IN THE COURT OF COMMON PLEAS, PROBATE AND JUVENILE DIVISIONS,
GEAUGA COUNTY, OHIO
Judge Timothy J. Grendell

Information Sheet
The Appellate Process

WARNING

This Information Sheet is intended to provide you with a brief overview of the subject matter. It may not provide to you all information that you require to be fully informed of the law that is applicable to your case. Additionally, the information may not accurately describe the pertinent sections of the Ohio Revised Code or appellate rules of procedure that are referenced in the footnotes. You should read those sections or rules that are footnoted. Additionally, you should consider reading those sections that are footnoted using "Page's Ohio Revised Code Annotated," which can be found at the Geauga County Law Library in the basement of the Courthouse at 100 Short Ct. Street, Chardon, Ohio 44024. Page's Ohio Revised Code Annotated will also provide you a summary of applicable court decisions (known as "case law"). While the Help Center can provide you with a limited amount of information, the Help Center staff cannot provide you with legal advice, and this Information Sheet is not intended to provide you with legal advice that is applicable to your case. You must decide how to best use the information provided. In the footnotes you will see a reference such as "R.C. 2505.03." That refers to Ohio Revised Code Section 2505.03, which is found in R.C. Title 25, and in R.C. Chapter 2505 of the Ohio Revised Code.

Background

After a trial court renders a final order, judgment, or decree ("Final Order"),[1] a party may appeal a Final Order to a court of appeals.[2] The appellate process of a Final Order is governed by R.C. Chapter 2505 and the Ohio Rules of Appellate Procedure, which rules are indicated by the preface ("App. R.").[3] An appeal from a Final Order rendered by this Court is determined by the Eleventh Appellate District Court of Appeals (the "Court of Appeals"), located at 111 High Street, NE., Warren, Ohio 44481. Thus, in addition to understanding and complying with R.C. Chapter 2505 and the Ohio Rules of Appellate Procedure, a person who appeals a Final Order of this Court must understand and comply with the Eleventh Appellate District Local Rules, which rules are indicated by the preface "Loc. R.").[4] The person who files an appeal is generally known as the "appellant." Other parties are generally known as the "appellee." Due to the complexity of the appellate process, the Help Center highly recommends that an appellant or appellee obtain an experienced attorney to assist with the appellate process to the extent

[1] See R.C. 2505.02(B) for a description of final orders that may be appealed.
[2] R.C. 2505.03
[3] The Ohio Rules of Appellate Procedure can be found on the Internet at:
<https://www.supremecourt.ohio.gov/LegalResources/Rules/appellate/AppellateProcedure.pdf>
[4] The Eleventh Appellate District Local Rules can be found on the Internet at:
<http://www.11thcourt.co.trumbull.oh.us/pdfs/LOCAL%20RULE%20AMENDMENTS%202017.pdf>

possible. Although the Court of Appeals is located in Warren, Ohio, for an appeal from this Court, the Clerk of this Court serves as the Clerk of the Court of Appeals for initial filings.[5]

An example of a Final Order in a probate proceeding is the final judgment of this Court's probate division in a Will contest action that was filed under R.C. 2107.71, which challenged the validity of the Will that was admitted to probate. If this Court rendered a final order declaring the Will to be valid, then a party who would otherwise inherit probate property if the Will was invalid could file an appeal with the Court of Appeals. Likewise, in a juvenile proceeding, if this Court's juvenile division, following the dispositional hearing, awarded legal custody of a minor child to the maternal grandmother based upon a finding at the adjudicatory hearing that the mother is "unsuitable" (assume the father is unknown), then the mother could file an appeal with the Court of Appeals. It should be noted, however, that an order rendered following an adjudicatory hearing is also a Final Order. Thus, in the example above, if this Court issued a final order, which determined that the mother is "unsuitable" or that the minor child is "abused, neglected or dependent," then the mother could immediately file an appeal before the dispositional hearing.[6]

Why File an Appeal?

Before taking the necessary steps to file an appeal of a Final Order, which are explained below, the appellant should promptly take some time and consider why an appeal should be filed and pursued. The reason cannot simply be that the appellant does not like the Final Order. To be successful, the appellant must convince the Court of Appeals that this Court committed an error applying the law that harmed the appellant, assuming in most cases that during the trial the appellant objected to this Court's error. With few exceptions, the Court of Appeals will not consider an error committed by this Court that the appellant did not object to at the time that error was committed. In essence, the Court of Appeals merely reviews what happened in this Court and determines whether (1) an error occurred and (2) if that error adversely affected the appellant. Except in a few instances, because the Court of Appeals will not consider new evidence, the Court of Appeals is limited to the court record (known as the "Record on Appeal")[7] transmitted from this Court (or the Clerk of the Geauga County Common Pleas Court – General Division) to the Court of Appeals, the briefs of the parties, and oral argument, if requested. Please review Appendix A, which is attached to this information sheet.

To better understand the appellate process, you need to understand and consider the fundamentals of the trial process. The basic steps of the trial process are the following:

- The parties file documents with this Court (e.g., a complaint, a petition, an application, a motion, etc.) that explains to this Court (i) the legal and factual basis for that party's claim or defense and (ii) what the party wants this Court to order. Those documents and the action taken by the parties in support of their claims must conform to the rules of procedure in Ohio courts.[8]

- With few exceptions, this Court conducts a hearing at which time the parties present evidence to this Court to prove the factual claims that support the court order that a party seeks. The

[5] See Loc. R. 3(A).

[6] *In re H.F.* (2008), 120 Ohio St.3d 499.

[7] See App. R. 9(A) for a description of the Record on Appeal.

