

IN THE SUPREME COURT OF OHIO

GARY L. NUNN, : Supreme Court Case No. 2008-0595  
: :  
Appellant, : :  
: :  
vs. : On appeal from the  
: Warren County Court  
: of Appeals, Twelfth  
SPRING VILLAGE APARTMENTS, : Appellate District  
: Court of Appeal  
: :  
Appellee, : :  
: Appellate Case No. CA2007-07-090  
: Trial Case No. 06-CVF-00402

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MEMORANDUM OF APPELLEE SPRING VILLAGE APARTMENTS  
IN OPPOSITION TO JURISDICTION

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PRO SE APPELLANT



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I. **STATEMENT OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION**

The proposition of law raised by Appellant involves whether Appellee properly identified trial counsel in the court record. This is a procedural issue involving the enforcement of a Local Rule of Appellate Procedure, and does not contain any substantial constitutional questions for this Court's review. A reviewing court has the authority to create and enforce local rules of procedure to efficiently and fairly dispose of cases. See, *De Hart v. Aetna Life Ins. Co.* (1982) 69 Ohio St.2d 189, 190-91. That court's enforcement of its local rules is a procedural issue, and does not rise to the level of a substantial constitutional question or issue of public or great general interest. Furthermore, the public has great interest in resolving cases through well-reasoned argument, determined debate, and careful review of the law and precedent, not through procedural technicalities. *Id.*

Instead, what is apparent is that Appellant has filed a baseless appeal to this Court. Appellant followed the local rules of appellate procedure and followed the customs and practices of the courts of Ohio regarding the designation of counsel. The identity of Appellee's counsel, both the firm and designated counsel from that firm, was known to Appellant at all times throughout this case, both at the trial and appellate levels. For the foregoing reasons, Appellee respectfully suggests that Appellant's attempt to invoke this Court's jurisdiction should be denied.

## II. APPELLEE'S POSITION REGARDING APPELLANT'S PROPOSITION OF LAW

APPELLANT'S PROPOSITION OF LAW: APPELLEE FOLLOWED EVERY PROCEDURAL RULE DURING THIS CASE. FURTHER APPELLANT DOES NOT RAISE A SINGLE SUBSTANTIAL CONSTITUTIONAL QUESTION OR ISSUE OF PUBLIC OR GREAT GENERAL INTEREST. FINALLY, A COURT OF APPEALS DETERMINES LEGAL ISSUES ON THE MERITS, AND WILL NOT DISPOSE OF AN APPEAL ON PROCEDURAL TECHNICALITIES.

Appellant's proposition of law is baseless for three reasons. First, Appellee followed every procedure at both the trial level and the appellate level. At all times, Appellant was on notice that Christopher R. Conard was counsel of record for Appellee, as was evidenced when Appellant served every pleading on Mr. Conard. Second, Appellant's proposition of law does not contain a single substantial constitutional question or issue of public or great general interest, or otherwise invoke the jurisdiction of this Court. Finally, it is a fundamental principle in Ohio that courts will dispose of cases on the merits, and not on procedural technicalities as Appellant contends the Twelfth District Court of Appeals should have done.

Appellee adhered to every procedural rule and the customs and practices of the courts of Ohio regarding the designation of counsel throughout this case. At all times, at both the trial level and the appellate level, the law firm Coolidge Wall Co., L.P.A. and Christopher R. Conard were listed as counsel of record for Appellee. Appellant was on notice of this, and even acknowledged this when he served every pleading he filed on both Coolidge Wall Co., L.P.A., and Mr. Conard, specifically. At the trial level, Appellant served Mr. Conard with the following pleadings: Appearance of Counsel; Memorandum in Opposition to Defendant's Motion to Dismiss; Motion to Continue Pre-Trial Conference; Pre-Trial Statement; Motion for Summary Judgment; Affidavit of Gary Nunn; Affidavit in Support of Motion for Summary Judgment; Requests for Production of Documents and Interrogatories and Admissions. At the appellate level, Appellant served on Mr. Conard: Notice of Appeal; and Appellant's Brief. Even now, in

this petition to the Ohio Supreme Court, Christopher R. Conard has entered an appearance as counsel of record for Appellee. Therefore, Appellant's proposition of law is without merit, and this Court should not accept jurisdiction.

