69 Klonopin pills, which was estimated to be about 69 milligrams of Klonopin. An investigator testified his research showed an average person with no tolerance would suffer a fatal overdose at about 300 milligrams. Klonopin is a benzodiazepine, and at the hospital, Lewis tested negative for benzodiazepine in a urine screen. However, Lewis testified that Klonopin would not show up in his urine and that a specific blood test had to be done to detect it in his body.

B. Autopsy

{¶4} The autopsy revealed the victim had multiple blunt force injuries of the head and neck, 14 sharp force injuries of the head and neck, two sharp force injuries of the left

upper extremity, and blunt force injuries of the torso, right upper extremity, and lower extremities. A deputy coroner testified that bruises could be the result of a fall and that incisions could have been self-inflicted but testified that stab wounds behind the victim's ears would be difficult to self-inflict. The victim also had petechial hemorrhages on and around her eyes. The deputy coroner testified that such hemorrhages are "most commonly seen with asphyxia," usually with traumatic asphyxia, "which is a mechanical way of suppressing the ability of the body to breathe, somebody sitting on a chest or putting a hand around the neck, or a ligature." She testified petechial hemorrhages could not result from a fall. The deputy coroner determined the victim's cause of death was multiple blunt and sharp force injuries of the head and neck with asphyxia. She could not determine time of death or order of injuries but testified the injuries appeared to have occurred in a short time frame.

C. Oral Statements to Law Enforcement

{15} At the hospital, law enforcement conducted a recorded interview of Lewis. Lewis says he and the victim were violating restraining orders against each other. She came to his home to reconcile, but that was not "the way it went. She came right back in there with that same bullshit." When his phone rang, the victim claimed it was his ex-girlfriend. The next thing he knew, the victim was choking him and punching him in the face, bit him on the leg, and kicked him. She told him to "do what she wants," or she would "do what she wants." She would cause him "a problem" and take his life away from him. Lewis says the victim was "trying to fuck me up" and had already gone through the court system. Lewis says he got a bottle of Klonopin, "turned it up," and wanted to end his life. He says the victim was taunting him and "pushed me over the edge."

{¶6} Lewis says, “I don’t know what the fuck happened. I took them pills and about that time they kicked in.” He says, “The next thing I know, I am laying there in [sic] the floor trying to get help. I called 911.” When asked how the victim got injured, Lewis says, “You would have to ask her that. I don’t know.” Lewis indicates he would not be surprised to hear the victim was dead because “it was heated,” and “it was rage. She just wouldn’t quit. I begged her.” He asked her to leave him alone and go home. Lewis says that after he took the pills, the next thing he knew was his life was “over with.” Lewis says, “I just want the death penalty,” and he wants “to be where she is.”

{¶7} Lewis later says the victim “wouldn’t quit fucking with me,” threatened him, and was going to ruin his life. Lewis says, “She was telling me shit like, yeah you will go to prison and get fucked in your ass and all kinds of shit like that. I said what did you say you mother fucker? I said why don’t you just fucking go home. She didn’t do it.” When asked if he remembered picking up any sharp objects, Lewis says he does not and that if he did, it should be in the house. Lewis says he does not know that he did anything to the victim “other than tell her to quit fucking with me and picking at me.” He later says, “I don’t even know that I hurt her. I took fucking 80-90 Klonopins.”

{¶8} Lewis was interviewed again that day following his release from the hospital. On video footage of the interview, Lewis says that his life is over, and he wants the death penalty. Lewis says he took too much Klonopin to know what happened to the victim. He also mentions that the victim choked and beat him in the face the last three days. When asked where the knife was that caused the victim’s wounds, Lewis indicated he did not know and said to “look in the house.” When asked if he ditched it somewhere, Lewis said,

“Go out and ditch it somewhere. What the fuck would I want to do that for?” Lewis later says that he will “make sure, on my behalf, that justice will be served for” the victim.

D. Physical Evidence

{¶9} A detective testified that the only injuries he saw on Lewis were two bruises, one “on his leg” and one “on his thigh.” An investigator testified that Lewis showed him a bite mark and a mark on his shin. Testing of fingernail scrapings from the victim revealed no DNA profile foreign to her.

{¶10} There was a letter on the living room table which stated: “To my grandbaby’s [sic] and my adult children I love you all and Im [sic] very proud of each and everyone [sic] of you. You guy’s [sic] know I always do my best for us all as a family always [sic] be careful people you meet and come in contact with you never know what people can cause you.” Blood was found in various locations in the residence, such as on and under the tablecloth on the kitchen table, and on the wall and floor by the table. There was an empty prescription bottle for Klonopin on the table.