[8] The fundamental rules of civil procedure in Ohio are known as the "Ohio Rules of Civil Procedure," which can be found at https://www.supremecourt.ohio.gov/LegalResources/Rules/civil/CivilProcedure.pdf. Additionally, Ohio juvenile courts has a special set of procedural rules known as the "Ohio Rules of Juvenile Procedure," which can be found at https://www.supremecourt.ohio.gov/LegalResources/Rules/juvenile/JuvenileProcedure.pdf.

evidence may be witness testimony or documents, such as letters, emails, business records, etc. but in each case the evidence must conform to the rules of evidence permitted in Ohio courts.[9] In this Court the hearing is recorded by a video or audio electronic device.

- Assuming there is no jury, which is generally the case in probate and juvenile hearings, at the conclusion of the hearing, the judge (or magistrate) will consider the evidence presented and will determine the relevant facts that are supported by that evidence.

- Following the determination of the relevant facts, the trial judge will apply the law that is applicable to the case and render a decision based upon the relevant facts that are proven by the evidence and the applicable law, and then issue a Final Order.

The appellate process involves a review of the trial process and a determination of whether this Court committed an error applying the law that was prejudicial to the appellant during the trial process. The error could be any of the following:

- This Court permitted a violation of the Ohio Rules of Civil Procedure, which for example could be allowing a complaint or motion that does not comply with those rules.

- This Court allowed material evidence to be submitted that does not comply with the Ohio Rules of Evidence.

- This Court made a finding of a material fact that was not supported by the evidence presented (or rather was against the "manifest weight" of the evidence).

- This Court did not properly apply the law to the facts of the case.

However, with few exceptions, the appellant may not raise any of those issues with the Court of Appeals unless during the trial process the appellant properly and timely objected to the error committed by this Court and this Court overruled or ignored that objection.

Moreover, if the trial was handled by a magistrate, and if the appellant failed to timely object to the magistrate's decision in the manner provided for in Civil Rule 53 of the Ohio Rules of Civil Procedure and this Court's local rules of practice, then the appellant cannot appeal this Court's adoption of the magistrate's decision, other than a claim of "plain error."[10]

Appellate Procedure.

- Preliminary Determinations.

    - Basis for Appeal. Before you decide to file an appeal you should decide the basis or reason for the appeal, or rather what exactly are the legal errors committed by this Court that were prejudicial to you. Again, the basis for your appeal cannot simply be that you disagree with the Final Order or that you believe the Final Order is "unfair." Eventually you must file a Brief (described below), which will explain to the Court of Appeals the legal errors committed by this Court. Determining what prejudicial errors were committed

[9] The rules of evidence in Ohio are known as the "Ohio Rules of Evidence," which can be found at https://www.supremecourt.ohio.gov/LegalResources/Rules/evidence/evidence.pdf.

[10] Civ. R. 53(D)(3)(b)(iv). See attached Exhibit A for a discussion of "plain error."

by this Court will assist you in deciding whether, and to what extent, you decide to order a Transcript of Proceedings that conforms to the Court of Appeals' requirements.

- The Record on Appeal.[11] Once again, the Court of Appeals does not provide the appellant with a new trial and with few exceptions will not consider new evidence. The Court of Appeals will only review this Court's record of the legal proceedings in this Court to determine whether this Court committed a prejudicial error. The appellant must take the necessary steps to cause this Court's record to be compiled and delivered to the Clerk of the Court of Appeals by the Clerk of this Court, which transmitted record is known as the "Record on Appeal." The Record on Appeal consists of:

  - Original Documents. All papers and exhibits filed in this Court (such as complaints, petitions, answers, motions, affidavits, discovery documents [e.g., interrogatories, depositions, admissions], court orders, judgments, decrees).

  - Docket. A certified copy of the docket and journal entries by this Court.

  - The Transcript of Proceedings. Unless a party supplies a court reporter with the Court's consent, all hearings in probate and juvenile divisions of this Court are recorded by a video or audio device.[12] However, the Court of Appeals will not accept a copy of the video or audio tape as the Transcript of Proceedings (explained below).

  Upon the filing of a Notice of Appeal (described below) the Clerk of this Court will begin the process of compiling the Record on Appeal. However, that process only involves gathering the original documents and certifying the docket and journal entries. The appellant has the duty to cause the preparation of the Transcript of Proceedings, in a form that is acceptable to the Court of Appeals,[13] if the appellant considers it necessary to include a Transcript of Proceedings in the Record on Appeal.[14] To repeat, the Court of Appeals will not accept a video or audio tape as part of the Record on Appeal. If the appellant decides that the Court of Appeals must consider all or part of the Transcript of Proceedings, then the appellant must cause a court-approved "transcriber" to prepare the Transcript of Proceeding, based upon the video or audio tapes, which must conform to the requirements of the Court of Appeals as set forth in Ohio App. R. 9(B)(6). Regarding a selection and preparation of an acceptable Transcript of Proceedings, consider the following:

  - If the appeal is from the juvenile division of this Court, then read and comply with Geauga County Juvenile Local Rule 16. To summarize:

    - Select the court reporting service, arrange for payment of cost (note the special provisions below for an indigent appellant), and prepare and file with the Clerk of this Court the form titled "GC JF 6.0 – Request for Transcript of Video/Audio Recording." You must have court approval of

[11] App. R. 9(A).

[12] App. R. 9(A)(2) permits a trial court to use a video-recording device to record the legal proceedings during a hearing rather than a stenographic/shorthand court reporter.

[13] See App. R. 9(B)(6) for a description of an acceptable format for the Transcript of Proceedings.

[14] App. R. 9(B)(1)

the court reporting service. If approved, direct the court reporting service to promptly contact the Clerk of this Court.

- Deliver a copy of that request form to all parties or their attorneys and provide the Clerk with Proof of Service. For all purposes of this information sheet, Proof of Service for an appeal from the juvenile division means preparing and filing with the Clerk of this Court the form titled "GC JF 3.0 – Proof of Service."

