

IN THE SUPREME COURT OF OHIO

State of Ohio, Ex Rel. Estate of	:	
Miles, et al.	:	
	:	Case No. 08-0782
Relator,	:	
	:	Original Action
v.	:	In Mandamus
	:	
Village of Piketon, et al.,	:	
	:	
Respondents.	:	

RESPONDENTS' MERIT BRIEF

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I. **FACTS AND UNDERLYING CASE HISTORY**

The facts of this case reveal that Relators are attempting to enforce a judgment against the Village of Piketon in Case No. 519-CIV-01 that is contrary to Ohio's Immunity Statute (Ohio Revised Code 2744.03(A)(6): which only deals with liability/immunity of individuals) and without Relators ever obtaining proper and valid service on the Village of Piketon as required by Ohio Civil Rule 4.2(M).

On **February 20, 2001**, the Miles Estate filed a Third Party Complaint specifically against the Village of Piketon in the Pike County Common Pleas Court, Case No. 292-CIV-00 asserting claims against the Village for the Village of Piketon Police Department's alleged mishandling of the Miles murder investigation (Apx. A). The Court docket shows that the Miles Estate served the Village of Piketon with that Third Party Complaint by way of certified mail, return receipt requested (Apx. B). On **May 9, 2002**, the Court in Case No. 292-CIV-00 signed an Agreed Judgment Entry of dismissal, dismissing all claims with prejudice and no claims were ever re-filed. The case was dismissed with prejudice on May 9, 2002 (Apx. C).

On **December 13, 2001**, the Miles Estate sued former Piketon Police Chief Nathaniel Todd Booth in a separate Pike County Common Pleas Court action (Case No. 519-CIV-01) alleging that Booth acted "negligently, wantonly, recklessly and/or willfully failed or refused to perform an adequate investigation,

and/or interfered with, tampered with, removed and/or destroyed property and evidence which would have led to the cause of the homicide of Jerry Miles” (Plaintiff’s Complaint, paragraph 9). The Miles Estate also alleged that “Defendant’s performance of his duties as Chief of Police in bad faith and/or in a reckless and wanton manner proximately caused harm to the Plaintiffs.” (Plaintiff’s Complaint, paragraph 10).

However, Nathaniel Todd Booth resigned from the Piketon Police Department on **April 19, 2000**, a year and a half before the Miles Estate filed suit. The Miles Estate perfected service on Nathaniel Todd Booth on **January 17, 2002** at his personal residence by way of ordinary mail at a time when Booth was no longer the Village Police Chief and had not been employed with the Village of Piketon Police Department for almost two years. (See Docket attached as Apx. D).

The Miles Estate will concede that at no time did the Miles Estate name the Village of Piketon or the Piketon Police Department as Defendants in Case No. 519-CIV-01 and will concede that the Complaint and Summons were never served on the Village, the acting Police Chief or the Village Solicitor. (See Apx. D Civil Docket for Case No. 519-CIV-01). Ohio Civil Rule 4.2(M) provides that service upon a municipal corporation or upon any of its officers, deputies, agents, etc. must be made by serving the officer responsible for administration of the office, department, agency, authority, etc. or by serving the City Solicitor.

On **September 9, 2002** in Case No. 519-CIV-01, the Court granted summary judgment against Nathaniel Todd Booth, citing to Ohio Revised Code Section 2744.03(A)(6) which governs individual immunity or liability of an employee of a political subdivision. (Apx. E).

On **January 2, 2003**, the Pike County Common Pleas Court entered Judgment against Nathaniel Todd Booth in the amount of Eight Hundred Thirty Seven Thousand Five Hundred Eighteen dollars and 22/100 (\$837,518.22). (Apx. F).

On **April 22, 2003**, the Miles Estate filed a supplemental lawsuit against the Village of Piketon and Piketon's governmental risk sharing pool in the Pike County Common Pleas Court, Case No. 171-CIV-03 (Apx. G) seeking to have the Village of Piketon and its risk sharing pool satisfy and pay the \$837,518.22 judgment entered against Nathaniel Todd Booth. At no time during Case No. 171-CIV-03 did the Miles Estate claim that it had won a judgment against the Village of Piketon in Case No. 519-CIV-01, **rather**, the Miles Estate asserted that the Village of Piketon had a statutory duty to defend and indemnify its former employee Nathaniel Todd Booth for the judgment. (See Supplemental Petition paragraphs 1 and 4).

Nathaniel Todd Booth died on February 4, 2003 and an Estate was opened in the Lawrence County Probate Court Probate Division Case No. 04 AM 016143.

The Miles Estate filed a claim against the Booth Estate in the Probate Court for enforcement of the January 2, 2003 judgment and attached a Certificate of Judgment from the Pike County Common Pleas Court. (Apx. H) that only recognized a judgment against Nathaniel Todd Booth at his personal address, 630-TR-274-S, Ironton, Ohio 45638.

On **April 24, 2004** in Case No. 171-CIV-03, the Miles Estate dismissed its claims seeking payment of the judgment against the Village of Piketon pursuant to Ohio Civil Rule 41(A)(1). (Apx. I). The Miles Estate never re-filed the action against the Village of Piketon.

On **April 24, 2008**, over five years after obtaining a judgment against former Police Chief Nathaniel Todd Booth, the Miles Estate filed a Complaint for Writ of Mandamus with the Ohio Supreme Court (Case No. 08-0782), claiming for the first time ever in any legal pleadings that the Village is aware of that the Miles Estate actually had a judgment against the Village.

On **June 27, 2008**, in Case No. 519-CIV-01, the Village of Piketon filed a Motion with the Pike County Common Pleas Court to vacate this purported judgment or in the alternative relief from the judgment pursuant to Ohio Civil Rule 60(B). The matter has been fully briefed and the Trial Court has set a November 19, 2008 In Person Status Conference.

## II. LAW AND ARGUMENT

### PROPOSITION OF LAW NO. 1

#### **A Judgment Is Void When Service Is Not Properly Made On A Defendant Pursuant to Ohio Civil Rule 4.2(M) Or When A Waiver of Summons Is Not Made In Writing By A Defendant pursuant to Ohio Civil Rule 4(D)**

The Docket in Case No. 519-CIV-01 clearly shows that the Miles Estate never served the acting Police Chief, the Village or the Village Solicitor with the Complaint and Summons. Instead, the Miles Estate served the former Piketon Police Chief by way of ordinary mail on January 17, 2002 at Booth's personal residence almost two years after Booth resigned his position as Piketon Police Chief.

Ohio Civil Rule 4.2(M) provides that service upon a municipal corporation must be made by serving the Officer responsible for the administration of the office, department, agency, authority, etc. or by serving the City Solicitor. Any judgment against the Village of Piketon in Case No. 519-CIV-01 is void as a matter of law.

A judgment rendered without proper service is a nullity and is void. *Lincoln Tavern v. Snader* (1956) 165 Ohio St. 61, 64. A Court lacks jurisdiction to enter judgment against a defendant where effective service of process has not been made upon that defendant and the defendant has not appeared in the case or waived

service. *Marryhew v. Yova* (1984) 11 Ohio St. 3d 154, 156; *Rite Rug Co., Inc. v. Wilson* 106 Ohio App.3d 59 (Franklin County 1995).

Completion of service of process is necessary to clothe the Trial Court with jurisdiction to proceed. Thus, where service of process has not been accomplished, any judgment rendered is void *ab initio*. *Rondy v. Rondy* 13 Ohio App.3d 19, 21 (Summit Cty. 1983); *Kurtz v. Kurtz*, 71 Ohio App.3d 176, 182 (Erie Cty. 1991); *Sampson v. Hooper Holmes, Inc.*, 91 Ohio App.3d 538, 540 (9<sup>th</sup> Dist. 1993).

The authority to vacate a void judgment falls within the inherent powers possessed by Ohio Courts. *Patton v. Diemer* (1988) 35 Ohio St. 3d 68 (syllabus). If service of process is improper or service is not made on a proper defendant, the judgment is void and may be set aside at any time pursuant to the Court's inherent powers. *Rite Rug Co., Inc. v. Wilson* 106 Ohio App.3d 59, 62 (Franklin County 1995).

Since the Docket for Case No. 519-CIV-01 clearly shows that the Miles Estate never served the Complaint and Summons on the Village, the Village Police Chief or the Village Solicitor and Relator will concede there was no service, the January 2, 2003 Judgment is void as a matter of law as applied to the Village of Piketon. *Lincoln Tavern v. Snader* (1956) 165 Ohio St. 61, 64.

The Miles Estate will argue that the Village of Piketon somehow waived service of the Summons because a pre-trial entry drafted by one of the Miles'

Estate's attorneys, lists the Village Attorney as being present in the Courtroom at the time of the pre-trial.

Under Ohio Civil Rule 4(D) a waiver of service of Summons by a defendant **must** be in writing. The case docket in 519-CIV-01 does not show any waiver of service by the Village of Piketon, nor does the docket reflect an entry of appearance by the Village Solicitor as an attorney of record for the Village of Piketon. See also, Ohio Civil Rule 11. There are no pleadings in Docket No. 519-CIV-07 signed by any counsel of record for the Village of Piketon.

There is no evidence from the Court docket in Case No. 519-CIV-01 or in the pleadings that Attorney Anthony Moraleja ever entered an appearance as counsel of record for the Village of Piketon or that he, with the knowledge of authorization of the Village, personally appeared in the case or conducted himself in a manner to waive service for the Village of Piketon.

