

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
LAKE COUNTY, OHIO**

**CASE NO. 2023-L-114**

CAREER & TECHNICAL ASSOCIATION,

Plaintiff-Appellee,

vs.

AUBURN VOCATIONAL SCHOOL DISTRICT BOARD OF EDUCATION,

Defendant-Appellant.



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**REPLY BRIEF OF DEFENDANT-APPELLANT AUBURN VOCATIONAL SCHOOL  
DISTRICT BOARD OF EDUCATION**

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**ORAL ARGUMENT REQUESTED**

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## **STATEMENT OF THE CASE**

Plaintiff-Appellee Career & Technical Association (“CATA”) asserts that the Trial Court specifically held that the underlying planning period stipends amounted to compensation for State Teacher Retirement System of Ohio (“STRS”) retirement purposes and ordered Defendant-Appellant Auburn Vocational School District Board of Education (“Board”) to pay the same (Answer Brief at 1-2, 17-18, 20, 22). In reply, the Board submits that nothing could be further from the truth for the reasons set forth in the instant reply brief (*infra*) and Assignments of Error and Brief of Appellant (“Initial Brief”), as well as the original October 14, 2021 journal entry (T.d. 289) and sua sponte November 20, 2023 nunc pro tunc journal entry (T.d. 321).

## **STATEMENT OF FACTS**

### **1. Stipulations**

CATA misrepresents the nature of the underlying legal stipulations including, but not limited to, the March 22, 2021 stipulations (T.d. 278) (Answer Brief at 1, 3-10, 13, 16-20). In reply, the Board respectfully reincorporates and refers this Honorable Court to the accurate representation of these legal stipulations, which is set forth on pages 6-9 of the Initial Brief. In further reply, the Board notes that the Trial Court never adopted any legal stipulations into any journal entry for the reasons explained at pages 4-5 and 7, *infra*.

### **2. Journal Entries**

CATA also misrepresents the plain and unambiguous language of all the applicable journal entries (Answer Brief at 3-9). In reply, the Board respectfully reincorporates and refers this Honorable Court to the accurate representations of the October 16, 2020 journal entry (T.d. 267), which is set forth on pages 4-6 of the Initial Brief; the original October 14, 2021 journal entry (T.d. 289), which is set forth on pages 4 and 8-12 of the Initial Brief; the sua sponte November 20, 2023 nunc pro tunc journal entry (T.d. 321), which is set forth on pages 4 and 12-13 of the Initial Brief;

and the November 21, 2023 journal entry (T.d. 323), which is set forth on pages 4 and 12-13 of the Initial Brief. The Board further notes that CATA submits contradictory representations of the original and sua sponte nunc pro tunc orders throughout the Answer Brief.

On the one hand, CATA asserts that the original October 14, 2021 journal entry (T.d. 289) and sua sponte November 20, 2023 nunc pro tunc journal entry (T.d. 321) each specifically hold that the underlying planning period stipends amount to compensation for STRS retirement purposes and order the Board to pay the same (Answer Brief at 1-2, 17-18, 20, 22). CATA even asserts that the November 21, 2023 journal entry (T.d. 323) specifically contains such a holding and order (Answer Brief at 17, 20, 27-32). Nonetheless, a clear reading of all applicable orders proves such assertions to be false.<sup>1</sup>

On the other hand, CATA admits that no order actually contains any such specific holding and/or judgment but, instead, it was the Trial Court's "intent" to include such a holding and judgment in both orders (Answer Brief at 3-10, 14, 16-17, 23). In fact, CATA argues what CATA believes the Trial Court either intended or meant to say in its journal entries approximately 39 times throughout the body of the Answer Brief.

## **LAW AND ARGUMENT**

### **FIRST ASSIGNMENT OF ERROR**

The Trial Court erred in sua sponte issuing the November 20, 2023 journal entry (T.d. 321) purporting to be a nunc pro tunc order correcting the original October 14, 2021 journal entry (T.d. 289).<sup>2</sup>

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<sup>1</sup> The Board further respectfully reincorporates and refers this Honorable Court to the Initial Brief on pages 4-13 and 22-24, as well as footnotes 3-4, for the full legal analysis of the terms "less" and "plus" and authority in support of the fact that the Board was, at best, only ordered to pay a specific monetary amount **less** stipulated STRS amounts.

