IN THE SUPREME COURT OF THE STATE OF OHIO

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| STATE OF OHIO, *ex rel.*,<br><br>RICHARD F. SCHWARTZ, In His Capacity As The Director Of Law And Prosecuting Attorney Of The City Of Newton Falls, Ohio<br>19 North Canal Street<br>Newton Falls, Ohio 44444<br><br>Relator,<br><br>vs.<br><br>LARRY TURNER, In His Capacity As Judge Of The Newton Falls Municipal Court<br>19 North Canal St.<br>Newton Falls, Ohio 44444<br><br>Respondent. | CASE NO. 07 - 0303<br><br>**MEMORANDUM IN SUPPORT OF MOTION FOR ALTERNATIVE WRIT OF PROHIBITION** |

FILED
FEB 13 2007
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

## I. INTRODUCTION

Relator, Richard F. Schwartz, Director of Law and Prosecuting Attorney, City of Newton Falls, Ohio, respectfully submits this ***Memorandum in Support of his Motion for Alternative Writ of Prohibition*** seeking immediate relief to temporarily stay enforcement of an order entered by Respondent, Larry Turner, Judge, Newton Falls Municipal Court. The fundamental question posed is whether a Municipal Court may lawfully conduct criminal arraignments and other hearings at a



15033/495526-1

location outside that is outside of the court's statutorily-established territorial jurisdiction. Because it may not, and because Respondent has done so and has indicated an intention to resume doing so at the earliest possible opportunity after resolution of logistical issues, this Court must issue an alternative writ forthwith.

## II. STATEMENT OF FACTS

The facts underlying Relator's request for relief from this Court are straightforward. As set forth in the Verified Complaint, on January 9, 2007, Respondent *sua sponte* issued an order regarding arraignments of, and other hearings involving, criminal defendants who are being held at the Trumbull County Jail. Respondent decreed that, effective immediately, he would "hold arraignments of defendants in the custody of the Sheriff's Department in the Trumbull County Jail on Monday and Thursday afternoon[s] provided such dates are regular business days of the Court." (Complaint, ¶ 8 & Exh. 1.) In addition, the Order provided that arraignments of custodial defendants would continue to occur at the Trumbull County Jail "(i) so long as the judges of the Warren Municipal Court consent to such arrangement; (ii) so long as the Sheriff's Department and the Court are in accord to such arrangement and (iii) for six (6) months from the date of this Order." (Complaint, ¶ 9 & Exh. 1.)

Acting pursuant to that order, on or about January 22, 2007, Respondent in fact began conducting arraignments of Newton Falls Municipal Court prisons at the Trumbull County Jail. (Complaint, ¶ 10.) In addition, although the order specifically addressed only arraignments, Respondent conducted other proceedings involving Newton Falls Municipal Court prisoners at the Trumbull County Jail, such as probation violation hearings. (Complaint, ¶ 11 & Exh. 2).

After one week of proceedings pursuant to the January 9, 2007 order, Respondent issued another order on January 23, 2007. This order suspended arraignment of Newton Falls Municipal Court prisoners at the Trumbull County jail, but only until "assurances can be made that all prisoners have a full and open court arraignment." (Complaint, ¶¶ 13 & 14 & Exh. 3.)

Although Respondent has articulated a rationale for these hearings to be held at the Trumbull County Jail, Ohio law does not authorize a Municipal Court to conduct any judicial activity outside of the statutorily-prescribed territorial jurisdiction. (Complaint, ¶ 16.) Accordingly, all proceedings that Respondent conducts outside the territorial jurisdiction of the Newton Falls Municipal Court are without legal effect. (Complaint, ¶ 17.) This Court should issue a writ of prohibition requiring that Respondent permanently cease conducting arraignments or any other hearings of Newton Falls Municipal Court prisoners at any location outside the territorial jurisdiction of the Newton Falls Municipal Court. Further, this Court should forthwith issue an Alternative Writ of Prohibition that temporarily prevents Respondent from conducting such extra-territorial proceedings pending issuance of the Writ of Prohibition.

## III. LAW AND ARGUMENT

### A. STANDARDS FOR GRANTING THE REQUESTED RELIEF.

For a writ of prohibition to issue, the relator must establish three elements:

(1) the court against whom the writ is sought is about to exercise judicial or quasi-judicial power;

(2) the exercise of that power is unauthorized by law; and,

(3) denial of the writ will result in injury for which no other adequate remedy exists in the ordinary course of law.

*State ex rel. Tollis v. Court of Appeals* (1988), 40 Ohio St.3d 145, 147, 532 N.E.2d 727 (per curiam); *State ex rel. Fyffe v. Pierce* (1988), 40 Ohio St.3d 8, 9, 531 N.E.2d 673; *Commercial Savings Bank v. Wyandot County Court of Common Pleas* (1988), 35 Ohio St.3d 192, 193, 519 N.E.2d 647 (per curiam). Each of those standards is met here, justifying immediate issuance of the requested Writ of Prohibition.