This Court should now vacate Relator's purported judgment against the Village of Piketon as void. *Patton v. Diemer*, (1988) 35 Ohio St. 3d 68; *Lincoln Tavern v. Snader*, (1956) 165 Ohio St. 61, 64.

## **PROPOSITION OF LAW NO. 2**

### **Ohio Courts Should Grant Relief From An Invalid Judgment Pursuant To Ohio Civil Rule 60(B)(5)**

To prevail on a Motion for Relief from Judgment under Civil Rule 60(B), a movant must demonstrate:

- 1) The party has a meritorious defense or claim to present if relief is granted;
- 2) The Party is entitled to relief under one of the grounds stated in Civil Rule 60(B)(5);
- 3) The Motion is made with a reasonable time.

*GTE Automatic Electric v. ARC Industries* (1976) 47 Ohio St. 2d 146.

Rule 60(B)(5) governing relief from judgment is premised upon the inherent power of the Court to prevent unfair application of a judgment. *Newark Orthopedics Inc. v. Brock*, 92 Ohio App.3d 117 (Franklin Cty. 1994); *Rite Rug Co., Inc. v. Wilson* 106 Ohio App.3d 59 (Franklin County 1995). Any doubt as to the merits of a movant's defense to a judgment should be resolved in favor of the motion to set aside the Judgment. *GTE Automatic Electric, Supra*. Courts should decide cases on the merits whenever possible. *Perotti v. Ferguson* (1983) 7 Ohio St. 3d 1.

**A. The Village of Piketon and Piketon Police Department have a Meritorious Defense to the Claims of the Miles Estate**

The grant of summary judgment in favor of the Miles Estate against former Police Chief Booth was expressly based upon Booth's individual liability as an **employee** of an Ohio political subdivision, with the Trial Court specifically citing to the immunity statute dealing with individual liability of a governmental employee under Ohio Revised Code 2744.03(A)(6) in the judgment entry the Miles Estate is now seeking to enforce against the Village of Piketon. (Apx. E). To the

contrary, the Village of Piketon and the Police Department would have been immune from any state law official capacity claims for the police department's investigation of the Miles' fatality under Ohio Revised Code Chapter 2744.

The liability of an Ohio political subdivision such as a Village of Village Police Department is and was expressly governed by Ohio Revised Code Section 2744.02. Under Ohio Revised Code 2744.02, the Village and Police Department are immune from governmental functions. See Ohio Revised Code 2744.02(A)(1). "Governmental functions" include, but statutory definition, the "provision of police," the "power to preserve the peace," and "the enforcement of any law." Ohio Revised Code Sections 2744.01(C)(1) and (C)(2)(a), (b) and (i).

The Ohio Supreme Court and various Courts of Appeals have held, as a matter of law, that the operation of a police department and the provision of police services are governmental functions, for which there is complete immunity. *Aldrich v. Youngstown* (1922), 106 Ohio St. 342; *Gabris v. Blake* (1967), 9 Ohio St. 2d 71; *Zeigler v. Mahoning County Sheriff's Dept.* (2000), 137 Ohio App.3d 831; *McCloud v. Nimmer*, 72 Ohio App.3d 533 (8<sup>th</sup> Dist. 1991).

There was no viable claim against the Village of Piketon or the Police Department in Case No. 519-CIV-01 that could have overcome immunity under Ohio Revised Code 2744.02 and Ohio Common Law. Perhaps that is why the Miles Estate specifically sued the Village of Piketon alleging mishandling of the

Miles murder investigation in Case No. 292-CIV-00 and then dismissed the case with prejudice on May 9, 2002. There were no claims asserted by the Miles Estate against the Village or Police Department in the underlying complaint and nothing in the Trial Court's January 2, 2003 Judgment Entry that in any way referenced a judgment against the Village of Piketon.

**B. The Village of Piketon Made A Motion For Relief From Judgment Within a Reasonable Time**

The first time the Miles Estate ever claimed it had obtained a Judgment against the "Village of Piketon" was on April 24, 2008, when the Miles Estate filed a Writ of Mandamus with the Ohio Supreme Court (Case No. 08-0782). That was over five years after obtaining a judgment against former Police Chief Nathaniel Todd Booth, years after the Miles Estate's involvement in related litigation, and over six years after dismissing Case No. 292-CIV-00, the case where the Miles Estate actually sued the Village of Piketon for the Miles murder investigation and actually served the Village with a Summons and then later dismissed the case.

On June 27, 2008, the Village of Piketon filed a Motion in the Pike County Common Pleas Court (Case No.: 519-CIV-01) to vacate the judgment or in the alternative, moved for relief from judgment. The matter has been fully briefed and the Trial Court has set a November 19, 2008 In Person Pre-Trial Conference.

### **PROPOSITION OF LAW NO. 3**

#### **A Judgment Against An Ohio Public Official On An “Official Capacity” Claim Cannot Be Based Upon The Individual Liability/Immunity Provisions Set Forth In Ohio Revised Code 2744.03(A)(6)**

The Miles Estate did not obtain a judgment against the “Village of Piketon” in Case No. 519-CIV-01. The Miles Estate’s complaint only alleged causes of action against Booth in an “individual” capacity that were governed by Ohio Revised Code Section 2744.03(A)(6); the immunity statute that addresses individual liability of an employee of a political subdivision. The summary judgment motion only asserted claims against Booth in an “individual” capacity, specifically citing to Ohio Revised Code Section 2744.03(A)(6).

The Court entry granting summary judgment in favor of the Miles Estate against Booth was based upon Booth’s individual liability as an employee of an Ohio political subdivision, with the Trial Court specifically citing to individual liability under Ohio Revised Code Section 2744.03(A)(6). (Apx. E). To the contrary, the Village of Piketon and the Police Department would have been immune from any state law official capacity claims for the police department’s investigation of the Miles’ fatality under Ohio Revised Code Chapter 2744 and Ohio Revised Code Section 2744.02.

The liability of an Ohio political subdivision such as a Village or Village Police Department is and was expressly governed by Ohio Revised Code Section

2744.02. Under Ohio Revised Code 2744.02, the Village and Police Department are immune from governmental functions. See Ohio Revised Code 2744.02(A)(1). “Governmental functions” include, but statutory definition, the “provision of police,” the “power to preserve the peace,” and “the enforcement of any law.” Ohio Revised Code Sections 2744.01(C)(1) and (C)(2)(a), (b) and (i).

The Ohio Supreme Court and various Courts of Appeals have held, as a matter of law, that the operation of a police department and the provision of police services are governmental functions, for which there is complete immunity. *Aldrich v. Youngstown* (1922), 106 Ohio St. 342; *Gabris v. Blake* (1967), 9 Ohio St. 2d 71; *Zeigler v. Mahoning County Sheriff's Dept.* (2000), 137 Ohio App.3d 831; *McCloud v. Nimmer*, 72 Ohio App.3d 533 (8<sup>th</sup> Dist. 1991).

A judgment entry must contain a clear pronouncement of the Court’s judgment and its rationale if the entry is combined with a decision or opinion. See, e.g., *Brackmann Communications, Inc. v. Ritter*, 38 Ohio App.3d 107 (12<sup>th</sup> Dist. 1987).

In the lower Court, there was no viable claim alleged against the Village of Piketon or the Police Department in Case No. 519-CIV-01 that could have overcome immunity under Ohio Revised Code 2744.02 and Ohio Common Law. For a writ of mandamus to issue to compel payment of a judgment, Relator is required to establish that he or she had a clear legal right to satisfaction of a

judgment, that Respondent has a clear legal duty to pay such amount and that Relator had no plain and adequate remedy at law. *Shimola v. Cleveland* (1994) 70 Ohio St. 3d 110. There were no claims asserted by the Miles Estate against the Village or Police Department in the complaint and nothing in the Trial Court's Judgment Entry that in any way referenced a judgment against the Village of Piketon or Piketon Police Department.

#### **PROPOSITION OF LAW NO. 4**

##### **A Writ of Mandamus Against An Ohio Political Subdivision Must Be Made Within Two Years Pursuant to Ohio Revised Code Section 2744.04(A)**

Ohio Revised Code Section 2744.04(A) mandates that all actions against an Ohio political subdivision, **including original actions**, must be filed within two (2) years after a cause of action accrues.

While the Village of Piketon and Police Department deny that the Miles Estate obtained a judgment against the Village of Piketon Police Department on January 2, 2003, any act by the Miles Estate to enforce said judgment under law had to have been filed by January 2, 2005.

The Miles Estate did, on April 22, 2003, file a separate lawsuit against the Village of Piketon and its governmental risk sharing pool seeking to enforce the January 2, 2003 judgment in the Pike County Common Pleas Court, Case No. 171-CIV-03. However, the Miles Estate abandoned its claims against the Village of

Piketon and dismissed the claims against Piketon on April 24, 2004 pursuant to Ohio Civil Rule 41(A). The Miles Estate never re-filed suit against the Village. Moreover, the Miles Estate specifically sued the Village of Piketon on February 20, 2001 for the Police Department's alleged mishandling of the Miles murder investigation but the case was dismissed with prejudice on May 9, 2002 and never re-filed.

Pursuant to Ohio Civil Rule 41(A) and Ohio's Savings Statute, Ohio Revised Code Section 2305.19, the Miles Estate had until April 24, 2005 in which to re-file its lawsuit against the Village of Piketon in Case No. 171-CIV-03 to attempt to collect on the judgment entered into against Nathaniel Todd Booth (which the Village of Piketon disputes owing). Any claims the Miles Estate had against the Village of Piketon relevant to the Booth judgment are now time-barred. See, e.g., *Bowshier v. Village of North Hampton, Ohio*, 2002 WL 940125 (2<sup>nd</sup> Dist. 2002).