<sup>2</sup> CATA misstates the Board's first assignment of error (Answer Brief at 10). While Loc.R. 16(C)(1) notes "that the appellee may recast or substitute issues to support his contentions in demonstrating the absence of error," CATA is not permitted to recast or substitute the first assignments of error altogether.

## ISSUE PRESENTED FOR REVIEW AND ARGUMENT NO. 1

Whether the November 20, 2023 journal entry (T.d. 321) is a final appealable order for appellate jurisdictional purposes.<sup>3</sup>

This Honorable Court must disregard the arguments set forth by CATA in the Answer Brief and hold that the sua sponte November 20, 2023 nunc pro tunc journal entry (T.d. 321) is a final appealable order for appellate jurisdictional purposes as (1) a de novo standard of review applies to nunc pro tunc orders, (2) nunc pro tunc orders are limited to correcting clerical errors only, (3) the Trial Court never expressly adopted any legal stipulations in either the original or sua sponte nunc pro tunc orders, and (4) the Board never waived the right to appeal future nunc pro tunc orders by appealing the original order. Each reason is succinctly explained below.

### 1. A De Novo Standard of Review Applies to Nunc Pro Tunc Orders.

It is well-settled in the Eleventh District that whether a trial court properly issued a nunc pro tunc order is a question of law which this Honorable Court reviews de novo. *See, e.g., In re Guardianship of Rhinehart*, 11th Dist. Portage No. 2020-P-0047, 2020-Ohio-7005, ¶ 19 (explaining the same); *Home S. & L. Co. v. Great Lakes Plaza, LTD.*, 11th Dist. Lake Nos. 2011-L-168, 2011-L-169, 2011-L-170, 2011-L-171, 2012-Ohio-3420, ¶ 12 (same); *Swift v. Gray*, 11th Dist. Trumbull No. 2007-T-0096, 2008-Ohio-2321, ¶ 38 (same). While this jurisprudence is supported by the Eleventh and Twelfth District cases relied upon by CATA (Answer Brief at 11), the Second and Fourth District cases relied upon by CATA are in error (*id.*). *Compare Cefaratti v. Cefaratti*, 11th Dist. Lake Nos. 2008-L-151, 2009-L-055, 2010-Ohio-5661, ¶ 15, (explaining that “the trial court’s decision to adopt, reject, or modify a magistrate’s decision is reviewed for abuse of discretion”) and *Ashburn v. Roth*, 12th Dist. Butler Nos. CA2006-03-054, CA2006-03-070,

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<sup>3</sup> CATA recasts or substitutes the first issue as “[w]hether the November 20, 2023 journal entry, (T.d. 321), is a new final appealable order for appellate jurisdictional purposes” (Answer Brief at 11), which appears to be a distinction without a difference.

2007-Ohio-2995, ¶ 11 (explaining that “a reviewing court will not reverse a lower court’s exercise of discretion in determining jurisdictional issues involved in an interstate custody or visitation dispute absent an abuse of discretion”) with *Brush v. Hassertt*, 2d Dist. Montgomery No. 21687, 2007-Ohio-2419 (erroneously reviewing a Civ.R. 60(A) order under an abuse of discretion standard) and *Shaver v. Shaver*, 4th Dist. Gallia No. 05CA5, 2005-Ohio-6642 (same).

## **2. Nunc Pro Tunc Orders Are Limited to Correcting Clerical Errors Only.**

It is also well-settled in the Eleventh District that, as a matter of law, a nunc pro tunc order can only correct “clerical mistakes” in an original order but cannot make “substantive changes” to the original order. *See* Initial Brief at 18-19 (setting forth the legal authority explaining the same).

Yet, despite this well-settled jurisprudence, CATA argues that “[a] party may only appeal a valid nunc pro tunc order to the extent that such an order ‘changes matters of substance by creating new rights, denying existing rights, or resolving some genuine ambiguity’” (Answer Brief at 12). In support of its preposterous position, CATA misrepresents the citation of *Brush*, 2007-Ohio-2419 at ¶ 10, wherein the Second District simply addresses whether a trial court’s revision of a prior final judgment extends the time for appeal. Nothing in *Brush*, to the extent the opinion is even persuasive authority, changes the nature of a nunc pro tunc order as a matter of law.