### B. A WRIT OF PROHIBITION SHOULD ISSUE TO PREVENT RESPONDENT FROM ENGAGING IN AN IMPERMISSIBLE EXERCISE OF EXTRA-TERRITORIAL JURISDICTION.

#### 1. Respondent Has Exercised, And Is About To Continue Exercising, Judicial Power.

Respondent has clearly indicated an intent to exercise judicial power. He has issued and implemented an order mandating that arraignments of Newton Falls Municipal Court prisoners shall be conducted at the Trumbull County jail. He has also conducted other hearings involving Newton Falls Municipal Court prisoners at the Trumbull County Jail. And, although Respondent has temporarily suspended the implementation of that order until those proceedings can be made open to the public, as is required by Criminal Rule 10(A), it is clear that he intends to resume conducting proceedings at the Trumbull County Jail as soon as possible.

It is beyond cavil that conducting arraignments and probation violation hearings are exercises of judicial power. See *State ex rel. Methodist Book Concern v. Guckenberger* (Ohio Ct. App.), 57 Ohio App. 13, 16-17, 11 N.E.2d 277 ("Judicial power consists in interpreting and applying the law by a duly authorized court to the facts involved in a contention between parties respecting their rights."), *aff'd* (1937), 133 Ohio St. 27, 10 N.E.2d 1001; see also *State ex rel. Attorney General v. Guilbert* (1897), 56 Ohio St. 575, 581 (defining judicial powers as "those conferred on judges as courts in the hearing and determination of questions arising in litigation between parties to actions pending before them").

Thus, the first requirement for issuance of the Writ of Prohibition is satisfied.

### 2. Respondent's Decision To Conduct Extra-Territorial Arraignments And Other Judicial Hearings Is Unauthorized By Law.

It is a basic and well-settled principle of Ohio and American law that a court "cannot transcend the power legally conferred on it." *Russell v. Fourth National Bank* (1921), 102 Ohio St. 248, 261-62. Municipal courts are, of course, creatures of statute, vested with no inherent powers or abilities. *State v. Human* (Crawford Cty. Muni. Ct. 1978), 56 Ohio Misc. 5, paragraph 2 of the syllabus, 381 N.E.2d 969 ("A municipal court is a create of statute. * * * There is no inherent jurisdiction in a municipal court."). Instead, municipal courts have ***only*** those powers specifically conferred on them by statute. *Id.*; see also *State v. Veal* (Wadsworth Muni. Ct. 1977), 51 Ohio Misc. 61, 366 N.E.2d 304 ("[E]very statutory court must necessarily be guided in the exercise of its territorial and subject matter jurisdictions ***exclusively and entirely*** by state statute.") (emphasis added). Moreover, the statutes investing municipal courts with jurisdiction are strictly construed. *Human*, 56 Ohio Misc. 5, paragraph 4 of the syllabus ("Criminal jurisdiction is statutory and must be strictly construed [when] one is dealing with * * * a court of limited jurisdiction such as a municipal court.").

The Newton Falls Municipal Court was established pursuant to O.R.C. § 1901.01(A), and, pursuant to O.R.C. § 1901.02, it has territorial jurisdiction only within the municipal corporation of Newton Falls and the townships of Bristol, Bloomfield, Lordstown, Newton, Braceville, Southington, Farmington, and Mesopotamia. It may "sit"[1] within Newton Falls or any of the other townships over which it has territorial jurisdiction. See O.R.C. § 1901.021(A). But its jurisdiction does not extend outside those boundaries. See *Goody v. Scott* (Richland Cty. Oct. 18, 1995), No.

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[1] *Black's Law Dictionary* defines "sit" as "[t]o hold court; to do any act of a judicial nature. To hold a session, as of a court * * *." BLACK'S LAW DICTIONARY 1387 (6th ed. 1990).

95CA31, 1995 Ohio App. LEXIS 5984, at *4 ("It is clear and unambiguous that the jurisdiction of a municipal court does not exceed the boundary of its territory.") (copy attached). As the Montgomery County Court of Appeals explained in *Rose v. Mays* (Montgomery Cty. Nov. 1995), No. CA 15084, 1995 Ohio App. LEXIS 4863, "[t]he pertinent statutes for both the municipal courts and the county courts literally confer territorial jurisdiction." *Id.* at *10 (copy attached); *see also id* at *12 (Fain, J., concurring) ("[T]he language of the applicable statutes clearly ties the jurisdiction of the municipal and county district courts to their territory * * *.").

Numerous provisions of Chapter 1901 of the Revised Code relative to the powers of municipal courts reinforce that their power and jurisdiction are tied directly to the scope of their territorial jurisdiction. E.g., O.R.C. § 1901.19 (declaring that a municipal court has "jurisdiction ***within its territory*** to perform" certain specific actions in civil case) (emphasis added); O.R.C. § 1901.20 (declaring that in criminal matters, a municipal court has jurisdiction over "the violation of any ordinance of any municipal corporation ***within its territory***" and "felony cases committed ***within its territory***") (emphasis added). See also O.R.C. § 2901.12(A) (requiring that trial of a criminal matter be held in a court "***in the territory*** of which the offense or any element of the offense was committed") (emphasis added); O.R.C. § 2931.04 ("All municipal court judges have jurisdiction ***within the territory*** for which they were elected or appointed in all cases of violation of Chapters 4301. and 4303. of the Revised Code * * *.") (emphasis added). Because it may not lawfully "sit" – that is, exercise judicial power – outside these specific, delineated areas, any judicial action that it might take outside its territory is necessarily without force or legal effect.