Last, the Ohio Supreme Court has ruled that a Writ of Mandamus should be dismissed if it was untimely filed. *State Ex. Rel. Witter* (1926) 114 Ohio St. 357, especially where the delay may prejudice Respondent. While the Village of Piketon and Police Department dispute that the January 2, 2003 judgment was against anyone other than Nathaniel Todd Booth in his individual capacity, Respondents assert that the filing of a Writ of Mandamus over five (5) years later

to attempt to enforce a judgment is untimely, especially when Relators filed a complaint in the Pike County Common Pleas Court Case No. 171-CIV-03, to enforce the January 2, 2003 judgment on April 22, 2003 and then abandoned their claims against the Village of Piketon and Police Department on April 24, 2004, as well as suing the Village of Piketon on February 20, 2001, in Case No. 292-CIV-01 specifically for the Police Department's alleged mishandling of the Miles' murder investigation and the dismissing of the claims on May 9, 2002 and never re-filing them.

#### **PROPOSITION OF LAW NO. 5**

##### **A Writ of Mandamus Should Be Denied When Relator Had An Adequate Remedy At Law To Pursue A Legal Claim**

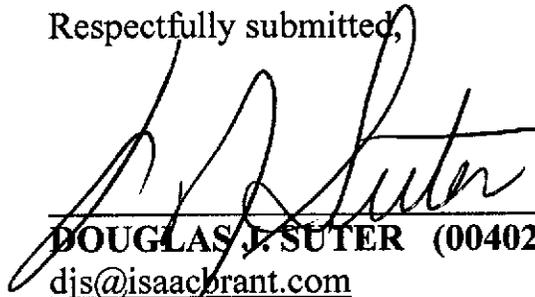
Ohio Revised Code Section 2731.05 provides that a Writ of Mandamus must not be issued when there is a plain and adequate remedy in the ordinary course of law. The Miles Estate had an adequate remedy at law to pursue claims against the Village of Piketon, Ohio and the Police Department for claims of an inadequate murder investigation by the Piketon Police Department. The Miles Estate made those very claims against the Village of Piketon in Case No. 292-CIV-00 by filing a third-party Complaint against the Village of Piketon on February 20, 2001, specifically against the Village of Piketon. Moreover, the Court docket shows that the Miles Estate, in that case (as opposed to no service in Case No. 519-CIV-01) served the third-party Complaint on the Village of Piketon by way of certified

mail, return receipt requested. The case was dismissed with prejudice on May 9, 2002 and never re-filed.

**CONCLUSION**

For the foregoing reasons, Respondents respectfully urge the Ohio Supreme Court for judgment on the pleadings and for an order dismissing Relator's complaint for writ of mandamus, or vacating the January 2, 2003 judgment, or in the alternative, staying this matter until such time as the Pike County Common Pleas Court decides the Village of Piketon's Motion to Vacate Judgment or alternatively Motion for Relief from Judgment filed on June 27, 2008 in Case No. 519-CIV-01, which has been fully briefed by all parties.

Respectfully submitted,



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*Attorneys for Defendant Village of Piketon*

**APPENDIX**

A. February 20, 2001 Third Party Complaint  
Filed By the Miles Estate in the Pike County  
Common Pleas Court, Case No. 292-CIV-00  
Against the Village of Piketon ..... 17-A

B. Notice of Certified Mail Service of Third Party  
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IN THE COURT OF COMMON PLEAS, PIKE COUNTY, OHIO  
GENERAL DIVISION

DEANNA ROBIN FREDERICK,  
nka Deanna Robin Tomlison  
Administratrix of The Estate of  
Deneen Renee Tomlison  
2873 Germany Road  
Beaver, OH 45613

Plaintiff,

vs.

THE ESTATE OF JERRY DALE MILES,  
Betty S. Miles, Administrator  
175 SR 220  
Piketon, OH 45661

Defendant and Third-Party Plaintiff,

and

JOSHUA R. MILES  
175 SR 220  
Piketon, OH 45661

Third-Party Plaintiff,

vs.

BILL E. TOMLISON,  
2839 Germany Road  
Beaver, OH 45613

and

CASE NO. 292-CIV-00

JUDGE BOLT-MEREDITH

I certify that this is a  
true and correct copy of the  
original filed in my Office  
on 2-20-01  
JOHN E. WILLIAMS, CLERK  
BY: H. Holbrook  
Deputy Clerk  
DATE: 7-3-08

THIRD PARTY COMPLAINT  
WITH JURY DEMAND  
ENDORSED HEREON

**FILED**  
COMMON PLEAS COURT  
—AM. FEB 20 2001 —P.M.  
*John E. Williams*  
PIKE CO. CLERK

**MOWERY  
AND  
BLUME**

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EXHIBIT

tabbies

17-A

**VIRGINIA TOMLISON,  
2839 Germany Road  
Beaver, OH 45613**

**Third-Party Defendants and  
Third-Party Plaintiffs,**

**and**

**DEANNA ROBIN FREDERICK,  
nka Deanna Robin Tomlison, Individually  
2873 Germany Road  
Beaver, OH 45613**

**Third-Party Defendant  
and Third-Party Plaintiff,**

**vs.**

**THE VILLAGE OF PIKETON  
109 East Third Street  
Piketon, OH 45661**

**Third-Party Defendant.**

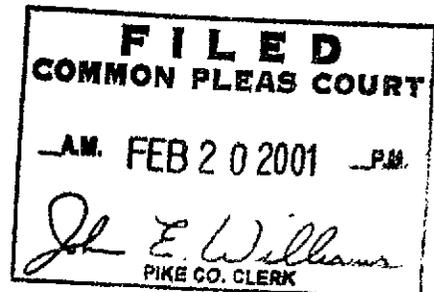
Now come Third-Party Plaintiffs, Deanna Robin Tomlison, Bill Tomlison and Virginia Tomlison, and hereby state their Third-Party Complaint against Third-Party Defendant, The Village of Piketon as follows:

**PARTIES**

1. Deanna Robin Tomlison is the sister of Deneen Renee Tomlison, deceased. Bill Tomlison and Virginia Tomlison are the parents of Deneen Renee Tomlison, deceased.
2. Betty S. Miles is the mother of Jerry Dale Miles, deceased. Joshua R. Miles is the brother of Jerry Dale Miles, deceased.

**MOWERY  
AND  
BLUME**

Attorneys at Law  
9050 Ohio River Road  
Wheetersburg, Ohio 45694  
Tel (740) 574-2521  
Fax (740) 574-2687



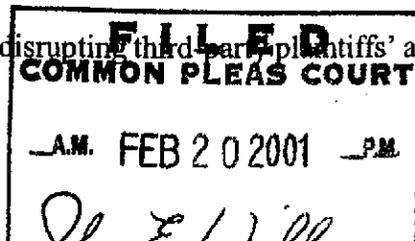
3. The Village of Piketon employs members of the Piketon Police Department to act on its behalf.
4. At all times set forth herein, members of the Piketon Police Department were acting within the course and scope of their employment.

### FIRST CLAIM FOR RELIEF

5. Third-Party Plaintiffs, Deanna Robin Tomlison, Bill Tomlison and Virginia Tomlison, reallege and reassert each and every allegation contained in paragraphs 1 through 4 of the Third-Party Complaint as though fully rewritten herein.
6. Betty S. Miles and Joshua Miles have asserted a Third-Party claim against Deanna Robin Tomlison, Bill Tomlison and Virginia Tomlison alleging said Third-Party Defendants "entered the mobile home and negligently, recklessly, and/or willfully interfered with, tampered with, removed, and/or destroyed property and evidence which would have led to solving" the cause of death of Deneen Renee Tomlison and Jerry Dale Miles.
7. Betty S. Miles and Joshua Miles have asserted a Third-Party claim against Deanna Robin Tomlison, Bill Tomlison and Virginia Tomlison alleging said Third-Party Defendants "entered the mobile home repeatedly in the days following the murder and negligently, recklessly, and/or willfully tampered with, interfered with, removed and/or disposed of property and evidence within the mobile home thereby disrupting third-party plaintiffs' ability to investigate and defend this wrongful death action, to investigate and prosecute wrongful death and survivorship actions on behalf of Jerry Miles' estate and beneficiaries, and further disrupting third-party plaintiffs' and law

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enforcement personnel's ability to investigate and prosecute a case against the apparent murder or murders."

8. The Village of Piketon Police Department investigated the cause of death of Deneen Renee Tomlison and Jerry Dale Miles. Third-Party Defendants, Deanna Robin Tomlison, Bill Tomlison and Virginia Tomlison, allege that they cooperated with the authorities in the investigation and complied with all instructions given by said authorities
9. After completion of the investigation, the Village of Piketon Police Department authorized Deanna Robin Tomlison, Bill Tomlison and Virginia Tomlison to enter the mobile home of Deneen Renee Tomlison and Jerry Dale Miles.
10. Because Third-Party Defendants, Deanna Robin Tomlison, Bill Tomlison and Virginia Tomlison, acted upon the advice and authority of Village of Piketon Police Department in entering the residence, the Village of Piketon is liable to Deanna Robin Tomlison, Bill Tomlison and Virginia Tomlison for any claims asserted by Betty S. Miles and Joshua Miles against Deanna Robin Tomlison, Bill Tomlison and Virginia Tomlison.