## **3. No Legal Stipulations Were Ever Adopted by the Trial Court.**

Contrary to the ongoing assertions of CATA (Answer Brief at 13), the Trial Court never expressly adopted any legal stipulations in either the original order (T.d. 289) or sua sponte nunc pro tunc order (T.d. 321). Nor was the Trial Court bound, as a matter of law, by any legal stipulations including, but not limited to, the March 22, 2021 stipulations (T.d. 278). *See* Initial Brief at 6-9 (setting forth the legal authority explaining the same). **It cannot go unnoticed that CATA wholly ignores the legal authority holding that parties are prohibited from stipulating**

as to STRS compensability. See Initial Brief at 9 (setting forth the legal authority explaining the same).

#### 4. No Waiver Exists.

Contrary to the assertions of CATA (Answer Brief at 12-13), the Board never waived the right to appeal future nunc pro tunc orders (e.g., T.d. 321) by appealing the original October 14, 2021 journal entry (T.d. 289). Nor does the authority relied upon by CATA support such a preposterous position. In fact, quite the opposite is true.

Yet again, CATA misrepresents the case of *Brush*, 2007-Ohio-2419 (Answer Brief at 12-13), wherein an original order was issued in April 2006, the Brushes did not appeal the original order, a Civ.R. 60(A) order was then issued in June 2006, the Brushes appealed the Civ.R. 60(A) order, and the Second District held that the Brushes waived the right to contest the original order because they never appealed the same. Here, the Board timely appealed the original order (T.d. 289), as well as the subsequent sua sponte nunc pro tunc order (T.d. 321). Accordingly, the instant appeal is distinguishable from *Brush*.

CATA also misrepresents the case of *Geauga Savs. Bank v. McGinnis*, 11th Dist. Trumbull Nos. 2010-T-0052, 2010-T-0060, 2010-Ohio-6247 (Answer Brief at 12), wherein the Geauga Bank filed a Civ.R. 60(A) motion on April 5, 2010, the Second National Bank did not object to the Civ.R. 60(A) motion, the trial court issued a Civ.R. 60(A) order on April 15, 2010, the Second National Bank then appealed the Civ.R. 60(A) order, and this Honorable Court held that the Second National Bank waived its appeal from the Civ.R. 60(A) order because the Second National Bank never objected to the underlying Civ.R. 60(A) motion. Here, there was no Civ.R. 60(A) motion to object to as the Trial Court sua sponte issued the nunc pro tunc journal entry (T.d. 321) without any prior notice or opportunity to be heard by the Board. See Initial Brief at 2, fn. 1 (explaining



the meaning of sua sponte). Accordingly, the instant appeal is distinguishable from *Geauga Savs. Bank*.

## **ISSUE PRESENTED FOR REVIEW AND ARGUMENT NO. 2**

Whether the November 20, 2023 journal entry (T.d. 321) substantially alters the original October 14, 2021 journal entry (T.d. 289) and is, therefore, a legal nullity.<sup>4</sup>

This Honorable Court must disregard the arguments set forth by CATA in the Answer Brief and hold that the sua sponte November 20, 2023 nunc pro tunc journal entry (T.d. 321) substantially alters the original October 14, 2021 journal entry (T.d. 289) and is, therefore, a legal nullity as (1) the sua sponte nunc pro tunc order (T.d. 321) is improper in both form and substance, (2) a trial court is required to conduct a hearing prior to sua sponte issuing the nunc pro tunc order, (3) the Trial Court never expressly adopted any legal stipulations in either the original order (T.d. 289) or sua sponte nunc pro tunc order (T.d. 321), (4) the Trial Court was not required to expressly reject the legal stipulations, (5) the Trial Court never held that the underlying planning period stipends amounted to compensation for STRS retirement purposes and never ordered the Board to pay the same, and (6) the intent of the original order (T.d. 289) is wholly irrelevant to the instant de novo review of the sua sponte nunc pro tunc order (T.d. 321). Each reason is succinctly explained below.

