

[Cite as *Schneider v. Schneider*, 2004-Ohio-7314.]

COURT OF APPEALS  
KNOX COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

FREDERICK M. SCHNEIDER

Plaintiff-Appellant

-vs-

ERICA L. SCHNEIDER

Defendant-Appellee

JUDGES:

Hon. W. Scott Gwin, P.J.  
Hon. William B. Hoffman, J.  
Hon. Julie A. Edwards, J.

Case No. 04CA000019

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Knox County Court of  
Common Pleas, Juvenile Division, Case  
No. 99-3041

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

November 9, 2004

APPEARANCES:

For Plaintiff-Appellant

For Appellee-State of Ohio/Knox CSEA

FREDERICK M. SCHNEIDER  
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*Hoffman, J.*

{¶1} Plaintiff-appellant Frederick M. Schneider appeals the June 10, 2004 Judgment Entry entered by the Knox County Court of Common Pleas, Juvenile Division, which denied his motion for relief from judgment. Defendant-appellee is Erica L. Schneider.

#### STATEMENT OF THE FACTS AND CASE

{¶2} Appellant and appellee were married on June 15, 1999. Two children were born as issue of said union, to wit: Christian (DOB 10/30/91) and Joshua (DOB 12/18/98). Appellant and appellee lived separate and apart as of November 18, 1998. After appellee failed to contribute to the support of the children, the Knox County Child Support Enforcement Agency (“CSEA”) filed a Complaint for Support on appellant’s behalf. Pursuant to Magistrate’s Decision filed June 4, 1999, appellee was ordered to pay child support to appellant.

{¶3} On April 14, 2004, CSEA filed a Motion to Terminate the support order. In its motion, CSEA advised the trial court it had conducted an investigation and found Christian and Joshua were no longer living with appellant due to appellant’s incarceration. The children had moved into appellee’s home on December 24, 2002. Via Journal Entry filed April 14, 2004, the trial court terminated the child support order.

{¶4} On May 14, 2004, appellant filed a Motion for Relief from Judgment/Order Pursuant to Ohio Civil Rule 60(B), alleging he did not receive a copy of CSEA’s Notice of Findings and Recommendations Regarding Termination of Support Order upon which the trial court based its decision. CSEA filed a Memorandum Contra. Appellant filed a Memorandum in Opposition thereto. Via Journal Entry filed June 10, 2004, the trial court

approved and adopted the magistrate's decision recommending appellant's Civ. R. 60(B) motion be denied.

{¶5} It is from this journal entry appellant appeals, raising the following assignment of error:

{¶6} "I. THE TRIAL COURT ABUSED JUDICIAL DISCRETION WHEN DENYING PLAINTIFF-APPELLANT'S MOTION FOR RELIEF FROM JUDGMENT FILED PURSUANT TO OHIO CIV. R. 60(B) WHEN PLAINTIFF-APPELLANT WAS NOT GIVEN ADEQUATE NOTICE OF THE PREVIOUS ACTION."

{¶7} This case comes to us on the accelerated calendar. App. R. 11.1, which governs accelerated calendar cases, provides, in pertinent part:

{¶8} A(E) Determination and judgment on appeal.

{¶9} "The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form.

{¶10} "The decision may be by judgment entry in which case it will not be published in any form."

{¶11} This appeal shall be considered in accordance with the aforementioned rule.

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{¶12} Initially, we must address the timeliness of appellant's notice of appeal.

{¶13} App. R. 4(A) provides: "A party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure."

{¶14} The filing requirements regarding the notice of appeal are mandatory and jurisdictional. The rules specify the time begins running after the entry of judgment if the trial court and clerk comply with Civ. R. 58(B). The record reflects Civ. R. 58(B) was followed. The trial court issued its Journal Entry on June 10, 2004. Service of the Journal Entry and notation of same was made in the docket on June 11, 2004. Because appellant's notice of appeal was not filed until July 19, 2004, we find it untimely. Accordingly, this Court has no jurisdiction to consider the merits of appellant's assignment of error.

{¶15} This appeal is ordered dismissed.

By: Hoffman, J.

Gwin, P.J. and

Edwards, J. concur

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JUDGES

IN THE COURT OF APPEALS FOR KNOX COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

FREDERICK M. SCHNEIDER

Plaintiff-Appellant

-vs-

ERICA L. SCHNEIDER

Defendant-Appellee

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JUDGMENT ENTRY

Case No. 04CA000019

For the reason stated in our accompanying Memorandum-Opinion, this appeal is ordered dismissed. Costs assessed to appellant.

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JUDGES