**WHEREFORE**, Third-Party Plaintiffs, Deanna Robin Tomlison, Bill Tomlison and Virginia Tomlison, demand judgment against Third-Party Defendant, The Village of Piketon, in an amount in excess of \$25,000.00 for compensatory damages if Third-Party Defendants, Deanna Robin Tomlison, Bill Tomlison and Virginia Tomlison are found liable to the Third-Party Plaintiffs, Betty S. Miles and Joshua R. Miles. In addition, Third Party Plaintiffs, Deanna Robin Tomlison, Bill Tomlison and Virginia Tomlison, demand costs, attorney's fees and any other relief to which they may be entitled in law or in equity.

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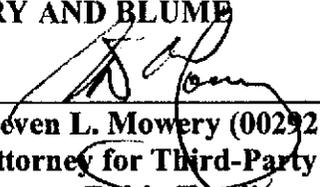
**FILED**  
**COMMON PLEAS COURT**

—A.M. FEB 20 2001 —P.M.

*John E. Williams*  
MAY 20 2001

**MOWERY AND BLUME**

BY: \_\_\_\_\_

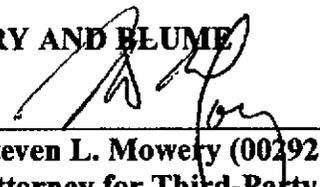
  
Steven L. Mowery (0029265)  
Attorney for Third-Party Plaintiffs,  
Deanna Robin Tomlison, Bill Tomlison  
and Virginia Tomlison  
9050 Ohio River Road  
Wheelersburg, OH 45694  
740-574-2521  
740-574-2687 FAX

**JURY DEMAND**

Third-Party Plaintiffs hereby demand a trial by jury for all issues in this action.

**MOWERY AND BLUME**

BY: \_\_\_\_\_

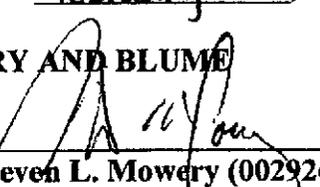
  
Steven L. Mowery (0029265)  
Attorney for Third-Party Plaintiffs,  
Deanna Robin Tomlison, Bill Tomlison  
and Virginia Tomlison

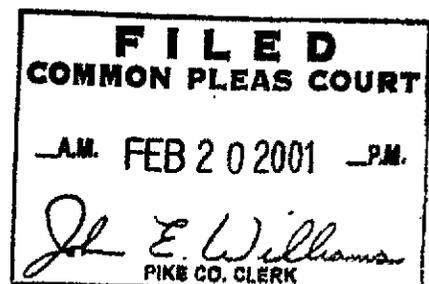
**PROOF OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Third Party Complaint with Jury Demand Endorsed Hereon was served upon Pat Apel and Margaret Apel Miller, Attorneys for Defendant and Third-Party Plaintiff, Betty S. Miles and Third-Party Plaintiff, Joshua R. Miles, at their address of 617 Fifth Street, Portsmouth, OH 45662 by regular U.S. Mail, postage prepaid, this 20<sup>th</sup> day of February, 2001.

**MOWERY AND BLUME**

BY: \_\_\_\_\_

  
Steven L. Mowery (0029265)  
Attorney for Third-Party Plaintiffs,  
Deanna Robin Tomlison, Bill Tomlison  
and Virginia Tomlison



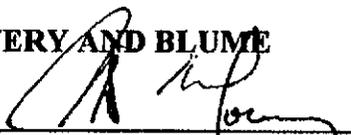
**MOWERY  
AND  
BLUME**

Attorneys at Law  
9050 Ohio River Road  
Wheelersburg, Ohio 45694  
Tel (740) 574-2521  
Fax (740) 574-2687

**REQUEST FOR SERVICE**

Please issue certified copy of the foregoing for service upon Third-Party Defendant, The Village of Piketon, at the address listed in the caption by Certified U.S. Mail, Return Receipt Requested. Returnable according to law.

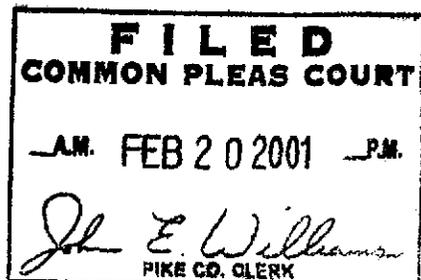
**MOWERY AND BLUME**

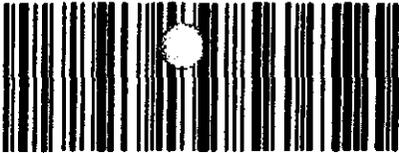
BY: 

**Steven L. Mowery (0029265)  
Attorney for Third-Party Plaintiffs,  
Deanna Robin Tomlison, Bill Tomlison  
and Virginia Tomlison**

**MOWERY  
AND  
BLUME**

Attorneys at Law  
9050 Ohio River Road  
Wheelerburg, Ohio 45694  
Tel (740) 574-2521  
Fax (740) 574-2687



<p>2. Article Number</p>  <p>7306 4575 1294 1147 7436</p>	<p>COMPLETE THIS SECTION ON DELIVERY</p>	
<p>3. Service Type <b>CERTIFIED MAIL</b></p>	<p>A. Received by (Please Print, if any) <i>Carol Irwin</i></p>	<p>B. Date of Delivery <i>2-23-01</i></p>
<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	<p>C. Signature <i>[Signature]</i></p> <p><input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>292-CIV-00 FREDERICK V MILES</p> <p>VILLAGE OF PIKETON 109 E 3D STREET PIKETON, OH 45661</p>	<p>D. Is delivery address different from item 1? If YES, enter delivery address below:</p> <p><i>PC BOX 547</i></p> <p><b>FILED 45661</b></p> <p><b>COMMON PLEAS COURT</b></p>	
<p>RE: 292-CIV-00 FREDERICK V MILES</p>	<p><b>FILED FEB 26 2001 P.M.</b></p> <p><i>John E. Williams</i> P.M.E. CO. CLERK</p>	
<p>PS Form 3811, June 2000</p>	<p>SENDER: Pike County Clerk of Courts</p> <p>Domestic Return Receipt</p>	

I certify that this is a true and correct copy of the original filed in my Office on 2-26-01

JOHN E. WILLIAMS, CLERK  
BY: *[Signature]*

**EXHIBIT**

17-B

tabbies



IN THE COURT OF COMMON PLEAS, PIKE COUNTY, OHIO  
GENERAL DIVISION

**DEANNA ROBIN FREDERICK,  
Adminstrator of the Estate of  
Deneen Renee Tomlison**

Case No. 292-CIV-00

**JUDGE BOLT-MEREDITH**

**Plaintiff,**

vs.

**ESTATE OF JERRY DALE MILES,  
Betty S. Miles, Administrator**

**Defendant and Third-Party Plaintiff,**

vs.

**BILL E. TOMLISON,**

**Third-Party Defendant.**

I certify that this is a true and correct copy of the original filed in my Office on 5-9-02  
JOHN E. WILLIAMS, CLERK  
BY: H. Hollibaugh  
Deputy Clerk  
DATE: 7-3-08

VOL 128 PG 0738

**AGREED JUDGMENT ENTRY OF DISMISSAL**

The Court, having been advised that the issues between Plaintiff, Deanna Robin Frederick, nka Deanna Robin Tomlison, Administrator of the Estate of Deneen Renee Tomlison, and Defendant and Third-Party Plaintiff, Betty S. Miles, Individually and as Administrator of the Estate of Jerry D. Miles, and Third-Party Plaintiff, Joshua R. Miles, and Third-Party Defendants, Bill E. Tomlison and Virginia Tomlison, have been settled, it is hereby ORDERED that all complaints, cross-claims and counterclaims by and between the aforementioned parties are dismissed with prejudice. Costs to be divided equally between Deanna Robin Frederick, nka Deanna Robin Tomlison, Administrator of the Estate of Deneen Renee Tomlison and Betty S. Miles, Administrator of the Estate of Jerry D. Miles.

**MOWERY  
AND  
BLUME**

Attorneys at Law  
9050 Ohio River Road  
Wheelerburg, Ohio 45694  
Tel (740) 574-2521  
Fax (740) 574-2687

**FILED  
COMMON PLEAS COURT**

—A.M. MAY -9 2002 —P.M.

*Da 8/12/02*

IT IS SO ORDERED.