Although no reported case from Ohio (or any other jurisdiction) appears to have determined the precise question posed by the instant proceedings, cases from other jurisdictions confirm that the exercise of extraterritorial jurisdiction such as that occurring here is impermissible. For example, in

*State v. Bell* (N.J. Super. Ct. App. Div. 1979), 399 A.2d 310, the New Jersey Superior Court, Appellate Division, considered the propriety of a search warrant issued by a Municipal Court judge for a search that was to take place in another Municipal Court's jurisdiction. It declared the warrant invalid, explaining as follows:

> A warrant issued by the judge of the Municipal Court of Aberdeen Township for the search of premises situation in the Borough of Union Beach, the issuing judge not then being designated or authorized to officiate as acting judge of the Municipal Court of Union Beach, is outside the territorial jurisdiction and excess the authority of the issuing judge and, as such, is illegal and void.
>
> In effect, no warrant issued and the search of the premises constituted a warrantless search.

*Id.* at 310 (citation omitted).

The Supreme Court of Idaho, in *Callahan v. Dunn* (Idaho 1917), 164 P. 356, issued a writ of prohibition to prevent the unauthorized exercise of territorial jurisdiction by a trial judge. In that case, a litigant attempted to have a proceeding pending in one judicial district heard by a judge of another judicial district that was in a separate territorial jurisdiction. And, the Supreme Court of Oklahoma, in *In the Matter of Application of McClaskey* (Okla. 1894), 37 P. 854, held that "where a person is tried and convicted at a time when the court cannot be legally held, the proceedings are void, and the judgment is a nullity." *Id.* paragraph 4 of the syllabus.

The foregoing discussion makes plain that the judge of an Ohio municipal court may only exercise judicial authority within the territorial jurisdiction of that court as established by statute. Manifestly, that principle is contravened by Respondent's decision to hold arraignments and other hearings of Newton Falls Municipal Court prisoners at the Trumbull County Jail, as the jail is located in Warren, Ohio, outside the territorial jurisdiction of the Newton Falls Municipal Court.

Accordingly, Respondent's January 9, 2007 order authorizing such extraterritorial proceedings is unauthorized by law, satisfying the second requirement for issuance of a writ of prohibition.

Thus, the second requirement for issuance of the Writ of Prohibition is satisfied.

### 3. Denial Of The Writ Will Result In Injury For Which There Is No Other Adequate Remedy.

The final requirement for issuance of a writ of prohibition is that denial of the writ will lead to injury for which no other adequate remedy exists. Although Respondent may be heard to argue that any defendant aggrieved by the extraterritorial proceedings has the right to assign that as an error on appeal, this Court has nevertheless concluded that issuance of a writ is appropriate in circumstances such as those presented here.

In *State, ex rel. Coyne v. Todia* (Ohio 1989), 45 Ohio St.3d 232, 543 N.E. 1271, this Court issued a writ to the Berea Municipal Court, prohibiting it from enforcing Local Rule 21, which purported to require that police and prosecuting attorneys in certain cities within the court's territorial jurisdiction refer traffic and criminal cases to the municipal court instead of to various mayor's courts that had previously been hearing those cases. One of Respondents' defenses in that case was that the relators had an adequate remedy at law via an appeal. This Court held that the third requirement for issuance of the writ of prohibition was nevertheless met, because "the adequacy of appeal is irrelevant in a prohibition case if a court is without any jurisdiction whatsoever to act." *Id.* at 236 (citing *State, ex rel. Adams v. Gusweiler* (1972), 30 Ohio St.2d 326, 329, 285 N.E.2d 22). In point of fact, this Court extended the *Gusweiler* holding to conclude that

> when an inferior court is without any jurisdiction whatsoever to act, the availability or adequacy of injunction as a remedy is immaterial to the exercise of supervisory jurisdiction by a superior court to prevent usurpation of jurisdiction by the inferior court.

*Id.*; see also *State ex rel. Fogle v. Steiner* (1995), 74 Ohio St.3d 158, 161, 656 N.E.2d 1288 ("[W]here an inferior court patently and unambiguously lacks jurisdiction over the cause, mandamus and prohibition will lie to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions.") (citing cases).

Those principles apply here. Respondent is without jurisdiction or authority to authorize arraignments or any other judicial proceedings of the Newton Falls Municipal Court outside the territorial jurisdiction of that court as established in the Ohio Revised Code. To the extent that Respondent purports to do so, this Court must issue a writ of prohibition, ordering that Respondent immediately cease and desist from such unauthorized and impermissible activity.

### C. AN ALTERNATIVE WRIT OF PROHIBITION SHOULD ISSUE FORTHWITH TO PREVENT FURTHER RESPONDENT FROM CONTINUING TO ENGAGE IN AN IMPERMISSIBLE EXERCISE OF EXTRA-TERRITORIAL JURISDICTION.