{¶11} On March 9, 2023, law enforcement received a written statement from Lewis in which he stated that “I will . . . tell you where you need to look for two knives [sic] plus clothing that was from me and [the victim] and her phone.” Lewis stated, “The knives [sic] are over the wood pile I use and the clothes cheek [sic] line other side and the phone I’ll tell you.” A search of a compost pile about 3/10 mile from Lewis’s residence revealed a trash bag containing what appeared to be bloody items, including female clothing and towels. Some items were tested and were presumptively positive for blood, and swabbing from stains on those items contained a DNA profile consistent with that of the victim; Lewis was excluded as a contributor.

{¶12} On March 21, 2023, Lewis made a recorded call from jail in which he talks about the victim attacking him and going “black.” Lewis says:

[N]ext thing I know bam. By the time I realized it, and you know, I seen her face and stuff. I can't stand to see her face like that, so I wiped that blood and stuff off, and I changed her shirt, stuff like - - well, actually, I changed her completely because there was blood, there was a lot of blood to be honest with you. And uh, I didn't want to see her like that, like I mentioned. So, I put the stuff and threw it down there on Lawrence Street and threw the knife over another place. I was gonna bury it under the wood piles, but I didn't make it that far. I just put one piece under there because the wood was too heavy, so ... and I wanted to get back to [the victim].

Lewis says he “just freaked out. That’s the only reason I took the stuff down there in the first place.” He says that he “didn’t know what to do” and was “under the influence.” Knives collected from his residence were not tested; they were not believed to have evidentiary value based on the jail call.

E. Suicide Assessment

{¶13} On March 21, 2023, Sergeant Christopher Conley of the Scioto County Sheriff’s Office performed a suicide risk assessment of Lewis. Sergeant Conley reported that when he asked if Lewis had suicidal ideations the past six months, Lewis replied, “The night I murdered my girlfriend.” Lewis then said he took around 80 of his psych meds to try to kill himself, and he stated, “Yeah, I murdered her.” A deputy reported hearing Sergeant Conley ask if Lewis had a significant loss in the last six months, and Lewis stated, “Yes my girlfriend.” The deputy reported that Sergeant Conley asked how she passed, and Lewis said, “I murdered her thats [sic] why I’m here, well thats [sic] what they say.”

{¶14} On the first page of Lewis’s suicide/mental health screening form, Sergeant Conley indicated Lewis reported that he experienced a significant loss in the last six

months, that the loss was his girlfriend, and that he “killed her.” Lewis signed the third page of the form. Lewis denied reading the first page and suggested he did not tell Sergeant Conley that he killed the victim.

F. Lewis’s Testimony

{¶15} Lewis testified that he and the victim had known each other for decades and dated from December 2, 2022 until January 10, 2023, when she assaulted him after his ex-girlfriend called him. Lewis was arrested and charged with domestic violence. Lewis and the victim got protection orders against each other. A few days later, the victim came to his home for help because she had been assaulted by someone else. The victim stayed at his home until her death. He and the victim had a sexual relationship during that time, and the victim continued to have jealousy issues. On February 21, 2023, she started talking about calls he received. The victim said he was a “whoring son of a bitch” and kicked his left leg so hard that she fell backwards and hit the kitchen table and floor. She got up and bit his leg. The victim said, “I’m getting ready to get you free, and you’re going to be with [your ex-girlfirend].” He told the victim to leave and said he was calling the cops. He went to look for his phone in the back bedroom and stayed there 15 to 20 minutes with the door closed. He was “kind of shaking” from the attack and took about ten Klonopin pills.

{¶16} When he returned to the kitchen, the victim was standing there covered in blood and holding “a little Dollar Tree knife in her hand in a stab position upside down.” She dropped it and grabbed a bigger knife from the kitchen table. She started swinging the knife at him and said, “I’m going to kill you.” Lewis told the victim to stop, and they started “ruffling and tuffling [sic] over this knife,” and the victim “probably sustained a

couple of scratches.” Lewis was “kind of blacking out at this point” because he was “in fear and in shock.” The next thing he remembered was “[t]otal sadness and confusion.” He shook the victim and could tell that “she was gone.” He assumed she “bled out.” Lewis testified that he did not punch, stab, choke, or kill the victim. Lewis testified that when the victim attacked him with the knife, he saw someone walking past his home, which he found weird given the early hour.