*C. Bob Mendenhall*

JUDGE

**MOWERY AND BLUME**

By: \_\_\_\_\_

*Steven L. Mowery*  
Steven L. Mowery (0029265)

Attorney for Deanna Tomlison, Bill Tomlison and Virginia Tomlison

**APEL & MILLER**

By: \_\_\_\_\_

*Pat Apel*  
Pat Apel (0067805)

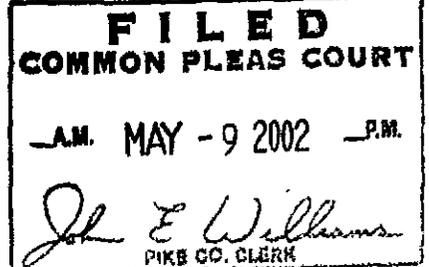
Margaret Apel Miller (0041912)

Attorneys for Betty S. Miles and Joshua R. Miles

VOL 128 P 0739

**MOWERY  
AND  
BLUME**

Attorneys at Law  
9050 Ohio River Road  
Wheelerburg, Ohio 45694  
Tel (740) 574-2521  
Fax (740) 574-2687





RUN DATE: 12/13/06

JOHN E. WILLIAMS  
CLERK OF COURTS  
PIKE COUNTY  
COMMON PLEAS COURT  
D O C K E T   S H E E T

PAGE 0001

STYLE: MILES ET AL V BOOTH  
ACTION: OTHER TORTS  
JUDGE : CASSANDRA BOLT-MEREDITH

CASE NO. 519-CIV-01  
FILED: 12/13/01

\*\*\*\*\*

P 001  
BETTY S MILES  
INDIVIDUALLY & ADMINISTRATOR  
135 STATE ROUTE 220  
PIKETON, OH 45661  
\*\*\* JURY DEMAND 12/13/01

ATTORNEY (S) :

PAT APEL  
617 5TH ST  
PORTSMOUTH OH 45662  
PHONE: 740 353-2146  
FAX: 740 354-3148

MARGARET B APEL-MILLER  
MILLER & RODEHEFFER  
630 6TH ST  
PORTSMOUTH OH 45662  
PHONE: 740 354-1300

P 002  
BILL S MILES  
175 STATE ROUTE 220  
PIKETON, OH 45661  
\*\*\* JURY DEMAND 12/13/01

PAT APEL  
617 5TH ST  
PORTSMOUTH OH 45662  
PHONE: 740 353-2146  
FAX: 740 354-3148

MARGARET B APEL-MILLER  
MILLER & RODEHEFFER  
630 6TH ST  
PORTSMOUTH OH 45662  
PHONE: 740 354-1300

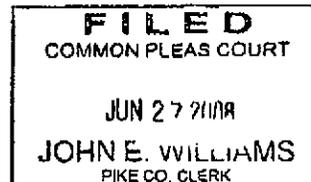
P 003  
JOSHUA R MILES  
175 STATE ROUTE 220  
PIKETON, OH 45661  
\*\*\* JURY DEMAND 12/13/01

PAT APEL  
617 5TH ST  
PORTSMOUTH OH 45662  
PHONE: 740 353-2146  
FAX: 740 354-3148

MARGARET B APEL-MILLER  
MILLER & RODEHEFFER  
630 6TH ST  
PORTSMOUTH OH 45662  
PHONE: 740 354-1300

\*\* VS \*\*

ATTORNEY (S) :



RUN DATE: 12/13/06

JOHN E. WILLIAMS  
CLERK OF COURTS  
PIKE COUNTY  
COMMON PLEAS COURT  
D O C K E T S H E E T

RUN TIME: 12:43

STYLE: MILES ET AL V BOOTH  
ACTION: OTHER TORTS  
JUDGE : CASSANDRA BOLT-MEREDITH

CASE NO. 519-CIV-01  
PAGE 0002  
FILED: 12/13/01

D 001  
NATHANIEL TODD BOOTH  
INDIVIDUALLY & AS CHIEF PIKETO  
630 TR 274-S  
IRONTON, OH 45638

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DATE	DESCRIPTION 519-CIV-01	MILES ET AL V BOOTH
12/13/01	CIVIL COMPLAINT FILED JURY DEMAND FILED PROOF OF SERVICE FILED REQUEST FOR SERVICE FILED COPIES FILED RETURNED TO APEL	
12/13/01	SUMMONS, COPY OF COMPLAINT AND ACCOMPANYING DOCUMENTS ISSUED TO DEFENDANT BY CERTIFIED MAIL	
12/13/01	SUMMONS ISSUED TO: NATHANIEL TODD BOOTH BY CERTIFIED MAIL #7160499081	
1/10/02	CERTIFIED MAIL RETURNED. ISSUED TO: NATHANIEL TODD BOOTH, ATTY NOTIFIED REASON: UNCLAIMED	
1/10/02	NOTICE OF NO SERVICE FILED COPY FILED	
1/17/02	REQUEST FOR SERVICE FILED COPIES FILED RETURNED TO APEL	
1/17/02	SUMMONS, COPY OF COMPLAINT AND ACCOMPANYING DOCUMENTS ISSUED TO NATHANIEL TODD BOOTH BY ORDINARY MAIL W/CERTIFICATE OF MAILING	
2/13/02	ANSWER OF DEPT BOOTHE FILED COPY FILED RETD TO BOOTHE	
7/08/02	MOTION FOR SUMMARY JUDGMENT FILED PROOF OF SERVICE FILED AFFIDAVIT OF LARRY M DEHUS FILED AFFIDAVIT OF BETT S MILES FILED COPIES FILED RTND TO APEL	

12/13/01

CIVIL COMPLAINT FILED  
JURY DEMAND FILED  
PROOF OF SERVICE FILED  
REQUEST FOR SERVICE FILED  
COPIES FILED RETURNED TO APEL

12/13/01

SUMMONS, COPY OF COMPLAINT AND ACCOMPANYING DOCUMENTS ISSUED TO DEFENDANT BY CERTIFIED MAIL

12/13/01

SUMMONS ISSUED TO: NATHANIEL TODD BOOTH BY CERTIFIED MAIL #7160499081

1/10/02

CERTIFIED MAIL RETURNED. ISSUED TO: NATHANIEL TODD BOOTH, ATTY NOTIFIED REASON: UNCLAIMED

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1/17/02

REQUEST FOR SERVICE FILED COPIES FILED RETURNED TO APEL

1/17/02

SUMMONS, COPY OF COMPLAINT AND ACCOMPANYING DOCUMENTS ISSUED TO NATHANIEL TODD BOOTH BY ORDINARY MAIL W/CERTIFICATE OF MAILING

2/13/02

ANSWER OF DEPT BOOTHE FILED COPY FILED RETD TO BOOTHE

7/08/02

MOTION FOR SUMMARY JUDGMENT FILED  
PROOF OF SERVICE FILED  
AFFIDAVIT OF LARRY M DEHUS FILED  
AFFIDAVIT OF BETT S MILES FILED  
COPIES FILED RTND TO APEL

REN DATE: 12/13/06

JOHN E. WILLIAMS  
CLERK OF COURTS  
PIKE COUNTY  
COMMON PLEAS COURT  
D O C K E T S H E E T

RUN TIME: 12:43

STYLE: MILES ET AL V BOOTH  
ACTION: OTHER TORTS  
JUDGE : CASSANDRA BOLT-MEREDITH

CASE NO. 519-CIV-01  
FILED: 12/13/01  
PAGE 0003

\*\*\*\*\*

9/09/02

JUDGMENT ENTRY FILED

This matter came before the Court on plaintiff's motion for summary judgment filed on the 8th day of July, 2002. Defendant was given an opportunity to respond to said motion but failed to do so.

Having construed the evidence submitted most strongly in favor of defendant, reasonable minds can come to but one conclusion and that conclusion is adverse to defendant. Thus, the Court hereby finds tht there is no genuine issue as to any material fact and that plaintiffs are entitled to judgment as a matter of law as to the issue of liability against Nathaniel Todd Booth, both individually and in his capacity as the Chief of Police of the Village of Piketon, Ohio.

Specifically, the Court finds that while he was acting within the course and scope of his employment, defendant's acts or omissions in the investigation of this matter were conducted in a reckless manner, and reflected a reckless indifference to the rights of the families involved. R.C. 2744.03(A)(6). The court further finds that as a result of defendant's reckless indifference, plaintiffs have suffered damages, including but not limited to serious emotional distress.

Thus, plaintiffs' motion for summary judgment is well-taken and is hereby GRANTED. Pursuant to Civil Rule 56(D), the Court finds that the damages proximately caused by defendants actions and/or omissions are in controversy and that this matter shall be set for trial on the issue of what damages were proximately caused by said acts or omissions on Counts One through Four of Plaintiffs' Complaint.

S/C. Bolt-Meredith

COPIES FILED AND MAILED TO ATTYS  
VOLUME # 131 PAGE # 317

11/14/02

JUDGMENT ENTRY FILED

This matter came before the Court this 6th day of November, 2002, for hearing on the issue of damages, the Court having previously granted Plaintiffs' motion for summary judgment as to all liability issues against Defendant, Nathaniel Todd Boothe, individually and in is his official capacity as Chief of Police of the Village of Piketon, Ohio, on the 9th day of September, 2002.

Present were the Plaintiffs and their counsel, Margaret Apel Miller and Pat apel. The Defendant contacted the Court by telephone and stated that he is ill and unable to attend the hearing and is not represented by counsel. The Defendant asked the Court ~~for a continuance~~ in this matter.

**FILED**  
COMMON PLEAS COURT  
  
JUN 27 2008  
JOHN E. WILLIAMS  
PIKE CO. CLERK

RUN DATE: 12/13/06

JOHN E. WILLIAMS  
CLERK OF COURTS  
PIKE COUNTY  
COMMON PLEAS COURT  
D O C K E T S H E E T

RUN TIME: 12:43

STYLE: MILES ET AL V BOOTH  
ACTION: OTHER TORTS  
JUDGE : CASSANDRA BOLT-MEREDITH

PAGE 0004  
CASE NO. 519-CIV-01  
FILED: 12/13/01

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The Defendant was advised on July 9, 2002, at a pretrial conference attended by Mr. Apel, Mr. Moraleja, Attorney for the Village of Piketon, and the Defendant, the Court directed Defendant to discuss the matter of counsel with Mr. Moraleja and was given thirty days to obtain counsel, either through the Village, the Village's insurer, or at his own expense, and/or file any memoranda contra Plaintiffs' motion for summary judgment, if he so chose. Defendant was further advised that his failing to have done so, summary judgment had been granted in favor of plaintiffs and that the issues to be determined by the Court involved damages. Defendant expressed his understanding thereof and advised the Court that he had called Mr. Moraleja's office about the matter but was told that Mr. Moraleja was no longer involved in the case.