- If the appeal is from the probate division of this Court, then read and comply with Geauga County Probate Local Rule 11.1. To summarize:

  - Select the court reporting service, arrange for payment of cost (note the special provisions below for an Indigent appellant), and prepare and file with the Clerk the form titled "GC PF 4.32 – for Transcript of Video/Audio Recording." Again, you must have court approval of the court reporter. If approved, direct the court reporting service to promptly contact the Clerk.

  - Deliver a copy of that request form to all parties or their attorneys and provide the Clerk with Proof of Service. For all purposes of this information sheet, Proof of Service for an appeal from the probate division means the form titled "GC PF 62.5 – Proof of Service."

- With Court approval, an indigent appellant may be able to have the county pay the cost of the Transcript of Proceedings after filing the forms titled (i) the Affidavit of Indigency and (ii) "Financial Disclosure Form (ODP 206-R).

- The appellant need not order the entire Transcript of Proceedings. Depending upon what is needed to support the appellant's claim of a trial court error, the appellant may order a portion of the Transcript of Proceedings.

- App. R. 9(D) allows the parties to agree upon a statement of the key facts of the case and file that statement as part of the Record on Appeal rather than an appropriate Transcript of Proceedings.

- If there is no video or audio recording of a hearing (or it is unavailable for transcription), then App. R. 9(C) allows for a statement of evidence to be prepared and filed as part of the Record on Appeal rather than an appropriate Transcript of Proceedings.

- Accelerated Calendar.[15] Determine whether this appeal meets the requirements to be placed on the Accelerated Calendar under Loc. R. 11.1. If so, then you will make the appropriate notation on the Docketing Statement explained below.

- Expedited Appeal[16] If the appeal results from a Final Order by the juvenile division of this Court, then determined whether this appeal meets the requirements of an Expedited Appeal under App. R. 11.2. Certain juvenile cases are given calendar priority over all other cases before the Court of Appeals. If your appeal qualifies as a priority appeal,

[15] App. R. 11.1 and Loc. R. 11.1
[16] App. R. 11.2 and Loc. R. 11.2

then you will make the appropriate notation on the Docketing Statement explained below. If your appeal qualifies as an Expedited Appeal, then the timing of certain actions are accelerated depending upon the nature of the case. At the risk of oversimplification, cases that are given priority over other cases are:

- an appeal of an abortion-related case from a juvenile court;[17]
- adoption and parental rights appeals, including abuse, neglect and dependency cases;[18] and
- certain Prosecutorial appeals regarding minors.[19]

- Motion to Extend. You should determine whether you require additional time for transmission of the Record on Appeal, including the Transcript of Proceedings, beyond 40 days (20 days if your case is place on the Accelerated Calendar) after filing the Notice of Appeal. An extension not greater than 30 days may granted by this Court or the Court of Appeals. The failure to timely obtain an extension could result in your appeal being dismissed. That process is explained below.

- Motion to Stay. You should determine whether you want the trial court to delay the execution of its Final Order. For example, if the trial court determined that the mother of minor children is unsuitable and that custody of those children shall be transferred to the father, then if the mother files a Notice of Appeal, the mother could file a Motion to Stay with the Court seeking an order to prevent the change of custody until her appeal is determined by the Court of Appeals. Again, that process is explained below.

- Appointment of Legal Counsel for Indigent. If you are indigent, determine whether you want the Court to appoint legal counsel for you for the appellate process. If so, the prepare and file with the Clerk of this f,"[20] (ii) "Affidavit of Indigency," and (iii) "Financial Disclosure Form (ODP-206R)." Deliver a copy of those forms to all parties, by certified mail, return receipt requested, and provide the Court with Proof of Service.

- Indigent Rights. Again, as noted above, if you are indigent (essentially as defined by "Financial Disclosure Form (ODP-206R)"), then there are at least three rights that may benefit you if you prepare and file with the Clerk that financial disclosure form together with the forms titled "GC AP 11.2 – Motion of Indigent" and "Affidavit of Indigency."

  - First – waiver of court cost deposit
  - Second – county will pay the cost of obtaining the Transcript of Proceedings.
  - Third – in some case, the appointment of legal counsel.

[17] App. R. 11.2(B)
[18] App. R. 11.2(C)
[19] App. R. 11.2(D)
[20] This form is available at this Court's Help Center

Initial Filing.

- Notice of Appeal.

    - Background. If you decide to file an appeal of a Final Order of this Court, then perhaps the most important step is to timely file a "Notice of Appeal," which is known as "perfecting an appeal."[21] The form of the Notice of Appeal used in the Court of Appeals is available on this Court's website. Please note that in the Notice of Appeal:

        - The appellant must describe the Final Order and must attach a copy of the Final Order to the Notice of Appeal.[22]

        - The appellant must indicate whether a complete Transcript of Proceedings has been ordered from a court-approved transcriber, or whether:

        - a partial Transcript of Proceedings is ordered;

        - a "statement" will be prepared pursuant to Ohio App. R. 9(C) or (D); or

        - no Transcript of Proceedings is ordered.

    - Timing. Pursuant to Ohio App. R. 4(A), generally the appellant must file the Notice of Appeal no later than 30 days after the effective date of the Final Order, which is the date that the Clerk of this Court enters the Final Order in the Court's journal.[23] If the appellant fails to timely file the Notice of Appeal, then the right of appeal is forfeited.

    - Where.

        - First, the appellant shall prepare and file the form titled "Notice of Appeal" with the Clerk of this Court, located at 231 Main Street, 2nd Floor, Chardon, Ohio 44024.[24] The appellant must file with the Clerk of this Court sufficient copies of the Notice of Appeal so that the Clerk of the Court of Appeals can serve a copy of the Notice of Appeal upon all parties (including the appellant) and deliver a copy to the Court of Appeals. After filing the Notice of Appeal (and sufficient copies) the Clerk will deliver to the appellant a time-stamped copy of the Notice of Appeal.