{¶17} Lewis admitted he changed the victim’s clothes. He testified that he put her clothing in a bag with towels, including one the victim had around her neck when he returned to the kitchen. Lewis rode a bike to the compost pile. Lewis testified he did not “so much hide” items and “just threw them over there”; he did not want them near his home. When asked where the knives were, he testified “probably in my home.” When reminded of the jail call, he testified, “I threw them right – well, I don’t know. I guess I threw them wherever I threw them, then.” Then he testified that he would guess they were in the compost pile. Lewis testified that it was not his intent to hinder a police investigation. He did not want anyone to see the victim “all bloody like that,” and he had decided to end his life and be “right there beside” the victim. Lewis testified that after he returned from the compost pile, he took the rest of the bottle of Klonopin and wrote a letter. He got woozy, laid down beside the victim, waited until he thought the pills would end his life, and called the police. Lewis thought he would go to jail because the victim’s body was in his home, and he did not want to go to jail because he had previously done ten years in prison for the felonious assault of a girlfriend and her mother and tampering with evidence.

G. Verdict and Sentencing

{¶18} The jury found Lewis guilty. The trial court ordered him to serve consecutive sentences and imposed an aggregate sentence of 18 years and 6 months to life.

II. ASSIGNMENTS OF ERROR

{¶19} Lewis presents two assignments of error:

Assignment of Error One: Defendant-Appellant's conviction for murder is against the manifest weight of the evidence.

Assignment of Error Two: The trial court's sentence is contrary to law as it runs the misdemeanor sentence consecutively to the two felony sentences.

III. MANIFEST WEIGHT OF THE EVIDENCE

{¶20} In the first assignment of error, Lewis contends his murder conviction is against the manifest weight of the evidence. Lewis maintains that evidence of the identity of a murderer must be substantial, and in this case, the only evidence he stabbed, hit, and choked the victim to death was that he was present in the home. Lewis asserts that he testified that the victim attacked him, that he went to the bedroom, that he later saw her covered in blood, that he did not hit, stab or asphyxiate her, and that he was 100% telling the truth. He also asserts that he called 911 and reported the victim's death, that he stayed with the victim's body until police pulled him away, that his DNA was not found on any tested evidence, that he admitted to hiding the victim's clothing and "the knife," and that he "never stated anything except that he did not kill his friend." Lewis claims "[t]hese are not the acts of a murderer." He also asserts that he saw a person walk past his home and that he does not know whether the person entered his home when he was in the bedroom. In addition, he asserts that the deputy coroner could not determine the

victim's time of death and acknowledged the blunt force injuries could have resulted from a fall.

{¶21} In determining whether a conviction is against the manifest weight of the evidence, an appellate court

must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that reversal of the conviction is necessary. In order to satisfy this test, the state must introduce substantial evidence on all the elements of an offense, so that the jury can find guilt beyond a reasonable doubt.

Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may nevertheless conclude that the judgment is against the weight of the evidence. However, we are reminded that generally, it is the role of the jury to determine the weight and credibility of evidence. “ ‘A jury, sitting as the trier of fact, is free to believe all, part or none of the testimony of any witness who appears before it.’ ” *State v. Reyes-Rosales*, 4th Dist. Adams No. 15CA1010, 2016-Ohio-3338, ¶ 17, quoting *State v. West*, 4th Dist. Scioto No. 12CA3507, 2014-Ohio-1941, ¶ 23. We defer to the trier of fact on these evidentiary weight and credibility issues because it is in the best position to gauge the witnesses' demeanor, gestures, and voice inflections, and to use these observations to weigh their credibility.

(Citations omitted.) *State v. Anderson*, 2019-Ohio-395, ¶ 14-15 (4th Dist.). “ ‘Ultimately, a reviewing court should find a trial court's decision is against the manifest weight of the evidence only in the exceptional case where the evidence weighs heavily against the decision.’ ” *State v. Allen*, 2022-Ohio-1180, ¶ 27 (4th Dist.), quoting *State v. Gillian*, 2018-Ohio-4983, ¶ 28 (4th Dist.), citing *State v. McKelton*, 2016-Ohio-5735, ¶ 330.

{¶22} R.C. 2903.02(A) states: “No person shall purposely cause the death of another” “A person acts purposely when it is the person's specific intention to cause a certain result” R.C. 2901.22(A).

