

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

CASE NO.: 2009-CV-51
Lower Case No.: 2009-SC-8068

ERNST URBAINCZYK,
Appellant,

v.

JEFFREY J. KOZAK,
Appellee.

Appeal from the County Court
for Orange County,
John E. Jordan, County Court Judge.

Michael E. Morris., Esq.,
for Appellant.

Lorraine M. Durham, Esq.,
for Appellee

Before POWELL, G. ADAMS, and EVANS, JJ.

PER CURIAM.

FINAL ORDER DISMISSING APPEAL

When this appeal was filed, there was no court reporter at the trial and thus no transcript of the proceedings. This Court entered an order on July 8, 2010 requiring Appellant to timely comply with Florida Rule of Appellate Procedure 9.200(b)(4), or this case would be dismissed. The order required Appellant to file a statement of the evidence, Appellee to file objections, and Appellant to submit the matter to the trial judge to settle and approve the statement so as to comply with the Rule. However, Appellant untimely served his Statement of the Evidence or Proceedings on July 21, 2010, past the deadline given him in our order. Appellee filed

and served his Objections and Proposed Amendments with the clerk of the trial court on August 6, 2010 and on November 15, 2010 a hearing was held on Appellant's Statement of Evidence. However, Appellant never submitted an order of the trial court settling and approving his Statement of Evidence as required by the Rule and this Court's Order.

Although we dismiss this appeal, we will address the merits which involve questions of law. Florida Rule of Civil Procedure 1.540 permits the correction of a misnomer (the misspelling of a party's name); it does not permit the substitution or addition of a new different party after trial. *See and compare G.B. Holdings, Inc. v. Steinhauser*, 862 So.2d 97 (Fla. 4th DCA 2003) (new party) and *Williams v. Palm Beach Community College Foundation, Inc.* 862 So.2d 917 (Fla. 4th DCA 2003) (misnomer). Therefore, we could not, as Appellant requests, substitute Luxury Auctions International LLC for him as defendant in the final judgment, and we leave the matter of the correct spelling of his name to the trial court.

APPEAL DISMISSED.

DONE AND ORDERED at Orlando, Orange County, Florida, on this 10th day of May, 2011.

/S/
ROM W. POWELL
Senior Circuit Judge

/S/
GAIL A. ADAMS
Circuit Judge

/S/
ROBERT M. EVANS
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished via U.S. mail on this _____ day of _____, 2011, to the following: **Michael E. Morris, Esq.**, P.O. Box 536044, Orlando, Florida 32853, and **Lorraine M. Durham, Esq.**, 7575 Dr. Phillips Blvd., Ste. 255, Orlando, Florida 32819; and **Honorable John E. Jordan**, 425 N. Orange Avenue, Orlando, Florida 32801.

/S/ _____
Judicial Assistant