### **1. The Sua Sponte Nunc Pro Tunc Order Is Improper in Both Form and Substance.**

CATA concludes – without any legal authority whatsoever – that the form and substance of the sua sponte nunc pro tunc journal entry (T.d. 321) were both proper (Answer Brief at 17-20). In reply, the Board respectfully reincorporates and refers this Honorable Court to pages 20-22 of

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<sup>4</sup> CATA recasts or substitutes the second issue as “[w]hether the November 20, 2023 journal entry, (T.d. 321), is a substantive change in judgment from the original October 14, 2021 journal entry. (T.d. 289)” (Answer Brief at 13), which appears to be a distinction without a difference. CATA also properly notes the Board’s original brief improperly referred to the date of the original October 14, 2021 journal entry as October 21, 2021.

the Initial Brief for the full legal analysis and authority in support of the form and substance requirements for nunc pro tunc orders.

**2. Hearings Are Required Prior to Sua Sponte Issuing Nunc Pro Tunc Orders.**

CATA also concludes – without any legal authority whatsoever – that the Trial Court was not required to hold a hearing prior to sua sponte issuing the nunc pro tunc journal order (T.d. 321) (Answer Brief at 16-17). In reply, the Board respectfully reincorporates and refers this Honorable Court to pages 20-21 of the Initial Brief for the full legal analysis and authority in support of the pre-hearing requirement for sua sponte nunc pro tunc orders.

**3. No Legal Stipulations Were Adopted by the Trial Court.**

Contrary to the ongoing assertions of CATA (Answer Brief at 17-20), the Trial Court never expressly adopted any legal stipulations in either the original order (T.d. 289) or sua sponte nunc pro tunc order (T.d. 321). In reply, the Board reincorporates the same arguments set forth on page 1, *supra*.

**4. The Trial Court Was Not Required to Expressly Reject the Legal Stipulations.**

Contrary to the assertions of CATA (Answer Brief at 18), legal stipulations are not automatically incorporated into a journal entry unless a trial court specifically rejects such legal stipulations in the journal entry itself. Not surprisingly, in support of this preposterous position, CATA again wholly misrepresents the case of *Brush*, 2007-Ohio-2419, which does not support this position at all. To the contrary, in the relied upon citation of *Brush*, 2007-Ohio-2419 at ¶ 27, the Second District simply improperly applies an abuse of discretion review to a Civ.R. 60(A) order. *See* pages 3-4, *supra* (explaining the proper de novo standard of review).

### **5. No Qualifying STRS Compensation Order Exists.**

Contrary to the assertions of CATA (Answer Brief at 17), the Trial Court never held that the underlying planning period stipends amounted to compensation for STRS retirement purposes and never ordered the Board to pay the same. In reply, the Board reincorporates the same arguments set forth on pages 1-2, *supra*.

### **6. Intent Is Wholly Irrelevant to Nunc Pro Tunc Orders.**

Contrary to the assertions of CATA (Answer Brief at 13-20), the intent of the original order (T.d. 289) is wholly irrelevant to the instant de novo review of the sua sponte nunc pro tunc order (T.d. 321). As explained by this Honorable Court:

The purpose of a nunc pro tunc order is to have the judgment of the court reflect its true action. The power to enter a judgment nunc pro tunc is restricted to placing upon the record evidence of judicial action which has actually been taken. It does not extend beyond the power to make the journal entry speak the truth, and can be exercised only to supply omissions in the exercise of functions which are merely clerical. It is not made to show what the court might or should have decided, or intended to decide, but what it actually did decide. (Emphasis deleted.)

*McKay v. McKay*, 24 Ohio App.3d 74, 75, 493 N.E.2d 317 (11th Dist.1985) (citations omitted).

*Compare* Initial Brief at 6-9 (explaining what the Trial Court could have decided) with Initial Brief at 10-13, 18-23 (explaining what the Trial Court actually decided). *See, generally*, Initial Brief at 18-23 (explaining why intent is irrelevant to nunc pro tunc orders).