        - Second, together with the Notice of Appeal, the appellant shall prepare and file the form titled "Instructions for Service of Notice of Appeal."

            - **Note**: As described below, together with the Notice of Appeal and the Instructions for Service of Notice of Appeal, the appellant will also prepare

[21] R.C. 2505.04 provides that "An appeal is perfected when a written notice of appeal is filed, in the case of an appeal of a final order, judgment, or decree of a court, in accordance with the Rules of Appellate Procedure or the Rules of Practice of the Supreme Court, . . ." The requirement for filing a Notice of Appeal is set forth in App. R. 3(A) and Loc. R. 3(a)

[22] Loc. R. 3(D)(2)

[23] See App. R. 4(D) and Civ. R. 58(A).

[24] App. R. 3(A)

and file a Docketing Statement (described below), and if required, an App. R. 9(B)(5) Statement (described below).

- Filing Fees. The appellant must pay to the Clerk of this Court a court cost deposit as follow:

  - $38.00 – which is the court cost deposit for this Court, and

  - $220.00 – which is the court cost deposit for (i) the Common Pleas Court, Geauga County, General Division and (ii) the Court of Appeals.

    Note: As noted above, if the appellant is indigent, this Court or the Court of Appeals may waive payment of the court cost deposit. An indigent appellant may prepare and file together with the Notice of Appeal the forms titled (i) "Indigency Motion (GC AP 11.2)," (ii) "Affidavit of Indigency," and (iii) "Financial Disclosure Form (ODP 206-R)."

- Statement of Partial Transcript of Proceedings. If a complete Transcript of Proceedings is not to be included in the Record on Appeal, then the appellant shall file, together with the Notice of Appeal, the form titled "GC AP 9.0 - App. R. 9(B)(5) Statement" (which is available on the Court's website), as follows:

  (a) If the proceedings were recorded by a stenographic/shorthand reporter, then the statement shall list the assignments of error the appellant intends to present on the appeal and shall either describe the parts of the Transcript of Proceedings that the appellant intends to include in the record or shall indicate that the appellant believes that no Transcript of Proceedings is necessary.

  (b) If the proceedings were not recorded by any means, or if the proceedings were recorded by non-stenographic means but the recording is no longer available for transcription, or if the stenographic record has become unavailable, then the form titled "GC AP 9.0 - App. R. 9(B)(5) Statement" shall list the assignments of error the appellant intends to present on appeal and shall indicate that a statement under App. R. 9(C) or 9(D) will be submitted.[25]

  The appellant shall file the form titled "GC AP 9.0 - App. R. 9(B)(5) Statement," together with the Notice of Appeal as described above and deliver the App. R. 9(B)(5) Statement to the appellee (or legal counsel) by mail or personally.

  The form title "GC AP 9.0 - App. R. 9(B)(5) Statement" shall be filed, together with the Notice of Appeal, the Instructions for Service of Notice of Appeal, and the Docketing Statement, in the same manner described above for the filling of the Notice of Appeal.

- Docketing Statement.[26] Since the Court of Appeals has adopted an Accelerated Calendar as permitted by App. R. 11.1, then together with the Notice of Appeal and the Instructions for Service of Notice of Appeal, the appellant must prepare and file with the Clerk of this Court the form titled "Docketing Statement," which is available on the Court's website, together with

[25] App. R. 9(B)(5)

[26] App. R. 3(G)(1) and Loc. R. 11.1(A)

sufficient copies of the Docketing Statement so that the Clerk of the Court of Appeals can serve a copy of the Docketing Statement upon all parties (including the appellant) and deliver a copy to the Court of Appeals. After filing the Docketing Statement (and sufficient copies) the Clerk of the Court of Appeals will deliver to the appellant a time-stamped copy of the Docketing Statement. In preparing the Docketing Statement, the appellant should consider the following:

- The primary purpose is to notify the Court of Appeals that the appellant is willing to allow the appeal to be placed upon the Court of Appeals' regular calendar, or whether to have the Court of Appeals place the appeal on the Accelerated Calendar, thus minimizing delay and unnecessary expense to obtain a decision from the Court of Appeals.[27]
    - Only certain matters may be placed upon the Accelerated Calendar, which are defined in Ohio App. R. 3(G) and Loc. R. 11.1. With a few exceptions, Final Orders issued in the probate division or juvenile division will not qualify for the accelerated calendar, and thus the appellant would indicate on the Docketing Statement that the appeal should be assigned to the regular calendar. Those few exceptions that could be placed on the Accelerated Calendar include:
        - No Transcript of the Proceedings is required;
        - If only a partial Transcript of Proceedings is requested, the preparation time will not be a source of delay;
        - The parties will submit an agreed statement as permitted by Ohio App. R. 9(C) or (D) rather than a Transcript of Proceedings; or
        - All parties agree to the accelerated calendar.
    - As noted above, in certain juvenile matters, the appeal may qualify for an Expedited Appeal, pursuant to App. R. 11.2 and Local R. 11.2 regarding:
        - Abortion pursuant to R.C. 2151.85, 2505.073, and 2919.121;[28]
        - granting or denying an adoption, or granting or permanent termination of parental rights; or
        - certain prosecutions of a minor.[29]
    - Note that the appellant must describe on the Docketing Statement
        - the case (cause of action) that is being appealed;
        - the probable issue for review (or rather the prejudicial error committed by this Court); and
        - whether a Final Order is being appealed

[27] App. R. 11.1(A) – second paragraph.
[28] If the appeal results from an order regarding abortion of a minor, then read the juvenile information sheet titled "Minor Abortion – Non-parental Consent."
[29] App. R. 11.1(D)

- Request for Transcript.

    - If the appellant indicates in the Notice of Appeal that the appellant will order a full or partial Transcript of Proceedings, then as noted above the appellant shall make reasonable arrangements for the preparation of the Transcript of Proceedings by promptly preparing and filing the form titled (i) "GC JF 6.0 – Request for Transcription" if the appeal arises from a juvenile matter or (ii) "GC PF 4.32 – Request for Transcription" if the appeal arises from a probate matter, which forms are available on the Court's website.

