

STATE OF OHIO)
) SS.
COUNTY OF LAKE)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

CAREER & TECHNICAL ASSOCIATION,

JUDGMENT ENTRY

Plaintiff-Appellee,

CASE NO. 2023-L-114

- vs -

AUBURN VOCATIONAL SCHOOL
DISTRICT BOARD OF EDUCATION,

Defendant-Appellant.

On April 19, 2024, appellant, Auburn Vocational School District Board of Education (“the Board”), filed an “Application for En Banc Consideration and Motion for Reconsideration as to Whether the Trial Court has Jurisdiction over Nunc Pro Tunc Orders” and a “Motion to Certify a Conflict as to Whether the Trial Court has Jurisdiction over Nunc Pro Tunc Orders.” (Sic.) Appellee, Career & Technical Association (“CATA”), has duly opposed the filings, and the Board replied to CATA’s opposition. The “application” and “motions” challenge this court’s April 9, 2024 dismissal of the Board’s appeal from the trial court’s judgment denying the Board’s “motion for interpleader.” *See Career & Technical Assoc. v. Auburn Vocational School Dist. Bd. of Edn.*, 2024-Ohio-1348, --- N.E.3d ---- (11th Dist.)

Each of the Board’s filings argue this court’s dismissal of its appeal in the underlying matter was error because, it claims, this court has jurisdiction over appeals from nunc pro tunc orders to determine whether such orders are deemed nullified as a matter of law. The Board cites various cases from this court supporting this conclusion and therefore seeks en banc consideration of the issue.

It additionally claims other districts have drawn the same legal conclusion. Hence, the Board requests this court to certify a conflict with the Supreme Court of Ohio.

In the underlying matter, this court dismissed the appeal for lack of a final, appealable order deriving from the trial court's denial of the Board's post-judgment/post-appeal motion for interpleader. Nevertheless, this court did make the following observations relating to the Board's contentions regarding the trial court's issuance of a November 20, 2023 "Nunc Pro Tunc Correcting Order." We noted:

[W]e discern no substantive change between the original, October 14, 2021 judgment, and the November 2023 nunc pro tunc order. Specifically, the order purports to clarify the court's intent regarding the members entitled to damages and the manner in which the proceeds would or should be allocated to STRS. The original order states, "Based on this evidence, the court awards judgment to Career Tech and against Auburn in the sum of \$1,486,045.78 (on behalf of and to be distributed to each member enumerated in Exhibit A[, the exhibit listing the members, the amount to which they are entitled, and an amount each should receive after contributions to STRS]). The nunc pro tunc provides: "Based on this evidence, the court awards judgment to Career Tech and against Auburn in the sum of \$1,486,045.78 (to be distributed by Auburn directly to each member enumerated in Exhibit A in the amounts stipulated, as set forth in Exhibit A, less governmental withholding and the stipulated amounts owed to STRS)."

We do not perceive a substantive modification of the final order, but merely a clarification of the content of Exhibit A.

Career & Technical Assoc., 2024-Ohio-1348, ¶ 12-13.

Because a proper nunc pro tunc entry does not affect substantive rights but merely corrects a clerical or mechanical error, a *proper* nunc pro tunc entry does

not give rise to a new final order for purposes of appeal. *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, paragraph two of the syllabus (“A nunc pro tunc judgment entry issued for the sole purpose of complying with Crim.R. 32(C) to correct a clerical omission in a final judgment entry is not a new final order from which a new appeal may be taken”). “‘Nunc pro tunc’ means ‘now for then’ and is commonly defined as ‘[h]aving retroactive legal effect through a court’s inherent power.’” *Lester* at ¶ 19, quoting Black’s Law Dictionary 1174 (9th Ed.2009). Accordingly, a nunc pro tunc entry, by its nature, applies retrospectively to the judgment it corrects. *Lester* at ¶ 19. Thus, proper nunc pro tunc entries do not constitute final, appealable orders. *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 31 (stating that nunc pro tunc entry “does not create a new final, appealable order”). And such entries do not “restart the clock” for purposes of filing a timely appeal. *State v. Damron*, 4th Dist. Scioto No. 10CA3375, 2011-Ohio-165, ¶ 10; accord *State ex rel. Womack v. Marsh*, 128 Ohio St.3d 303, 2011-Ohio-229, 943 N.E.2d 1010, ¶ 15, quoting *State v. Yeaples*, 180 Ohio App.3d 720, 2009-Ohio-184, 907 N.E.2d 333, ¶ 15 (3d Dist.) (stating that “[a] nunc pro tunc entry is the procedure used to correct clerical errors in a judgment entry, but the entry does not extend the time within which to file an appeal, as it relates back to the original judgment entry”).

Only when the trial court changes a matter of substance or resolves a genuine ambiguity in a judgment previously rendered should the period within which an appeal must be taken begin to run anew. *Perfection Stove Co. v. Scherer*, 120 Ohio St. 445, 449, 166 N.E. 376 (1929); *Aetna Life & Casualty v. Daugherty*,

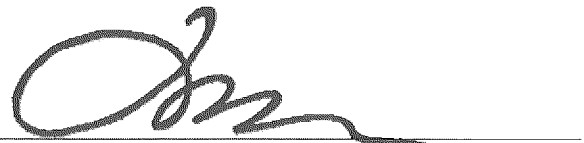
8th Dist. Cuyahoga No. 45368, 1983 WL 5940, *2 (Apr. 21, 1983). The relevant inquiry is whether the trial court, in its second judgment entry, has disturbed or revised legal rights and obligations which by its prior judgment had been settled with finality. See *Federal Trade Comm. v. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 211-212, 73 S.Ct. 245, 97 L.Ed. 245 (1952). See also *In re J.R.*, 8th Dist. Cuyahoga No. 92957, 2009-Ohio-4883, ¶ 11.

As demonstrated by the above-quoted passage from our underlying opinion, the nunc pro tunc entry was proper. It did not change the substance of the original entry and did not impose additional obligations on the parties or afford the parties any additional rights.

We accordingly decline to grant en banc consideration and further decline to certify a conflict with the Supreme Court of Ohio. Finally, to the extent the two filings at issue request reconsideration of the underlying matter, such a request is overruled.

For the reasons discussed in this judgment, the Board's motions/application are overruled.

Additionally, in light of this judgment, all pending motions are overruled.



PRESIDING JUDGE EUGENE A. LUCCI

MATT LYNCH, J.,

ROBERT J. PATTON, J.,

concur.