Based upon the Defendant's oral motion to continue and the concurrence of the Plaintiffs, the Court finds said motion to be well taken. The motion is, hereby, granted, and the Defendant may obtain counsel if he so chooses. This matter is hereby scheduled for hearing on damages on the 18th day of December, 2002, at 1:15 p.m. All future for continuances must be in writing and filed in advance of the hearing date.  
It is so ORDERED.

S/C. Bolt-Meredith

cc: Nathaniel Booth  
Anthony Moraleja  
COPIES FILED AND MAILED TO ATTYS  
VOLUME # 132 PAGE # 763

1/02/03

JUDGMENT ENTRY FILED

This matter came before the court this 18th day of December, 2002, for a hearing to determine the damages suffered by Plaintiffs in the judgment rendered against the Defendant. A copy of said judgment is attached as Exhibit A and is incorporated herein by reference thereto. Present in the court room were the Plaintiffs, represented by Mr. Pat Apel, and the Defendant who represented himself. The Defendant indicated that he had tried again to contact Mr. Moraleja, the Village's attorney, to discuss with him representation by the Village but received no response from Mr. Moraleja or any representative of the Village of Piketon.

The defendant having offered no evidence to the contrary, the Court hereby finds, based upon the pleadings, the judgment rendered against the Defendant, the evidence before the court, statements of Plaintiffs' counsel and the Defendant, that the Defendant is liable to

RUN DATE: 12/13/06

RUN TIME: 12:43

JOHN E. WILLIAMS  
CLERK OF COURTS  
PIKE COUNTY  
COMMON PLEAS COURT  
D O C K E T S H E E T

PAGE 0005

STYLE: MILES ET AL V BOOTH

CASE NO. 519-CIV-01

ACTION: OTHER TORTS

FILED: 12/13/01

JUDGE : CASSANDRA BOLT-MEREDITH

\*\*\*\*\*

the plaintiffs for all the damages they sustained as alleged in the Complaint and Judgment Entry filed herein. Therefore, the Court further finds that the Defendant is liable to the Plaintiffs and should pay to them forthwith, the amount of \$837,518.22, awarded as follows:  
To the Estate of Jerry D. Miles \$237,518.22  
To Betty S. Miles \$200,000.00  
To Bill S. Miles \$200,000.00  
To Joshua R. Miles \$200,000.00

There being no just cause for delay, it is hereby ORDERED, ADJUDGED and DECREED that Judgment be rendered accordingly and the Defendant pay the same to the Plaintiffs, plus interest at the rate of ten percent (10%) per annum.

The Clerk of Courts is hereby ordered to serve upon all parties notice of the judgment and its date of entry upon the journal in a manner prescribed by Civil rule 5(B). The Clerk is further ordered to note said service in the appearance docket, all in accordance with Civil Rule 58.

Costs to Defendant.

S/C. Bolt-Meredith

Exhibit A attached.

COPIES FILED & MAILED TO PARTIES & ATTYS W/CERT OF MAILING  
VOLUME # 133 PAGE # 717

3/19/03

COST BILL FILED

1/30/04

CERTIFICATE OF JUDGMENT ISSUED



IN THE COURT OF COMMON PLEAS  
PIKE COUNTY, OHIO

**BETTY S. MILES, Individually  
and as Administrator of the  
Estate of Jerry D. Miles, et al.**

**CASE NO. 519-CIV-01**

**JUDGE BOLT-MEREDITH**

**Plaintiffs**

**JUDGMENT ENTRY**

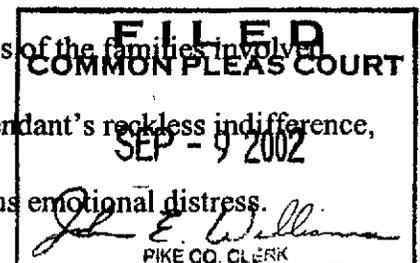
**vs**

**NATHANIEL TODD BOOTH,  
Individually and in his  
capacity as Chief of Police of  
the Village of Piketon, Ohio  
Defendant**

This matter came before the Court on plaintiffs' motion for summary judgment filed on the 8th day of July, 2002. Defendant was given an opportunity to respond to said motion but failed to do so.

Having construed the evidence submitted most strongly in favor of defendant, reasonable minds can come to but one conclusion and that conclusion is adverse to defendant. Thus, the Court hereby finds that there is no genuine issue as to any material fact and that plaintiffs are entitled to judgment as a matter of law as to the issue of liability against Nathaniel Todd Booth, both individually and in his capacity as the Chief of Police of the Village of Piketon, Ohio.

Specifically, the Court finds that while he was acting within the course and scope of his employment, defendant's acts or omissions in the investigation of this matter were conducted in a reckless manner, and reflected a reckless indifference to the rights of the families involved R.C. 2744.03(A)(6). The Court further finds that as a result of defendant's reckless indifference, plaintiffs have suffered damages, including but not limited to serious emotional distress.



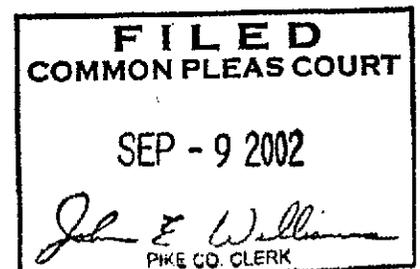
VOL 13 | PG 0317

Thus, plaintiffs' motion for summary judgment is well-taken and is hereby **GRANTED**. Pursuant to Civil Rule 56(D), the Court finds that the damages proximately caused by defendants actions and/or omissions are in controversy and that this matter shall be set for trial on the issue of what damages were proximately caused by said acts or omissions on Counts One through Four of Plaintiffs' Complaint.

  
\_\_\_\_\_  
**JUDGE CASSANDRA S. BOLT-MEREDITH**

  
\_\_\_\_\_  
PAT APEL, #0067805  
MARGARET APEL MILLER, #0041912  
Attorneys for Defendant

cc: NATHANIEL TODD BOOTH



VOL 131 PG 0318

12/18  
a.  
miles



IN THE COURT OF COMMON PLEAS  
PIKE COUNTY, OHIO

**BETTY S. MILES, Individually  
and as Administrator of the  
Estate of Jerry D. Miles,  
Bill S. Miles, and  
Joshua R. Miles  
Plaintiffs**

**CASE NO. 519-CIV-01**

**JUDGE BOLT-MEREDITH**

**JUDGMENT ENTRY**

vs

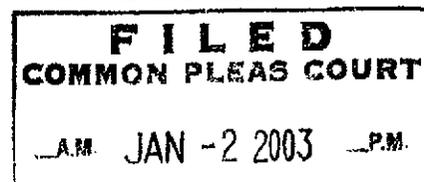
**NATHANIEL TODD BOOTH,  
Individually and in his  
capacity as Chief of Police of  
the Village of Piketon, Ohio  
Defendant**

This matter came before the Court this 18<sup>th</sup> day of December, 2002, for a hearing to determine the damages suffered by Plaintiffs in the judgment rendered against the Defendant. A copy of said judgment is attached as Exhibit A and is incorporated herein by reference thereto. Present in the court room were the Plaintiffs, represented by Mr. Pat Apel, and the Defendant who represented himself. The Defendant indicated that he had tried again to contact Mr. Moraleja, the Village's attorney, to discuss with him representation by the Village but received no response from Mr. Moraleja or any representative of the Village of Piketon.

The defendant having offered no evidence to the contrary, the Court hereby finds, based upon the pleadings, the judgment rendered against the Defendant, the evidence before the Court, statements of Plaintiffs' counsel and the Defendant, that the Defendant is liable to the Plaintiffs for all the damages they sustained as alleged in the Complaint and Judgment Entry filed herein.

Therefore, the Court further finds that the Defendant is liable to the Plaintiffs and should pay to them forthwith, the amount of \$837,518.22, awarded as follows:

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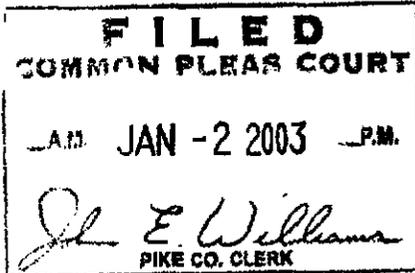


To the Estate of Jerry D. Miles	\$237,518.22.
To Betty S. Miles	\$200,000.00
To Bill S. Miles	\$200,000.00
To Joshua R. Miles	\$200,000.00

There being no just cause for delay, it is hereby ORDERED, ADJUDGED and DECREED that Judgment be rendered accordingly and the Defendant pay the same to the Plaintiffs, plus interest at the rate of ten percent (10%) per annum.

The Clerk of Courts is hereby ordered to serve upon all parties notice of the judgment and its date of entry upon the journal in a manner prescribed by Civil Rule 5(B). The Clerk is further ordered to note said service in the appearance docket, all in accordance with Civil Rule 58.

Costs to the Defendant.