    - The appellant should consider the following steps:

        - If the appeal arises from a (i) juvenile matter, then review Geauga County Juvenile Local Rule 16, or (ii) probate matter, then review Geauga County Probate Local Rule 11.1.

        - Unless the Court or the Court of Appeals grants an extension of time (discussed below) the Clerk of this Court must deliver to the Court of Appeals the Transcript of Proceedings, as part of the Record on Appeal, no later than 40 days (20 days if on the Accelerated Calendar) after filing the Notice of Appeal. It is the appellant's duty to cause the Transcript of Proceedings to be timely and properly prepared, in accordance with App. R. 9 to enable the Clerk of this Court to timely deliver the Record on Appeal to the Court of Appeals.

        - Extension of Time. If the appellant determines that the Clerk of this Court is unable to timely deliver the Record on Appeal to the Court of Appeals (i.e., no later than 40 days after filing the Notice of Appeal or 20 days if the appeal is on the Accelerated Calendar), then App. R. 10 and Loc. R. 10 allows this Court to grant the appellant a 30-day extension to file the Record on Appeal, including the Transcript of Proceedings. To obtain such extension, the appellant should consider preparing and filing the forms titled (i) GC AP 11.0 – Motion to Extend Filing of the Record – Trial Court with the Court, or GC AP 11.1 – Motion to Extend Filing of the Record – Court of Appeals, as appropriate under App. R. 10 and Loc. R. 10.[30] Moreover, you must prepare and attached to that motion an affidavit that sets forth the facts showing good cause for the extension.[31]

    - App. R. 11.2 Appeals.[32] Only the Court of Appeals can grant an order to extend the time period for filing the Record on Appeal if the appeal is a juvenile case that is defined by App. R. 11.2.

        - Accelerated Calendar. Again, as permitted by App. R. 11.1, the Court of Appeals has adopted an Accelerated Calendar, as more fully described in Loc. R. 11.1. If, in the Docketing Statement (see below), the appellant elects to have the appeal assigned to the Court of Appeals' Accelerated Calendar and if the Court of Appeals grants the request, then the time period for filing the Record on Appeal,

[30] Those motions are available at the Court's Help Center.

[31] Loc. R. 10(B)

[32] Loc. R. 10(A)

including the Transcript of Proceedings is reduced from 40 days to 20 days following the filing of the Notice of Appeal.

- Removal from Accelerated Calendar.[33] If the Court of Appeals places an appeal on the Accelerated Calendar, and if a party objects, then that party must file a motion to remove the appeal from the Accelerated Calendar no later than 10 days after the time-stamped notice, which placed the appeal on the Accelerated Calendar.

- Motion for Stay. App. R. 7 and Loc. R. 7 provide you with a method to delay the execution of the Final Order pending the outcome of your appeal to the Court of Appeals. Generally, the Motion for Stay should be filed in this Court. If you decide to file the Motion to Stay with this Court, then you should consider preparing and filing the form titled "GC AP 10.0 – Motion to Stay – Trial Court." If you decide to file the Motion to Stay with the Court of Appeals, then you should consider preparing and filing the form titled "GC AP 10.1 – Motion to Stay – Court of Appeals."[34] A careful review of App. R. 7 and Loc. R. 7 will assist you in deciding where to file the Motion to Stay. You must deliver of copy of the appropriate motion upon all parties by certified mail, return receipt requested, and provide the Clerk of this Court with Proof of Service.[35]

  - Memorandum in Support.[36] You must prepare and attach to your Motion to Stay a memorandum that discusses the relevant factors concerning whether (1) the stay order should be granted and (2) the posting of a supersedeas bond should be posted. Moreover, if the Motion to Stay is filed with the Court of Appeals, then you must attach a copy of Court's judgment where the Court granted or refused to grant a stay order.

  - Exigent Circumstances.[37] If there are "exigent circumstances" that require an immediate court order to stay the execution of the Final Order, then this Court, without a hearing (i.e., "ex parte"), may grant a temporary stay, until a hearing on the matter can be held if the appellant can demonstrate (typically by affidavit) to the Court that exigent circumstances exist, which warrant the temporary stay order.

  - Juvenile Matters.[38] If the Final Order concerns a dependent, neglected, unruly, or delinquent child, then the Court will not stay the Final Order without a showing that suitable provisions have been made for the maintenance, care, and custody of that child.

  - Response to Stay Order.[39] If the other party filed a Motion to Stay, and you wish to respond to that motion, then you must file your response within seven days after that motion was filed.

[33] Loc. R. 11.1(C)
[34] Those motions are available at the Court's Help Center.
[35] Loc. R. 7(A)(1)
[36] Loc. R. 7(C)
[37] Loc. R. 7(A)(2)
[38] App. R. 7(C)
[39] Loc. R. 7(D)

Actions by the Appellee.

If another party (the "Appellant") has filed a Notice of Appeal, then there may be certain actions that you (the "Appellee") should consider, which include the following:

- If you are satisfied with the Final Order, there is no need to file any Notice of Appeal (known as a cross appeal).[40] However, if you also want to appeal the Final Order to any extent, then you too should prepare and file a Notice of Appeal, Instructions for Service of Notice of Appeal, and a Docketing Statement with the Clerk of this Court in the same manner as required of the appellant and explained above.[41] The "cross" Notice of Appeal must be filed within 30 days after the Final Order or within 10 days after the filing of the initial Notice of Appeal.[42]