Since the Trial Court never issued an order holding that the underlying planning period stipends amounted to compensation for STRS retirement purposes and never ordered the Board to pay the same, the totality of the Answer Brief is based solely upon what CATA believes the Trial Court either intended or meant to say. Since it is well-settled in the Eleventh District that nunc pro tunc orders are reviewed de novo and intent is wholly irrelevant to such reviews, it is not surprising

that none of the cases relied upon by CATA dispute this well-settled jurisprudence. *Contra Cefaratti*, 2010-Ohio-5661 (improperly applying an abuse of discretion review to a Civ.R. 60(A) order without opining as to the trial court's intent); *Shaver*, 2005-Ohio-6642 (improperly applying an abuse of discretion review to a Civ.R. 60(A) order without opining as to the trial court's intent); *Wood v. Wood*, 11th Dist. Portage No. 2009-P-0076, 2010-Ohio-2155 (explaining that the nunc pro tunc power is codified in Civ.R. 60(A) and opining as to the trial court's intent); *Ashburn*, 2007-Ohio-2995 (improperly applying an abuse of discretion review to a Civ.R. 60(A) order and opining as to the trial court's intent); *Brush*, 2007-Ohio-2419 (improperly applying an abuse of discretion review to a Civ.R. 60(A) order and opining as to the trial court's intent).

### **ISSUE PRESENTED FOR REVIEW AND ARGUMENT NO. 3**

Whether the November 20, 2023 journal entry (T.d. 321) is untimely and is, therefore, a legal nullity.

This Honorable Court must disregard the arguments set forth by CATA (Answer Brief at 20-23) and hold that the sua sponte November 20, 2023 nunc pro tunc journal entry (T.d. 321) is untimely and is, therefore, a legal nullity as (1) no exception to the Civ.R. 60(A) timelines exist, (2) the Trial Court never held that the underlying planning period stipends amounted to compensation for STRS retirement purposes and never ordered the Board to pay the same, and (3) nunc pro tunc orders are limited to correcting clerical errors only. In reply, the Board reincorporates and refers this Honorable Court to the arguments set forth on pages 1-2 and 8, *supra*, as well as on pages 24-25 of the Initial Brief.

## **SECOND ASSIGNMENT OF ERROR**

The Trial Court erred in denying the summary application (T.d. 295) for a post-judgment Civ.R. 22 interpleader order for the disposition of the \$1,486,045.78 judgment award for safekeeping, payment, and disposition by the Trial Court (T.d. 323).<sup>5</sup>

### **ISSUE PRESENTED FOR REVIEW AND ARGUMENT NO. 1**

Whether the November 21, 2023 journal entry (T.d. 323) is a final appealable order for appellate jurisdictional purposes.

This Honorable Court must disregard the arguments set forth by CATA (Answer Brief at 24-26) and hold that the November 21, 2023 journal entry (T.d. 323) is a final appealable order for appellate jurisdictional purposes. In reply, the Board reincorporates and refers this Honorable Court to the arguments set forth on page 26 of the Initial Brief.

### **ISSUE PRESENTED FOR REVIEW AND ARGUMENT NO. 2**

Whether the Trial Court had jurisdiction to rule upon the summary application (T.d. 295) for a post-judgment Civ.R. 22 interpleader order (T.d. 323).<sup>6</sup>

This Honorable Court must disregard the arguments set forth by CATA (Answer Brief at 27-32) and hold that the Trial Court had jurisdiction to rule upon the summary application for a post-judgment Civ.R. 22 interpleader order. In reply, the Board respectfully reincorporates and refers this Honorable Court to the arguments set forth above, as well as on pages 26-27 of the Initial Brief. In further reply to the STRS arguments set forth by CATA (Answer Brief at 28-32), the Board respectfully reincorporates and refers this Honorable Court to the arguments set forth on pages 8-9 of the Initial Brief.

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<sup>5</sup> CATA misstates the Board's second assignment of error (Answer Brief at 24). While Loc.R. 16(C)(1) notes "that the appellee may recast or substitute issues to support his contentions in demonstrating the absence of error," CATA is not permitted to recast or substitute the second assignments of error altogether.

<sup>6</sup> CATA recasts or substitutes the second issue as "[w]hether the Trial Court had jurisdiction to rule upon the Board's post-judgment "motion for interpleader. (T.d. 295), (T.d. 323)" (Answer Brief at 26).

**CONCLUSION**

Based upon the foregoing and the Initial Brief, this Honorable Court must reverse both the sua sponte November 20, 2023 journal entry (T.d. 321) and November 21, 2023 journal entry (T.d. 323).

Respectfully submitted,

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