{¶23} The State introduced substantial evidence from which the jury could conclude that Lewis purposely caused the victim's death. There was evidence that the victim had multiple blunt force injuries of the head and neck, petechial hemorrhages on and around her eyes, 14 sharp force injuries of the head and neck, 2 sharp force injuries of the left upper extremity, and additional blunt force injuries. The victim's cause of death was multiple blunt and sharp force injuries of the head and neck with asphyxia. There is no evidence anyone was in the home when the victim sustained her injuries but her and Lewis. Although the deputy coroner testified it was possible incisions were self-inflicted, she also testified that some of the wounds would be difficult to self-inflict. And while the deputy coroner acknowledged bruises could be the result of a fall, and Lewis testified the victim fell after kicking him, he did not mention her falling during his interviews. The deputy coroner also testified that the petechial hemorrhages could not result from a fall and were most commonly seen with asphyxia, usually with traumatic asphyxia, "which is a mechanical way of suppressing the ability of the body to breathe, somebody sitting on a chest or putting a hand around the neck, or a ligature." Lewis had few injuries compared to the victim, and he told police that the victim pushed him "over the edge," that "it was heated" and "rage," and that he wanted the death penalty, suggesting he was responsible for her death.

{¶24} Lewis gave different versions of events to police and the jury. He indicated to police that after the victim attacked him with her body, he took the bottle of Klonopin and blacked out. However, he told the jury the victim attacked him on 2 occasions—first with her body and then with a knife, that she sustained injuries between the attacks while he was in a bedroom with the door closed, that he took 10 Klonopin pills between the

attacks, that he blacked out during the second attack due to fear and shock, and that he took the rest of the Klonopin after the victim died.

{¶25} Lewis also disposed of evidence. Although he claimed it was not his intent to interfere with a police investigation, the day of the incident, Lewis did not tell police that he cleaned up the victim or removed anything from the scene and suggested he did not dispose of any knives. He later admitted to disposing of items. But then during trial, he testified that the knives were probably in his home until he was reminded of the jail call he made. Lewis admitted he rode a bike to a different location to dispose of items. And he disposed of the knives in such a manner that they were never found.

{¶26} After weighing the evidence and all reasonable inferences, considering the credibility of the witnesses after according the requisite deference to the jury's determinations, we conclude that in resolving evidentiary conflicts, the jury did not clearly lose its way or create a manifest miscarriage of justice so that we must reverse Lewis's murder conviction. This is not the exceptional case where the evidence weighs heavily against the conviction. Accordingly, we conclude that Lewis's murder conviction was not against the manifest weight of the evidence and overrule the first assignment of error.

IV. SENTENCE

{¶27} In the second assignment of error, Lewis contends that his sentence is contrary to law because the trial court ran his misdemeanor sentence consecutively to his two felony sentences. Lewis asserts that in *State v. Polus*, 2016-Ohio-655, the Supreme Court of Ohio interpreted R.C. 2929.41 and held that a trial court may only run a misdemeanor sentence consecutive to a felony sentence in the situations set forth in R.C.

2929.41(B)(3). He asserts that none of the situations in R.C. 2929.41(B)(3) apply. The State concedes error and asks us to modify Lewis's sentence.

{¶28} The State asserts that R.C. 2953.08(G)(2) applies to this assignment of error, but Lewis is challenging a sentence for a misdemeanor, and R.C. 2953.08 applies to felony sentences. See *Conneaut v. Fromknecht*, 2024-Ohio-1119, ¶ 8 (11th Dist.). “Generally, we review a misdemeanor sentence for an abuse of discretion. However, when a trial court does not comply with the applicable sentencing statutes, we apply a de novo standard of review.” (Internal citation and quotation marks omitted in original.) *State v. Phillips*, 2024-Ohio-2310, ¶ 7 (1st Dist.), quoting *State v. Kendrick*, 2023-Ohio-1763, ¶ 24 (1st Dist.).

{¶29} But in this case, Lewis did not raise his R.C. 2929.41 argument below and has therefore forfeited all but plain-error review. See *State v. Drain*, 2022-Ohio-3697, ¶ 51 (“a defendant’s failure to raise an issue at trial forfeits all but plain error on review”). A party asserting plain error must demonstrate that an obvious error occurred and that there is a reasonable probability it resulted in prejudice, meaning it affected the outcome of the proceeding. See *State v. Knuff*, 2024-Ohio-902, ¶ 117. “It is well settled that a sentence that is contrary to law is plain error” *State v. Price*, 2024-Ohio-1641, ¶ 7 (4th Dist.), quoting *State v. Burrell*, 2024-Ohio-638, ¶ 14 (11th Dist.).