- If you receive a statement from the appellant that the Record on Appeal will not include the entire Transcript of Proceedings, and if you believe that a Transcript of Proceedings or other parts of the proceedings necessary, then, within 10 days after the service of that statement of the appellant, you should file and serve on the appellant a designation of additional parts to be included. The Clerk of this Court shall forward a copy of that designation to the Clerk of the Court of Appeals. If the appellant refuses or fails, within 10 days after service on the appellant of appellee's designation, to order a transcription of the additional parts, then within five days thereafter, you must either: (1) order the parts in writing from the reporter or (2) apply to the Court of Appeals for an order requiring the appellant to do so. At the time of ordering, the party ordering the Transcript of Proceedings shall arrange for the payment to the transcriber of the cost of the Transcript of Proceedings.[43]

- If the appellant fails to timely make reasonable arrangements to transmit the Record on Appeal, then you may file a motion in the Court of Appeals to dismiss the appeal. That motion must be supported by a certificate of the Clerk of this Court showing the date and substance of the Final Order from which the appeal was taken, the date on which the Notice of Appeal was filed, the expiration date of any order extending the time for transmitting the Record on Appeal, and proof of service. The appellant may respond within 10 days of such service.[44]

Preparation and Filing the Brief.

Perhaps the most challenging aspect of the appellate process is preparing an effective Brief, especially without the assistance of an experienced attorney. A Brief is a written document that explains to the Court of Appeals the prejudicial errors made by this Court and what you want the Court of Appeals to do for you. The challenge is that the Brief must be written in a manner that conforms to the detailed requirements set forth in Ohio App. R. 16 and Loc. R. 16. The failure to do so can result in your appeal being dismissed.

[40] App. R. 3(C)(2)
[41] App. R. 3(C)(1)
[42] App. R. 4(B)
[43] App. R. 9(B)(5)
[44] App. R. 11(C)

- Timing and Filing.

  - Regular Calendar. If the appeal is placed on the regular calendar, then as required by Ohio App. R. 11(B), when the Record on Appeal is received and docketed by the Clerk of the Court of Appeals, the Clerk will deliver a notice to all parties as to the date that the Record on Appeal is filed. That notice and the filing date are critical because, pursuant to Ohio App. R. 18(A) (and except of provided in Ohio App. R. 14(C)), the appellant must file with the Clerk of Court of Appeals and serve upon all parties, the appellant's Brief within 20 days after the date of filing the Record on Appeal. Then, the appellee must file with the Court of Appeals, and serve upon all parties, the appellee's Brief within 20 days after receiving appellant's Brief. Finally, the appellant may file and serve a reply Brief to the appellee's Brief within 10 days after receipt of appellee's Brief.[45] The appellant and the appellee shall file their Brief with the Clerk of Courts for the Court of Common Pleas, Geauga County, which office is located on the 3rd Floor of the Courthouse, 100 Short Ct. St., Chardon, Ohio 44024.

  - Accelerated Calendar. If the appeal is placed on the Accelerated Calendar, then please review Ohio App. R. 11.1 (A) and Loc. R. 11.1. Essentially, the timing for filing is reduced from 20 days to 15 days for both appellant's Brief and appellee's Brief, and no reply Brief is permitted.

  - Dismissal. Pursuant Ohio App. R. 18(C), the Court of Appeals may dismiss the appeal if the appellant's Brief is not timely filed and may disallow the appellee from attending the oral argument if appellee's Brief is not timely filed.

  - Copies. A party must file four copies of the Brief with the Clerk of the Court of Appeals.[46]

- Format. The format for preparing a Brief is set forth in detail in Ohio App. R. 16 and Loc. R. 16. You must review both of those rules carefully. The Help Center recommends that you review a sample brief, which is on the Court of Appeals' website at: <http://www.11thcourt.co.trumbull.oh.us/pdfs/Brief%20Website.pdf.[47]

  Fundamentally, the purpose of the Brief is to inform the Court of Appeals of (1) the prejudicial errors committed by this Court, (2) a description of the case that was presented to this Court, (3) the relevant facts as set forth in the Record on Appeal, (4) the legal analysis and explanation of the prejudicial errors that this Court committed, including a description of the applicable legal authorities, and (5) a description of what the party wants the Court of Appeals to do.

  At the risk of oversimplifying the requirements, the structure of the Brief is the following:

  - Table of Contents, including page references;
  - A Table of Cases, that lists all of the applicable case law, statutes, and other legal authorities that support the appellant's/appellee's argument;
  - A statement of each "assignment of error" and a statement of the "issue presented" for each "assignment of error;"

[45] See App. R. 18(A) and Loc. R. 16

[46] App. R. 18(B)

[47] The sample brief can also be found at <http://www.11thcourt.co.trumbull.oh.us/pdfs/Brief%20Website.pdf>.

- A Statement of the Case, which describes the nature of the case that was presented to this Court;
- A Statement of the Facts that are relevant to each "assignment of error;"
- The Argument, which explains to the Court of Appeals the applicable law, the relevant facts, and why this Court committed the error(s) described in the "assignment of errors." This typically is the bulk of the Brief;
- A Conclusion that describes the relief sought by the appellant/appellee.

  - Form. You must pay particular attention to App. R. 19 and Loc. R. 16 for the exact form of the Brief, including spacing, paper and type size, the font, number of words or pages permitted etc.

- Prehearing Conference. As permitted by App. R. 20, the Court of Appeals may require the parties to attend a prehearing conference in an effort to simplify the issues and other matters that could assist the appellate process.

- Oral Argument.[48]

  - Must Be Requested. No oral argument will be scheduled unless a party requests on oral argument by placing a bold notice on the cover of that party's Brief – i.e. "**ORAL ARGUMENT REQUESTED**."[49] If appellant does not properly request an oral argument, then oral argument is waived unless the appellee requests an oral argument.

  - Notice.[50] The Clerk of the Court of Appeals shall give written notice to the parties or their attorneys of the date, time, and location of the oral argument. The Court of Appeals shall consider continuances of oral argument upon written motion establishing good cause for the continuance. The party requesting the continuance shall file the written motion within 10 days after the time-stamped date of the Notice of Oral Argument; provided that the Court of Appeals may enlarge that 10-day period upon a showing of exceptional circumstances.