An alternative writ of prohibition may issue in extraordinary circumstances that justify immediate intervention. E.g., *State ex rel. Plain Dealer Publishing Co. v. Hamilton County Court of Common Pleas* (1989), 44 Ohio St.3d 602, 602, 542 N.E.2d 1102 (refusal to allow public access to exhibit introduced into evidence justified alternative writ).

Such circumstances are present here. As noted above, Respondent is without legal authority or justification to conduct any proceedings of the Newton Falls Municipal Court outside of the territorial jurisdiction of that court, as established by statute. Respondent has done that and, pending resolution of certain logistical and administrative issues, Respondent appears intent on resuming that practice. In order to ensure that Respondent does not engage in further proceedings that are without force or effect, an Alternative Writ of Prohibition should issue forthwith.

## IV. CONCLUSION

For the foregoing reasons, this Court should immediately issue an Alternative Writ of Prohibition directed to Respondent, Larry Turner, Judge, Newton Falls Municipal Court, temporarily enjoining enforcement of any provisions of the Journal Entry dated January 9, 2007, filed in connection with "In the Matter of: ARRAIGNMENT OF DEFENDANTS IN THE CUSTODY OF THE TRUMBULL COUNTY SHERIFF," Newton Falls Municipal Court Case No. GEN-0700001. Further, after due proceedings, this Court should issue a Writ of Prohibition, permanently enjoining and restraining Respondent from enforcing any provisions of the Journal Entry dated January 9, 2007, filed in connection with "In the Matter of: ARRAIGNMENT OF DEFENDANTS IN THE CUSTODY OF THE TRUMBULL COUNTY SHERIFF," Newton Falls Municipal Court Case No. GEN-0700001.

Respectfully submitted,

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LEXSEE 1995 OHIO APP. LEXIS 5984

Positive
As of: Feb 12, 2007

**JAMES A. GOODY II, M.D., Plaintiff-Appellee, -vs- WALLACE SCOTT, ET AL., Defendants-Appellants.**

**Case No. 95CA31**

**COURT OF APPEALS OF OHIO, FIFTH APPELLATE DISTRICT, RICHLAND COUNTY**

***1995 Ohio App. LEXIS 5984***

**October 18, 1995, DATE OF JUDGMENT ENTRY**

**NOTICE:** [*1] THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.

**PRIOR HISTORY:** CHARACTER OF PROCEEDING: Civil Appeal from the Mansfield Municipal Court. Case No. 94-CVH-4058.

**DISPOSITION:** JUDGMENT: Reversed.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Defendant debtors appealed from a judgment of the Mansfield Municipal Court, Richland County, Ohio, that entered a default judgment against them for failure to pay medical bills to plaintiff, a physician creditor. The trial court also issued an order for garnishment of the debtors' wages.

**OVERVIEW:** Both the debtors and the creditor resided in Galion, Crawford County, Ohio, when the action commenced, the medical services were provided in Galion, Ohio, and the debtors were served by certified mail in Galion, Ohio. When the debtors wages' were being garnisheed, they appealed. They argued that the municipal court erred in authorizing any garnishment of their wages in that the underlying default judgment upon which the garnishment had been predicated was void ab initio for lack of subject matter jurisdiction because none of the parties resided in, nor did any of the actions concerned with the case take place within, the territorial jurisdiction of the municipal court. The court held that a municipal court's territorial jurisdiction was a necessary component of its subject matter jurisdiction. The court found that the municipal court lacked subject matter jurisdiction because the medical service was not provided within its territory, neither debtor resided within its territory, and neither debtor was served within its territory.

**OUTCOME:** The judgment of the municipal court was reversed and declared void for lack of subject matter jurisdiction. The court ordered that all monies collected by the creditor from the debtors under the void orders of the municipal court be returned to the debtors.

**CORE TERMS:** territory, municipal, subject matter jurisdiction, territorial, territorial jurisdiction, reside, garnishment, unambiguous, monetary, venue, assignment of error, subject matter, declared void, void, collected, township

**COUNSEL:** APPEARANCES:

For Plaintiff-Appellee:

For Defendants-Appellants: Victoria T. Bartels, Richland County Legal Services, Mansfield, Ohio 44902.

**JUDGES:** Hon. W. Don Reader, J., Hon. W. Scott Gwin, P.J., Hon. Sheila G. Farmer, J. Reader, J., Gwin, P.J. and Farmer, J. concur.

**OPINION BY:** W. Don Reader

**OPINION:** OPINION

*Reader, J.*

This is an appeal from a judgment of the Mansfield Municipal Court, Richland County, Ohio, that entered a default judgment against defendants-appellants Wallace and Tina Scott (Appellants) for failure to pay medical bills to plaintiff-appellee James A. Goody II, M.D. (Appellee). The trial court also issued an order for garnishment of Appellants' wages. Both Appellants and Appellee resided in Galion, Crawford County, Ohio, when this action commenced, the medical services were provided in Galion, Ohio, and Appellants were served by certified mail in Galion, Ohio. Appellants' wages are currently being garnisheed **[*2]** and they now appeal. Appellee did not file a brief in the case sub judice.