*C. Bolt-Meredith*  
CASSANDRA S. BOLT-MEREDITH  
JUDGE

Submitted by:

*Pat Apel*  
PAT APEL, #0067805  
MARGARET APEL MILLER, #0041912  
Attorneys for Plaintiffs

cc: NATHANIEL TODD BOOTH

VOL 133 PG 0718



IN THE COMMON PLEAS COURT,  
PIKE COUNTY, OHIO

BETTY S. MILES, Individually  
and as Administrator of the  
Estate of Jerry D. Miles  
175 SR 220  
Pikeston, OH 45661

CASE NO. 171CIV03

JUDGE BOLT-MEREDITH

and

BILL S. MILES  
175 SR 220  
Pikeston, Ohio 45661

and

JOSHUA R. MILES  
175 SR 220  
Pikeston, OH 45661  
Plaintiffs

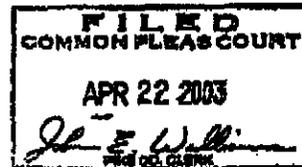
vs

VILLAGE OF PIKESTON, OHIO  
Serve: Rhonda Clemmons  
Village Administrator  
PO Box 547  
Pikeston, OH 45661

SUPPLEMENTAL PETITION  
Pursuant to R.C. §3929.06

and

PUBLIC ENTITIES POOL OF OHIO  
Serve: Accordia of Ohio LLC  
PO Box 427  
Dayton, OH 45401  
Defendants



Come now the Plaintiffs and state the following to this Honorable Court:

1. Defendant, Village of Pikeston, hereinafter Pikeston, is a village organized under the laws of the State of Ohio and is and was at the time herein mentioned authorized and required by

State law to defend and indemnify its employees in certain lawsuits, including the suit referred to herein.

2. Defendant, Public Entities Pool of Ohio, hereinafter Pool, is an intergovernmental organization organized pursuant to an Intergovernmental Contract to defend and indemnify members of the Pool in certain lawsuits, including the suit referred to herein.

3. On or about January 5, 2000, Nathaniel Todd Booth, was the Chief of Police of Defendant Piketon. Both Defendant Piketon and Booth were members of the Defendant Pool as defined by the Legal Defense and Claim Payment Agreement entered into by both Defendants.

4. On January 5, 2000, and thereafter, while the aforesaid statutes and the aforesaid Legal Defense and Claim Payment Agreement were in full force and effect, Plaintiffs' decedent and the Plaintiffs suffered certain damages for injury and loss to persons or property caused by the wrongful acts of Nathaniel Todd Booth while acting within the scope of his employment or official responsibilities as an employee of Defendant Piketon and as a member of the Defendant Pool. Pursuant to State law and said Legal Defense and Claim Payment Agreement, Defendants had a duty to defend Booth.

5. Thereafter, on the 18<sup>th</sup> day of December, 2002, Plaintiffs recovered a judgment of \$837,518.22 against Nathaniel Todd Booth in an action in the Common Pleas Court of Pike County, Ohio styled Betty S. Miles Individually and as Administrator of the Estate of Jerry D. Miles and Bill S. Miles and Joshua R. Miles v. Nathaniel Todd Booth, Case No. 519-CIV-01, which judgment remains in full force and effect and wholly unsatisfied, although more than 30 days have elapsed since the rendition thereof. (Exhibit A).

6. Defendants received notice of the fact of said suit on several occasions including

Received Apr-28-08 09:48pm

From-8374818008

To-CRAWFORD & COMPANY

FILED  
COMMON PLEAS COURT

APR 22 2003  
FILED  
COMMON PLEAS COURT

Page 001  
JUN 27 2008  
JOHN E. WILLIAMS  
PIKE CO. CLERK

service by mail of the complaint on the Village Attorney, Anthony Morales, and upon the Defendant, Nathaniel Booth, by certified mail. Said service constituted notice to both Defendants.

7. Defendants' failure to defend Booth makes each liable for said judgment rendered against him.

WHEREFORE, Plaintiffs pray judgment against the Defendants jointly and severally for the amount of the judgment rendered in case No. S19-CTV-01 which is a sum in excess of \$25,000.00, plus the stated interest on 10% per annum from December 8, 2002, and the costs of this proceeding.

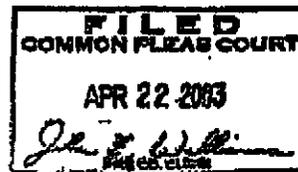
Respectfully submitted,  
APEL & MILLER

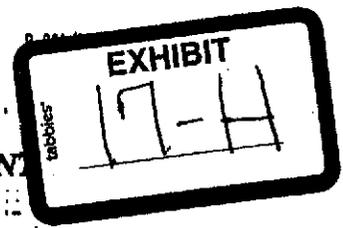
*[Signature]*  
PAT APEL (0067805)  
MARGARET APEL MILLER (0041912)  
617 Fifth Street  
Painesville Ohio 44062  
740-353-2146  
740-354-3148 (fax)

TO THE CLERK:

Please issue a certified copy of the foregoing for service upon Rhonda Clemmons for the Defendant, Village of Pileston, and Accordia of Ohio LLC, for Defendant, Public Entities Pool of Ohio, at the above addresses by Certified U.S. Mail, Return Receipt Requested.

*[Signature]*





**CERTIFICATE OF JUDGMENT  
FOR LIENS UPON LANDS AND TENEMENTS**

Revised Code, Sec. 2329.02

I, John E. Williams, Clerk of Pike County Common Pleas Court, do hereby certify that on JANUARY 2, 2003, a judgment or decree was rendered by said Court in favor of

ESTATE OF JERRY D MILES ETAL 175 SR 220 PIKETON OH 45661  
judgment creditor

and against

NATHANIEL TODD BOOTH 630 TR-274-S IRONTON OH 45638  
judgment debtor(s)

in the amount of \$837,518.22 with interest at the rate of 10% per cent per annum from JANUARY 2, 2003 and costs in the amount of UNKNOWN in Common Pleas Court Case No. 519-CIV-01 entitled BETTY S. MILES Plaintiff vs. NATHANIEL TODD BOOTH Defendant(s), which judgment is entered in Journal 133, page 0717 in said court.

JUDGMENT LIEN RECORDED IN  
PIKE COUNTY  
COMMON PLEAS COURT

JOHN E. WILLIAMS, Clerk of  
Common Pleas Court

DATE FILED JANUARY 30, 2004

DOCKET 3

By \_\_\_\_\_ Deputy

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IN THE COMMON PLEAS COURT  
PIKE COUNTY, OHIO



**BETTY S. MILES, Individually and  
as Administrator of the Estate of Jerry D.  
Miles, et. al.**

**Plaintiffs**

**Case No. 171CIV03**

**JUDGE BOLT-MEREDITH**

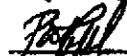
**vs.**

**NOTICE OF DISMISSAL**

**VILLAGE OF PIKETON, OHIO, et al.**  
**Defendants.**

Now comes plaintiffs, by and through their counsel, and hereby gives notice of their dismissal without prejudice of their Supplemental Petition against the Village of Piketon, Ohio. This dismissal is pursuant to Civil Rule 41(A)(1).

Respectfully submitted,

  
\_\_\_\_\_  
Pat Apel (#0067805)  
Margaret Apel Miller (#0041912)  
APEL & MILLER  
Attorneys at Law  
617 Fifth Street  
Portsmouth, Ohio 45662  
740-353-2146

**FILED**  
COMMON PLEAS COURT  
  
JUN 27 2008  
JOHN E. WILLIAMS  
PIKE CO. CLERK

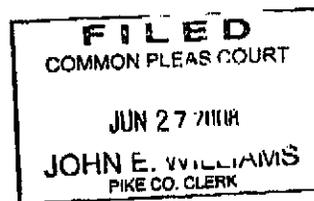
**CERTIFICATE OF SERVICE**

A copy of the foregoing has been forwarded via U.S. Mail to the following this 24<sup>th</sup> day of April, 2004.

Douglas J. Sutor, Esq.  
Isaac, Brant, Ledmon & Tector  
250 East Broad Street, Suite 900  
Columbus, OH 43215-3742  
Attorney for the Village of Piketon

Jeffrey C. Turner, Esq.  
Boyd W. Gentry, Esq.  
Surdyk, Dowd & Turner Co., L.P.A.  
130 West Second Street, Suite 900  
Dayton, Ohio 45402  
Attorneys for Defendant PEP

  
Pat Apcl



Westlaw.

Not Reported in N.E.2d

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Not Reported in N.E.2d, 2002 WL 940125 (Ohio App. 2 Dist.), 2002 -Ohio- 2273

▷ CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio, Second District, Clark County.

Terry BOWSHIER, et al., Plaintiffs-Appellants,  
v.

The VILLAGE OF NORTH HAMPTON, OHIO, A  
Municipal Corporation, et al., Defendants-Appellees.

No. 2001 CA 63.

Decided May 10, 2002.

Drivers who were given speeding tickets filed complaint against village, mayor, police chief, clerk, and council members, by which drivers sought to enjoin expenditure of village monies to enforce certain speed limits, declaration that certain unspecified ordinances relating to speed limits were unconstitutional, class certification, and damages under § 1983, and in which drivers alleged negligence, gross negligence, breach of fiduciary duty, fraud, and false arrest. The trial court entered judgment for defendants. Drivers appealed. The Court of Appeals, Clark County, Wolff, P.J., held that: (1) two-year statute of limitations applicable to political subdivision tort liability, rather than four-year statute of limitations applicable to fraud claims, applied to claims; (2) two-year statute of limitations for bodily injury and injury to personal property claims was applicable to § 1983 claims; (3) action challenging city's use of speed trap did not sound in fraud; (4) savings statute applied to bar application of statute of limitations to bar second breach of fiduciary duty claim brought by drivers who were named in first complaint; (5) savings statute could not be applied to refiled action brought by driver challenging enforcement of speeding statutes, when complaint was not refiled within one year of dismissal of case; (6) drivers failed to pay required se-

curity for taxpayers claims; (7) none of facts alleged by drivers with respect to village official's enforcement of speeding ordinances rose to level of wanton or willful misconduct, which would except officials from immunity from suit; and (8) trial court was not required to address merits of drivers' declaratory judgment action seeking declaration that certain speeding ordinances were unconstitutional.