In addition, Appellant's proposition of law does not raise a single constitutional question or issue of public or great general interest. Instead, Appellant contends that he lost his appeal because the Twelfth District Court of Appeals, Warren County (the "Court of Appeals"), permitted three attorneys, on behalf of Appellee, to take part in the appeal, and did not require one of the attorneys to withdraw pursuant to Local App. R. 9(B). Appellant raised this issue with the Court of Appeals in his Motion for an Order Prohibiting Participation of Counsel ("Motion") under Rule 9. The Court of Appeals heard oral argument on Appellant's Motion and subsequently denied it. See, Entry Denying Motion for Order Prohibiting Participation of Counsel. The Court of Appeals then considered the assignments of error raised, and issued an opinion affirming the Trial Court's judgment against Appellant. See, Judgment Entry.

Appellant did not appeal the Judgment Entry of Twelfth District Court of Appeals, filed herein on February 11, 2008, affirming the Trial Court's granting of summary judgment in favor of Appellee on the basis of the legal doctrine of res judicata. Instead, Appellant appealed only the Appellate Court's denial of his Motion, the basis of which was a procedural question concerning a local appellate rule. Nowhere does Appellant state how his proposition of law is based upon a constitutional question or an issue of great general interest.

Appellant's proposition of law also does not invoke the jurisdiction of this Court in any other manner. In making a determination on Appellant's Motion, the Court of Appeals applied the correct law, Local App. R. of Procedure 9. Therefore, this Court does not have jurisdiction by virtue of the lower court applying the incorrect law. Moreover, this is a local procedural rule,

which specifically applies to appeals filed in the Court of Appeals for the Twelfth District. There is no conflict among the District Courts of Appeal regarding Local App. R. 9, and therefore, there is no conflict that requires resolution by this Court.

Even if this Court accepted Appellant's proposition of law, its determination would not affect the outcome of the case. Appellant initiated this case seeking the return of his rental deposit. The Trial Court granted summary judgment in favor of Appellee under the doctrine of *res judicata*. The Court of Appeals affirmed this decision, also based on the doctrine of *res judicata*. The determination of the Court of Appeals of Appellant's Motion based on Local App. R. 9 did not affect its analysis and determination of Appellant's appeal under the doctrine of *res judicata*. Likewise, this Court's determination on the Court of Appeals' enforcement of Local App. R. 9 would not change the result in this case since Appellant's proposition of law under Local App. R. 9 and his appeal of the Trial Court's grant of summary judgment are based on separate rules and legal doctrines, and therefore, are unrelated legal issues. In addition, this Court's determination of Appellant's proposition of law would affect only the current parties, and would not be law that could be applied across the State of Ohio.

Finally, the Twelfth District Court of Appeals properly disposed of this case on the merits, and not on an alleged procedural technicality based on a local appellate rule. Pursuant to Section 5, Article IV of the Ohio Constitution, each District Court of Appeals has the authority to adopt reasonable local rules of procedure. *De Hart v. Aetna Life Ins. Co.* (1982) 69 Ohio St.2d 189, 190-91. "[L]ocal appellate rules are needed in order to achieve the prompt and efficient dispatch of justice. This is a two-pronged objective -- the local rules must encourage promptness and efficiency, on the one hand, and fairness and justice on the other. Fairness and justice are best served when a court disposes of a case on the merits. Only a flagrant, substantial disregard for

the court rules can justify a dismissal on procedural grounds.” Id. at 19-93 (internal citations omitted). Thus, “it is a fundamental tenet of judicial review in Ohio that courts should decide cases on the merits.” Id.; see, e.g., *Cobb v. Cobb* (1980), 62 Ohio St.2d 124. “Judicial discretion must be carefully -- and cautiously -- exercised before this court will uphold an outright dismissal of a case on purely procedural grounds.” *De Hart*, 69 Ohio St.2d at 192.

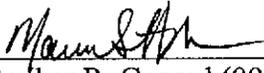
Appellant asked the Court of Appeals not to permit counsel for Appellee to participate in the appeal based on Local Appellate Rule 9. The Court of Appeals declined, and proceeded with the merits of the appeal. The Court of Appeals properly upheld the fundamental tenant in Ohio that courts should decide cases on the merits. See, id.

### III. CONCLUSION

For the reasons stated above, this Court should decline to exercise its jurisdiction in this matter.

Respectfully submitted,

COOLIDGE WALL, CO., L.P.A.

By  \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the preceding was served upon Gary L. Nunn, 201 South Heincke, Apartment P., Miamisburg, Ohio 45342, via regular U.S. mail, postage prepaid, on the 24th day of April, 2008.

  
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Attorney at Law