Appellants assign one error to the trial court:

ASSIGNMENT OF ERROR

> THE MUNICIPAL COURT ERRED IN AUTHORIZING ANY GARNISHMENT OF APPELLANTS' WAGES, IN THAT THE UNDERLYING DEFAULT JUDGMENT UPON WHICH THE GARNISHMENT HAS BEEN PREDICATED IS VOID AB INITIO FOR LACK OF SUBJECT MATTER JURISDICTION.

Appellants challenge the subject matter jurisdiction of the Mansfield Municipal Court in the proceedings at bar because none of the parties reside, nor any of the actions concerned with this case took place within the territorial jurisdiction of the Mansfield Municipal Court. Though not raised in the lower court, the issue of subject matter jurisdiction clearly may be raised at any point in the proceedings. Thus the issue before us is whether a municipal court's territorial jurisdiction is a necessary component of its subject matter jurisdiction. We find that it is.

*R.C. 1901.18* states in pertinent part:

> (A) * * * Subject to the monetary jurisdiction of municipal courts as set forth in *section 1901.17 of the Revised Code,* a municipal court has original jurisdiction *within its territory* **[*3]** in all of the following actions or proceedings and to perform all of the following functions:
>
> * * * *
>
> (2) In any action or proceeding at law for the recovery of money or personal property of which the court of common pleas has jurisdiction;
>
> (3) In any action at law based on contract, to determine, preserve, and enforce all legal and equitable rights * * * .
>
> Emphasis added.

*R.C. 1901.19* states in pertinent part:

> (A) [A municipal court has] jurisdiction within its territory in all of the following actions or proceedings and to perform all of the following functions:
>
> * * * *
>
> (4) In any civil action or proceeding at law in which the subject matter of the action or proceeding is located within the territory or when the defendant or any of the defendants resides or is served with summons within the territory; * * * *

*R.C 1901.02(B)* states in pertinent part:

> * * * * The Mansfield municipal court has jurisdiction within Madison, Springfield, Sandusky, Franklin, Weller, Mifflin, Troy, Washington, Monroe, Perry, Jefferson, and Worthington townships, and within sections 35-36-31 **[*4]** and 32 of Butler township in Richland county.

It is clear and unambiguous that the jurisdiction of a municipal court does not exceed the boudary of its territory. As stated by the Marion Municipal court in *Thomas v. Holiday Inn (Marion Mun. Ct. 1992), 62 Ohio Misc.2d 487, 601 N.E.2d 688:*

> The word "jurisdiction" in *R.C. 1901.19(A)* is unambiguous and has a clear meaning. *R.C. 1.42* states that words and phrases shall be read in context and construed according to the rules of grammar and common usage. *R.C. 1901.02*, defining the territorial jurisdiction of the court, *R.C. 1901.03(A)*, which defines the word "territory," and *R.C. 1901.19*, all explicitly use the word "jurisdiction" and not "venue." To ignore this unambiguous language and hold that the statutes relate only to venue would be to ignore the unequivocal language of these statutes, and reverse the traditional and long-standing territorial nature of municipal courts.

*Id. at 491.*

It is clear from the statutes cited, *supra*, that a municipal court has subject matter jurisdiction only if three requirements are met: (1) that any claim for money damages be within the court's monetary jurisdiction; **[*5]** (2) that the action fall within one of the categories listed in *R.C. 1901.18*; and (3) that the action have contact with the court's territorial limits (a) because the subject matter of the action is located within the court's territorial limits, (b) because at least one defendant resides within the court's territorial limits, or (c) because at least one defendant has been served within the court's territorial limits.

From the uncontested facts of this case, we find that the Mansfield Municipal Court lacked subject matter jurisdiction because it failed to meet the third requirement above; the medical service was not provided within its territory, neither defendant resided within its territory, and neither defendant was served within its territory.

Appellant's assignment of error is sustained.

For the foregoing reasons, the judgment of the Mansfield Municipal Court is reversed and declared void for lack of subject matter jurisdiction. We order that all monies collected by Appellee from Appellants under the void orders of the Mansfield Municipal Court be returned to Appellants within ten days of the filing of this order.

By Reader, J.

Gwin, P.J. and

Farmer, J. concur.

JUDGES

JUDGMENT **[*6]** ENTRY

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Mansfield Municipal Court is reversed and declared void for lack of subject matter jurisdiction. We order that all monies collected by Appellee from Appellants under the void orders of the Mansfield Municipal Court be returned to Appellants within ten days of the filing of this order.

LEXSEE 1995 OHIO APP. LEXIS 4863

Analysis
As of: Feb 12, 2007

**KATHLEEN M. ROSE, Plaintiff-Appellee, v. BILLY H. MAYS, Defendant-Appellant.**

**Case No. CA 15084**

**COURT OF APPEALS OF OHIO, SECOND APPELLATE DISTRICT, MONTGOMERY COUNTY**

***1995 Ohio App. LEXIS 4863***

**November 1, 1995, Rendered**

**NOTICE:** [*1] THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.

**PRIOR HISTORY:** T.C. Case No. 95CVI006.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Appellant sought review of an order from the First District County Court of Montgomery County (Ohio), which entered a default judgment against him after denying his motion to dismiss the action of appellee on grounds both of incorrect venue and lack of jurisdiction.