  - Time Allowed.[51] The appellant and the appellee are given 15 minutes each to present their arguments.

  - Presentation. The appellant will start the oral argument and will present a brief summary of the appeal before proceeding with appellant's argument. The appellant may reserve some time for rebuttal after the appellee's argument. Following the appellant's initial argument, the appellee will use his or her 15 minutes to present appellee's argument. The parties should be prepared to receive and answer questions for the judges. That may be the most challenging part of the oral argument process.

- Judgment.[52] Following the oral argument, in some cases some weeks after the oral argument, the Court of Appeals will issue its judgment in the form of a written opinion. After docketing the judgment, the Clerk of the Court of Appeals will deliver a copy of the judgment to all parties.

[48] See generally, Loc. R. 21
[49] Loc. R. 21(A) and App. R. 21(A)
[50] Loc. R. 21(C)
[51] Loc. R. 21(D)
[52] App. R. 30(A)

- Failure to Prosecute.[53] Unless the defaulting party demonstrates that no undue delay and no prejudice has been caused to the opposing party by the failure to comply with the Ohio Rules of Appellate Procedure or the Eleventh Appellate District Local Rules, the following are good cause for dismissal of an appeal pursuant to App. R. 3(A), 11(C), or 18(C):

    - Failure to file a Docketing Statement as required by Loc. R. 11;

    - Failure to file with the Notice of Appeal the appropriate filings required by App. R. 9(B), and Loc. R. 3;

    - Failure to timely order in writing from the court reporter any necessary Transcript of Proceedings, or to timely file any necessary statement of evidence pursuant to App. R. 9(C) or (D), or a notice that no Transcript of Proceedings or narrative statement will be filed as required by Loc. R. 3;

    - Failure to cause the Record on Appeal to be timely transmitted to the Clerk of the Court of Appeals;

    - Failure to timely file a Brief with assignments of error and issues presented for review;

    - Any other non-compliance with the Ohio Rules of Appellate Procedure or the Eleventh Appellate District Local Rules.

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LEGAL PRACTICE IN THE PROBATE COURT, THE JUVENILE COURT, AND THE ELEVENTH APPELLATE DISTRICT IS RESTRICTED BY LAW TO ATTORNEYS WHO ARE LICENSED BY THE SUPREME COURT OF OHIO. IF AN INDIVIDUAL WISHES TO HANDLE HIS OR HER OWN CASE, THAT PERSON MAY ATTEMPT TO DO SO, HOWEVER DUE TO THE COMPLEXITY OF THE LAW AND DESIRE TO AVOID COSTLY ERRORS, MANY PERSONS WHO HAVE MATTERS BEFORE THE ELEVENTH APPELLATE DISTRICT COURT OF APPEALS ARE REPRESENTED BY AN ATTORNEY.

IF YOU CHOOSE TO REPRESENT YOURSELF AND USE THE COURT'S FORMS, PLEASE BE ADVISED THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF THE GEAUGA COUNTY PROBATE OR JUVENILE COURT, INCLUDING THE HELP CENTER STAFF, OR EMPLOYEES OF THE ELEVENTH APPELLATE DISTRICT COURT OF APPEALS FROM PROVIDING YOU WITH LEGAL ADVICE OR ASSISTING YOU IN THE SELECTION OR PREPARATION OF LEGAL FORMS. IF YOU NEED ADDITIONAL ASSISTANCE YOU WILL NEED TO CONTACT AN ATTORNEY OF YOUR CHOOSING.

[53] Loc. R. 103

APPENDIX A

WARNING - THE INFORMATION SET FORTH IN THIS APPENDIX MAY NOT BE COMPLETE AND IS NOT A SUBSTITUTE FOR LEGAL ADVICE AND THOROUGH LEGAL RESEARCH. THE HELP CENTER HIGHLY RECOMMENDS THAT YOU OBTAIN ADVICE FROM AN ATTORNEY THAT YOU CHOOSE BEFORE DECIDING WHETHER TO FILE AN APPEAL.

The following is a list of some fundamental principles that a pro se litigant might consider when deciding whether to file an appeal and deciding the "assignment(s) of error" to identify on the Docketing Statement and the form titled "GC APP 9.0 - App. R. 9(B)(5) Statement," and when preparing a Brief.

1. Limitation of Appeal Process. An appeal is a review of this Court's application of the law. The Court of Appeals does not provide you with a new trial, and except for rare instances, the Court of Appeals will not consider new evidence. The primary function of the Court of Appeals is to decide whether this Court committed a prejudicial error.

2. Preservation of Right of Appeal. If this Court committed an error arising from the rules governing this Court and the conduct of a trial, and if you failed to timely "object" to that error before, during, or after the trial in the manner permitted by law, which would allow the trial judge to consider and correct the error, then generally the Court of Appeals will not allow that error to be considered by the Court of Appeals. In other words, if you do not raise an objection with the trial judge (or magistrate) when the error is committed, then you likely will not be able to present that error to the Court of Appeals as ground to reverse this Court's judgment.

   It is well-established that an appellate court will not consider issues or arguments raised by the parties on appeal that were not raised to or considered by this Court. See *Anderson v. Anderson,* 2009-Ohio-5636.

   a. Examples where the trial judge could commit an error would be the trial judge's failure to properly apply:

      i. the Rules of Civil Procedure
      ii. the Rules of Juvenile Procedure
      iii. the Rule of Superintendence for Ohio Courts – Probate Court
      iv. the Rules imposed upon Ohio courts by the Ohio Revised Code
      v. the Rule of Evidence
      vi. requirements of the Ohio or United States Constitution

      However, in each case, when the trial judge commits the error, the party adversely affected must timely object (point out the error to the trial judge).

   b. If the trial was conducted by a magistrate, and the party adversely affected fails to timely object to the magistrate's decision, then that party has waived the right to appeal that decision. See Civ. R. 53 and the Information Sheet titled "Conduct at a Hearing."

c. Plain Error Doctrine.[54] In rare cases, a Court of Appeals may reverse a Final Order based upon a procedural error even if the appellant fails to timely object to that error by applying what is known as the "plain error" doctrine. The "plain error" doctrine has been used by appellate courts in juvenile cases where this Court permanently terminated parental rights of a minor child.