{¶30} At the time of sentencing, R.C. 2929.41 stated:

(A) Except as provided in division (B) of this section, division (C) of section 2929.14, or division (D) or (E) of section 2971.03 of the Revised Code, a prison term, jail term, or sentence of imprisonment shall be served concurrently with any other prison term, jail term, or sentence of imprisonment imposed by a court of this state, another state, or the United States. Except as provided in division (B)(3) of this section, a jail term or sentence of imprisonment for misdemeanor shall be served concurrently

with a prison term or sentence of imprisonment for felony served in a state or federal correctional institution.

(B)(1) A jail term or sentence of imprisonment for a misdemeanor shall be served consecutively to any other prison term, jail term, or sentence of imprisonment when the trial court specifies that it is to be served consecutively or when it is imposed for a misdemeanor violation of section 2907.322, 2921.34, or 2923.131 of the Revised Code.

...

(3) A jail term or sentence of imprisonment imposed for a misdemeanor violation of section 4510.11, 4510.14, 4510.16, 4510.21, or 4511.19 of the Revised Code shall be served consecutively to a prison term that is imposed for a felony violation of section 2903.06, 2903.07, 2903.08, or 4511.19 of the Revised Code or a felony violation of section 2903.04 of the Revised Code involving the operation of a motor vehicle by the offender and that is served in a state correctional institution when the trial court specifies that it is to be served consecutively.¹

{¶31} In *Polus*, the Supreme Court of Ohio explained that “[t]he first sentence of R.C. 2929.41(A) enacts the general rule requiring concurrent sentencing with only clearly delineated exceptions, including the provisions in R.C. 2929.41(B)” *Polus*, 2016-Ohio-655, ¶ 10. “The second sentence of R.C. 2929.41(A) creates a more specific rule”—“subject only to the exceptions stated in R.C. 2929.41(B)(3), a trial court must impose concurrent sentences for felony and misdemeanor convictions.” *Id.* at ¶ 10. R.C. 2929.41(B)(1) does not allow a trial court to impose consecutive sentences for any set of felony and misdemeanor convictions. *Id.* at ¶ 12. “R.C. 2929.41(B)(1) merely ‘requires a sentencing court to impose sentences for misdemeanor violations of R.C. 2907.322 (pandering sexually oriented matter involving a minor), 2921.34 (escape), or 2923.131 (possession of deadly weapon while under detention) ‘consecutively to any other prison term, jail term, or sentence of imprisonment.’” *Id.*, quoting *State v. Johnson*, 2008-Ohio-

¹ R.C. 2929.41(B)(3) has been amended, effective October 24, 2024, to delete the terms “2903.07” and “motor.”

69, ¶ 14, quoting R.C. 2929.41(B)(1). “The reference in R.C. 2929.41(B)(1) to a trial court’s authority to ‘specif[y]’ consecutive sentences refers only to the authority delineated in R.C. 2929.41(B)(3).” (Alteration in original.) *Id.* at ¶ 12.

{¶32} The trial court’s decision to order Lewis to serve his misdemeanor sentence for violating a protection order consecutive to his felony sentences was contrary to law and plain error. A violation of R.C. 2919.27(A)(1) is not an offense for which the trial court must impose a consecutive sentence under R.C. 2929.41(B)(1), and it is not an offense for which the trial court may impose a consecutive sentence under R.C. 2929.41(B)(3). Therefore, the general rule in R.C. 2929.41(A) requiring a concurrent sentence applies to Lewis’s sentence for violating a protection order offense. Accordingly, we sustain the second assignment of error.

V. CONCLUSION

{¶33} We overrule the first assignment of error and sustain the second assignment of error. We reverse the trial court’s judgment to the extent the court ordered Lewis to serve his sentence for violating a protection order consecutive to his other sentences. We remand to the trial court to issue a corrected sentencing entry which runs the sentence for violating a protection order concurrent with the other sentences. We affirm the trial court’s judgment in all other respects.

JUDGMENT AFFIRMED IN PART
AND REVERSED IN PART.
CAUSE REMANDED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED IN PART AND REVERSED IN PART and that the CAUSE IS REMANDED. Appellant and appellee shall split the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the LAWRENCE COUNTY COURT OF COMMON PLEAS to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. & Wilkin, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.