**OVERVIEW:** The county court entered a default judgment against appellant after it denied his motion to dismiss based upon both incorrect venue and lack of jurisdiction. Appellant contended that he resided within the jurisdiction of a municipal court and nothing indicated that the action arose from any transaction that arose within the territorial jurisdiction of the county court. Appellant sought review and the court declared all proceedings against appellant in the county court a nullity and, pursuant to *Ohio R. App. P. 12(B)*, vacated the judgment and dismissed appellee's action. The court concluded that the provisions of *Ohio Rev. Code Ann. § 1901.19(A)(4)* existed as a geographic limitation on the subject-matter jurisdiction of municipal courts and did not relate to venue. Accordingly, the county court did not have jurisdiction of the matter because appellant resided within a municipal court jurisdiction and there was nothing in the record to indicate that the subject matter of the action was located within the territory of the county court. Under *Ohio Rev. Code Ann. § 1907.01* the county court's jurisdiction was superseded by the municipal court district in which appellant resided.

**OUTCOME:** The court vacated the judgment against appellant and dismissed the action of appellee and declared all proceedings against appellant in the county court a nullity.

**CORE TERMS:** municipal, venue, territory, territorial jurisdiction, subject-matter, jurisdictional, territorial, resides, subject matter, long-standing, unequivocal, presently, strongest, incorrect, monetary, supplied, connotes, summons, assignments of error, assignment of error, jurisprudential

**COUNSEL:** KATHLEEN M. ROSE, 103 Corando, Brookville, Ohio 45309, Plaintiff-Pro se.

THOMAS M. BAGGOTT, S.C. Regis. No. 0001919, ALTICK & CORWIN, 1700 One Dayton Centre, One South Main Street, Dayton, Ohio 45402, Attorney for Defendant-Appellant.

**JUDGES:** FREDERICK N. YOUNG, J., WOLFF, J., concurs. FAIN, J., concurring.

**OPINION BY:** FREDERICK N. YOUNG

**OPINION:**

**OPINION**

FREDERICK N. YOUNG, J.

Billy H. Mays appeals from the entry of default judgment against him by the First District County Court of Montgomery County, Ohio. The appellee, Kathleen M. Rose, did not file a brief.

*App.R. 18(C)* provides, in part, that where an appellee has not submitted a brief in the time permitted, the court may accept the appellant's statement of the facts and issues as correct and reverse the judgment if the appellant's brief reasonably appears to sustain such action.

The appellant, in his brief, presents as a fact that he resides in the jurisdiction of the Kettering Municipal Court, Montgomery County, Ohio, but that he was sued in the small claims division of **[*2]** the First District Montgomery County Court. There are no facts presented which indicate that the suit arises from a transaction that took place within the territorial jurisdiction of the First District County Court. The appellant filed a motion with the county court to dismiss the suit on grounds both of incorrect venue and lack of jurisdiction. The court apparently denied the motion by telephone without comment, although no entry appears in the record of that fact. Nevertheless, pursuant to *App.R. 18(C)*, we shall accept it as a fact that the court did deny that motion. Further proceedings resulted which culminated in a default judgment against the defendant and the denial by the First District Court of the defendant's motion to vacate the judgment pursuant to Rule 60(B).

The appellant brings to us the following three assignments of error:

> I. IT CONSTITUTED ERROR FOR THE TRIAL COURT TO DENY DEFENDANT/APPELLANT'S MOTION TO DISMISS.
>
> II. IT CONSTITUTED ERROR FOR THE TRIAL COURT TO DENY DEFENDANT/APPELLANT'S MOTION FOR A CONTINUANCE.
>
> III. IT CONSTITUTED ERROR FOR THE TRIAL COURT TO DENY DEFENDANT/APPELLANT'S MOTION FOR RELIEF FROM JUDGMENT.

We **[*3]** could sustain the appellant's first assignment of error on the grounds of incorrect venue alone, but we find that a more fundamental question needs to be addressed, namely, whether the county court had subject matter jurisdiction of this particular case.

When the General Assembly established the county court system it provided in *R.C. § 1907.01* that "The County Court shall have jurisdiction throughout a county court district that shall consist of all territory within the county not subject to the territorial jurisdiction of any municipal court." (emphasis supplied).

In addition, *R.C. § 1907.15(B)* provides that "The jurisdiction of each county court judge shall be limited to his area of jurisdiction, except as provided [not relevant]." (emphasis supplied).