I*n appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at this Court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.* See *In re E.B*., 2014-Ohio-5764.

*By its very terms, the "plain error" rule places three limitations on a reviewing court's decision to correct an error" that was not preserved at trial. . . . First, an error, "i.e., a deviation from a legal rule," must have occurred. . . . Second, the error complained of must be plain, that is, it must be "an 'obvious' defect in the trial proceedings. . . . Third, the error must have affected 'substantial rights.' We have interpreted this * * * to mean that this Court's error must have affected the outcome of the trial.* See *State v. Morgan*, 153 Ohio St.3d 196, 2017-Ohio-7565

Plain error is particularly difficult to establish here because parental rights determinations "are some of the most difficult and agonizing decisions a trial judge must make," and, therefore appellate courts must grant "wide latitude" to this Court's consideration of the evidence. See *Robinette v. Bryant*, 2013-Ohio-2889

3. Abuse of Discretion; Manifest Weight of the Evidence. Generally, a Court of Appeals will not "second guess" the trail judge's findings of fact based upon the admissible evidence presented at the trial and the conclusions of law resulting from those findings of fact.

As an appellate court, we are not the trier of fact; instead, our role is to determine whether there is relevant, competent, and credible evidence upon which the factfinder could base his or her judgment. . . . It is well-established that this Court in a bench trial is in the best position to determine the credibility of witnesses. . . . Furthermore, this Court, as the fact finder, is free to believe all, part, or none of the testimony of each witness. See State v. Caldwell (1992), 79 Ohio App.3d 667, 679, 607 N.E.2d 1096.[55]

. . . A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before this Court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not. The determination of credibility of testimony and evidence must not be encroached upon by a reviewing tribunal, especially to the extent where the appellate court relies on unchallenged, excluded evidence in order to justify its reversal. See *Davis v. Flickinger,* 77 Ohio St.3d 415, 418 (1997)

An abuse of discretion is a term of art reflecting a court's exercise of judgment that fails to comport with the record or logic. . . This standard has been found to be 'particularly

[54] See Crim. R. 52(B). Typically, the "plain error" doctrine is applied in the appeal of a criminal cases.
[55] *In re K.D.,* 2018-Ohio-3381

appropriate' in cases involving issues relating to the custody of and, by extension, visitation with children since the trial judge is in the best position to determine the credibility of the witnesses and there 'may be much that is evident in the parties' demeanor and attitude that does not translate well to the record. See *In re T.J.T.P.*, 2019-Ohio-837

We will not reverse a judgment as being against the manifest weight of the evidence when the record contains some competent, credible evidence going to all the essential elements of the case. . . . In conducting our review, we must make every reasonable presumption in favor of this Court's findings of fact. . . . We give deference to this Court as the trier of fact because it is "best able to view the witnesses and observe their demeanor, gestures, and voice inflections, and use these observations in weighing the credibility of the proffered testimony. See *In re C.V.M.*, 2012-Ohio-5514.

However, there are cases where an appellate court reversed a trial court order on the basis that this Court's Final Order was against the "manifest weight of the evidence," such as:

- *In re A.C.*, 2012-Ohio-826 [Ohio Ct. of App. Lucas Cty.]
- *Cantrell v. Trinkle*, 2011-Ohio-5288 [Ohio Ct. of App. Clark Cty.]

4. Permanent Custody Appeal.

To determine whether a permanent custody decision is against the manifest weight of the evidence, an appellate court must weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving evidentiary conflicts, this Court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed . . . In reviewing evidence under this standard, we defer to this Court's determinations of matters of credibility, which are crucial in these cases, where demeanor and attitude are not reflected well by the written record.
In a permanent custody case the dispositive issue on appeal is whether this Court's findings . . . were supported by clear and convincing evidence. Clear and convincing evidence is that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established. [I]f the children services agency presented competent and credible evidence upon which the trier of fact reasonably could have formed a firm belief that permanent custody is warranted, then the court's decision is not against the manifest weight of the evidence. The essential question we must resolve is whether the amount of competent, credible evidence presented at trial produced in the court's mind a firm belief or conviction that permanent custody was warranted. See *In re I.B-C.* , 2019-Ohio-1464 [4th App. Dist.]

When questions of fact are tried by a court without a jury, judgment may be general for the prevailing party unless one of the parties in writing requests otherwise in which case, the court shall state in writing the conclusions of fact found separately from the conclusions of law. R.C. 2151.414(C) states: "If the court grants permanent custody of a child to a movant under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding." The failure to request findings of fact and conclusions of law ordinarily results in a waiver of the right to challenge this Court's lack of an explicit finding concerning an issue. When a party does not request that this Court make findings of fact and conclusions of law under Civ. R. 52, the reviewing court will presume that this Court considered all the factors and all other relevant

> *facts. . . . Thus, in the absence of a proper request for findings of fact and conclusions of law, a trial court need not specifically set forth its findings regarding the R.C. 2151.414(E) factors. . . . Furthermore, in the absence of findings of fact and conclusions of law, we generally must presume that this Court applied the law correctly and must affirm if some evidence in the record supports its judgment.* See *In re I.B-C.* , 2019-Ohio-1464 [4th App. Dist.]

For a Court of Appeals to determine whether there has been an abuse of discretion it is critical, in practically all cases, that the appellant cause a Full Transcript of Proceedings to be included in the Record on Appeal.