Municipal courts are provided jurisdiction "within the corporate limits of their respective municipal corporations." *R.C. § 1901.02(A)*. Moreover, according to statute, a municipal court has jurisdiction "within its territory" where "the subject matter of the action or proceeding is located within the territory or when the defendant...resides or is served with summons within the territory." *R.C. § 1901.19(A)(4)*. **[*4]**

Whether these municipal court provisions are jurisdictional in nature or merely relate to venue is a question that has vexed Ohio Courts for some time. We are persuaded that they are jurisdictional by the cogent reasoning of Municipal Court Judge William R.. Finnegan in ***Thomas v. Holiday Inn of Lima*** *(1992), 62 Ohio Misc. 2d 487, 601 N.E.2d 688.* Because the same analysis made by Judge Finnegan regarding municipal courts applies as well to county courts on the issue, we hereby set forth the judge's opinion on this issue in full:

> The issue of whether this court has jurisdiction in this action arises because of the language contained in *R.C. 1901.19(A)(4)*. This statute provides as follows:
>
> "Subject to the monetary jurisdiction of municipal courts as set forth in *section 1901.17 of the Revised Code*, a municipal court and a housing or environmental division of a municipal court have jurisdiction within its territory in all the following actions or proceedings and to perform all of the following functions:
>
> " * * *

"(4) In any civil action or proceeding at law in which the subject matter of the action or proceedings is located within the territory **[*5]** or when the defendant or when any of the defendants resides or is served with summons within the territory."

Prior to 1987, most of this language was found in former *R.C. 1901.19(D).*

While the above language speaks clearly of jurisdiction of the municipal court, it appears that courts across the state have had substantial problems determining whether jurisdiction or venue is actually dealt with by this language.

Subject-matter jurisdiction of a court connotes the power to hear and decide the case upon its merits; venue connotes the locality where the suit should be heard. *Morrison v. Steiner (1972), 32 Ohio St. 2d 86, 61 Ohio Op. 2d 335, 290 N.E.2d 841; Fireproof Constr., Inc. v. Brenner-Bell, Inc.* (1949), 152 Ohio St.347, 40 *Ohio Op. 375, 89 N.E.2d 472.*

Some courts in Ohio have held that the language found in present *R.C. 1901.19(A)(4)* refers to jurisdiction. *Melamed v. Catalano (M.C. 1981), 20 Ohio Op. 3d 428,* held that a municipal court has subject-matter jurisdiction of an action only if the monetary jurisdictional limit of $ 10,000 is not exceeded, pursuant to *R.C. 1901.17*; the action falls within one of the categories of actions **[*6]** the court is authorized to hear and determine under *R.C. 1901.18*; and, finally, that the action has at least one of the three contacts with the territorial limits of the court, which contacts are presently found in R..C. 1901.19(A)(4). The court further held that if an action satisfies the first two requirements, but fails to satisfy the third requirement, the municipal court does not have subject-matter jurisdiction of the action.

In the case of *Santiago v. S.S. Kresge Co. (C.P.1976), 2 Ohio Op. 3d 54,* it was stated at 56: "The territorial jurisdiction statutes, *R.C. §§ 1901.02* and *1901.19*, are clearly expressed as jurisdictional limitations. To hold that these statutes relate only to venue would be to ignore the unequivocal language of these statutes, and to reverse the traditional and long-standing territorial nature of these courts."

In the case of *Kacian v. Illes Constr. Co. (1970), 24 Ohio App. 2d 43, 53 Ohio Op. 2d 159, 263 N.E.2d 680,* the court also discussed the matter of the territorial jurisdiction of a municipal court as being an issue of jurisdiction as opposed to venue.

Perhaps the strongest case to support the proposition that the language **[*7]** of present R..C. 1901.09(A)(4) relates to jurisdiction, as opposed to venue, is *Gastaldo v. Parker Appliance Co. (1962), 173 Ohio St. 181, 18 Ohio Op. 2d 463, 180 N.E.2d 589,* in which the Ohio Supreme Court clearly treated the language of *R.C. 1901.19(A)(4)*, former *R.C. 1901.19(D)*, as relating to subject-matter jurisdiction, and not venue.

On the other hand, there is also case support indicating that *R.C. 1901.19(A)(4)* relates to venue, as opposed to jurisdiction. In *Fireproof Constr., Inc. v. Brenner-Bell, Inc., supra*, the Ohio Supreme Court held former Ohio General Code 1558-54b(d) to be a venue provision, even though said provision was written in terms of jurisdiction. The aforementioned section was part of the original legislation creating the Columbus Municipal Court, but a comparison of this provision with present *R.C. 1901.09(A)(4)* reveals a substantial similarity of language. The Ohio Supreme Court did not explain in the *Fireproof Constr., Inc.* case why the statute, which spoke of jurisdiction, was to be viewed as relating to venue instead of jurisdiction.

Perhaps the strongest case to support the view that *R.C. 1901.19(A)(4)* is a venue provision **[*8]** is *Brooks v. Hurst Buick-Pontiac-Olds-GMC, Inc. (1985), 23 Ohio App. 3d 85, 23 Ohio B. Rep. 150,*

*491 N.E.2d 345*. The court in *Brooks* attempted to distinguish the *Melamed* and *Santiago* cases, which support the view that the statute is jurisdictional, by stating that these cases relied upon earlier case law which preceded the Ohio Rules of Civil Procedure. The court further cited the case of *Morrison v. Steiner (1972), 32 Ohio St. 2d 86, 61 Ohio Op. 2d 335, 290 N.E.2d 841,* as supporting the proposition that every municipal court in Ohio has subject-matter jurisdiction in every case where the requirements of *R.C. 1901.18(C)* and *1901.17* are met.

This court finds the line of case authority supporting the proposition that *R.C. 1901.19(A)(4)* to be a jurisdictional statute to be the more persuasive line of authority. The court makes this determination for the following reasons.

First, the Ohio Supreme Court, in *Gastaldo, supra*, clearly dealt with the language presently found in *R.C. 1901.19(A)(4)* as relating to subject-matter jurisdiction and not venue. Second, the use of the word "jurisdiction" in *R.C. 1901.19(A)* is unambiguous and has a clear **[*9]** meaning. *R.C. 1.42* states that words and phrases shall be read in context and construed according to the rules of grammar and common usage. *R.C. 1901.02*, defining the territorial jurisdiction of the court, *R.C. 1901.03(A)*, which defines the word "territory," and *R.C. 1901.19*, all explicitly use the word "jurisdiction," and not "venue." To ignore this unambiguous language and hold that the statutes relate only to venue would be to ignore the unequivocal language of these statutes, and reverse the traditional and long-standing territorial nature of municipal courts.

It should also be noted that to construe *R.C. 1901.19(A)(4)* as a venue provision would also cause a constitutional problem, as it is quite clear that the delineation of proper venue is a procedural matter and is within the rulemaking power of the Ohio Supreme Court. *Morrison v. Steiner, supra.* If *R.C. 1901.19(A)(4)* were held to be a venue provision, said provision would be an enactment of the legislature relating to procedure in an area in which the Ohio Supreme Court has already promulgated a rule, being *Civ.R. 3(B)*. The statute would have to be held unconstitutional and in violation of the procedural rulemaking **[*10]** authority of the Ohio Supreme Court under Section 5(B), Article IV of the Constitution of Ohio. *State ex rel. Silcott v. Spahr (1990), 50 Ohio St. 3d 110, 552 N.E.2d 926.*

For all of the above reasons, the court holds that the provisions of *R.C. 1901.19(A)(4)* exist as a geographic limitation on the subject-matter jurisdiction of municipal courts, and do not relate to venue.

We can only add to Judge Finnegan's opinion that the Ohio Supreme Court has quite recently reiterated that "the literal language" of pertinent statutes "must be enforced whenever possible." ***State ex rel. Auglaize Mercer Community Action Comm., Inc. v. Ohio Civ. Rights Comm.*** *(1995), 73 Ohio St. 3d 723, 726, 654 N.E.2d 1250.* The pertinent statutes for both the municipal courts and the county courts literally confer territorial jurisdiction.

Applying the foregoing analysis, we find that the First District Court did not have jurisdiction in this case because the defendant resides within the territorial jurisdiction of a municipal court and there is nothing in the record to indicate that the subject matter of the action or proceeding was located within the territory of the county **[*11]** court or that the defendant was served there. The jurisdictional issue in this case was properly raised to the judge of the First District Court and, based on that ground, the complaint against the defendant should have been dismissed.

All proceedings in this case in the First District Court are a nullity. We hereby sustain the appellant's first assignment of error. Pursuant to *App.R. 12(B)*, the action against the appellant is dismissed and the judgment against the appellant is hereby vacated.

The appellant's second and third assignments of error are moot. If the appellee wishes to file a new action against appellant it must be filed in the Municipal Court of Kettering, Ohio, Small Claims Division, or elsewhere as she chooses in any court having jurisdiction over the appellant.

. . . . . .

WOLFF, J., concurs.

**CONCUR BY:** FAIN

**CONCUR:** FAIN, J., concurring:

I write separately only to register my unhappiness with the result. I cannot disagree with Judge Finnegan's well-reasoned analysis of the statutory language in ***Thomas v. Holiday Inn of Lima*** *(1992), 62 Ohio Misc. 2d 487, 601 N.E.2d 688.*

The problem with making jurisdiction depend upon rules of jurisprudence, **[*12]** even salutory rules like the rule that a case should be heard and decided in a municipal or county court that has some territorial connection with the facts of the case, is that judgments, upon which interested parties have relied, may be found to be jurisdictionally defective, and therefore worthless, long after their rendering supposedly put the controversy to rest. The advantage of making such rules jurisprudential, rather than jurisdictional, is that any jurisprudential defect in the proceedings must be timely raised, or it is waived.

The territorial basis for Ohio's municipal and county district courts ought to be a matter of venue, rather than of jurisdiction. Because the language of the applicable statutes clearly ties the jurisdiction of the municipal and county district courts to their territory, I cannot disagree with the result we reach in this case, but it is a bad result, and I suggest that the General Assembly amend these statutes to provide for state-wide jurisdiction of the muncipal and county district courts, within their amount-in-controversy limitations, with the territory of each court being material to the question of venue, as is the case with Ohio's common pleas **[*13]** courts.