Affirmed.

West Headnotes

[1] Municipal Corporations 268 ↪ 742(3)

268 Municipal Corporations

268XII Torts

268XII(A) Exercise of Governmental and Corporate Powers in General

268k742 Actions

268k742(3) k. Time to Sue and Limitations. Most Cited Cases

Two-year statute of limitations applicable to political subdivision tort liability, rather than four-year statute of limitations applicable to fraud claims, applied to claims of drivers who were given speeding tickets against village, even though drivers characterized village's conduct as fraud, given that setting and enforcing speed limits within village were traditional governmental functions, and claim that drivers were injured by manner in which village performed functions was properly characterized as one for political subdivision tort liability, not fraud. R.C. § 2744.04.

[2] Civil Rights 78 ↪ 1382

78 Civil Rights

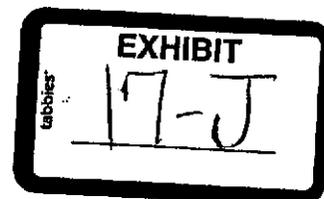
78III Federal Remedies in General

78k1378 Time to Sue

78k1382 k. Criminal Law Enforcement; Prisons. Most Cited Cases

(Formerly 78k210)

Two-year statute of limitations for bodily injury



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and injury to personal property claims was applicable to § 1983 claims of drivers who were given speeding tickets against village and village officials arising out of enforcement of speeding ordinances, given that § 1983 did not contain statute of limitations. 42 U.S.C.A. § 1983; R.C. § 2305.10.

### [3] Limitation of Actions 241 ↪130(5)

#### 241 Limitation of Actions

##### 241II Computation of Period of Limitation

241II(H) Commencement of Proceeding; Relation Back

241k130 New Action After Dismissal or Nonsuit or Failure of Former Action

241k130(5) k. Dismissal or Nonsuit in General. Most Cited Cases

Breach of fiduciary duty claims in second action of drivers who were given speeding tickets, by which drivers asserted that village officials had abused authority with which they had been entrusted by enforcing speed trap, related back to, and was substantially same as, first such claims, and thus savings statute applied to bar application of statute of limitations to preclude second action. R.C. § 2305.19; Rules Civ.Proc., Rule 15(C).

### [4] Limitation of Actions 241 ↪130(5)

#### 241 Limitation of Actions

##### 241II Computation of Period of Limitation

241II(H) Commencement of Proceeding; Relation Back

241k130 New Action After Dismissal or Nonsuit or Failure of Former Action

241k130(5) k. Dismissal or Nonsuit in General. Most Cited Cases

Drivers who were given speeding tickets were not prejudiced by trial court's failure to properly apply savings clause to bar application of statute of limitations to claim that village violated fiduciary duty by enforcing speed trap, given that evidence did not support underlying claim. R.C. § 2305.19; Rules Civ.Proc., Rule 15(C).

### [5] Limitation of Actions 241 ↪130(5)

#### 241 Limitation of Actions

##### 241II Computation of Period of Limitation

241II(H) Commencement of Proceeding; Relation Back

241k130 New Action After Dismissal or Nonsuit or Failure of Former Action

241k130(5) k. Dismissal or Nonsuit in General. Most Cited Cases

Savings statute did not apply to drivers who received speeding tickets, who were named for first time in refiled complaint challenging enforcement of certain speed limits, even though first action sought class certification, given that no class was certified in first action, drivers appeared to have dismissed original claim because trial court refused to certify class when drivers failed to properly identify and notify potential members of class, case was not treated as a class action when it was refiled, and savings statute applied only to plaintiff in original action. R.C. § 2305.19; Rules Civ.Proc., Rule 15(C).

### [6] Limitation of Actions 241 ↪130(5)

#### 241 Limitation of Actions

##### 241II Computation of Period of Limitation

241II(H) Commencement of Proceeding; Relation Back

241k130 New Action After Dismissal or Nonsuit or Failure of Former Action

241k130(5) k. Dismissal or Nonsuit in General. Most Cited Cases

Savings statute could not be applied to refiled action brought by driver challenging enforcement of speeding statutes, when complaint was not refiled within one year of dismissal of case. R.C. § 2305.19; Rules Civ.Proc., Rule 15(C).

### [7] Municipal Corporations 268 ↪1000(2)

#### 268 Municipal Corporations

##### 268XIV Taxpayers' Suits and Other Remedies

##### 268k1000 Actions

268k1000(2) k. Conditions Precedent in General. Most Cited Cases

Drivers who brought taxpayer action against village

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and village officials challenging enforcement of speeding statutes did not post required security by paying filing fee, even though neither village, nor trial court, took initiative with respect to security. R.C. § 733.59.

#### [8] Municipal Corporations 268 ↪747(1)

268 Municipal Corporations

268XII Torts

268XII(B) Acts or Omissions of Officers or Agents

268k747 Particular Officers and Official Acts

268k747(1) k. In General. Most Cited

Cases

None of facts alleged by drivers with respect to village officials' enforcement of speeding ordinances rose to level of wanton or willful misconduct, which would except officials from immunity from suit, even though drivers claimed that officials knew that posted speed limit was improper sometime before speeding tickets in question were issued, where exhibits merely showed that proper speed limit had been in dispute for some time, and trial court did not rule that any of posted speed limits were improper until after time at issue. R.C. § 2744, et seq.

#### [9] Municipal Corporations 268 ↪742(3)

268 Municipal Corporations

268XII Torts

268XII(A) Exercise of Governmental and Corporate Powers in General

268k742 Actions

268k742(3) k. Time to Sue and Limitations. Most Cited Cases

Even if wanton and willful misconduct on part of village officials in enforcing speed limit, as necessary to establish that individual officials were not entitled to immunity, had been established, drivers' claims still had to fail as untimely, where they were not filed within two years of speeding violations. R.C. § 2744.02(A).

#### [10] Municipal Corporations 268 ↪724

268 Municipal Corporations

268XII Torts

268XII(A) Exercise of Governmental and Corporate Powers in General

268k724 k. Governmental Powers in General. Most Cited Cases

Enforcement of speed trap was governmental function for purposes of immunity statutes, even if government officials made error in enforcement, given statutory definition of "governmental functions" which included police services, judicial and legislative functions, regulation of traffic, and the erection of traffic control devices. R.C. § 2744.01(C)(2).

#### [11] Municipal Corporations 268 ↪1000(3)

268 Municipal Corporations

268XIV Taxpayers' Suits and Other Remedies

268k1000 Actions

268k1000(3) k. Requesting City Officers to Bring Action. Most Cited Cases

Drivers who were given speeding tickets and brought taxpayer action challenging village's enforcement of speed trap, failed to provide sufficiently clear and specific written demand upon village to enjoin allegedly illegal activity, even though written request for injunction to village solicitor alleged that posted speed limits along highway were illegal, where demand did not implicate any village ordinance or resolution in illegality. R.C. §§ 733.56, 733.59.

#### [12] Declaratory Judgment 118A ↪128

118A Declaratory Judgment

118AII Subjects of Declaratory Relief

118AII(F) Ordinances

118Ak128 k. Ordinances in General. Most Cited Cases

Trial court was not required to address merits of drivers' declaratory judgment action seeking declaration that certain speeding ordinances were unconstitutional, given that no remedy was offered and no

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damage was incurred, and drivers failed to timely notify Attorney General of challenge to constitutionality or to serve Attorney General with constitutional challenge with reasonable amount of time for Attorney General to evaluate issues and determine whether to participate. R.C. § 2721.12(A); Rules Civ.Proc., Rule 4(E).

### [13] Limitation of Actions 241 ↔58(2)

#### 241 Limitation of Actions

##### 241II Computation of Period of Limitation

##### 241II(A) Accrual of Right of Action or Defense

##### 241k58 Liabilities Created by Statute

##### 241k58(2) k. Liability of Municipality or Public Officers. Most Cited Cases

Ticketed drivers' claims of negligence, gross negligence, and breach of fiduciary duty against village officials arising out of enforcement of speeding regulations were barred by two-year statute of limitations, given that no driver had received speeding ticket within prescribed two year period. R.C. 2744.04.

### [14] Automobiles 48A ↔349(10)

#### 48A Automobiles

##### 48AVII Offenses

##### 48AVII(B) Prosecution

##### 48Ak349 Arrest, Stop, or Inquiry; Bail or Deposit

48Ak349(10) k. What Is Arrest or Seizure; Stop Distinguished. Most Cited Cases

### False Imprisonment 168 ↔5

#### 168 False Imprisonment

##### 168I Civil Liability

##### 168I(A) Acts Constituting False Imprisonment and Liability Therefor

##### 168k1 Nature and Elements of False Imprisonment

168k5 k. Act or Means of Arrest or Detention. Most Cited Cases  
Evidence presented by drivers in action challenging

village's enforcement of speeding ordinance did not support finding of false arrest, where it did not establish arrest at all under legal definition of arrest and precedent that brief roadside confrontation with police officer for purpose of issuing citation was not arrest.

### [15] Parties 287 ↔35.63

#### 287 Parties

##### 287III Representative and Class Actions

##### 287III(C) Particular Classes Represented

##### 287k35.63 k. Constitutional Challenges and Actions Against Government in General. Most Cited Cases

Drivers who brought action challenging village's enforcement of speeding ordinance did not establish right to certify action as class action, given that claims that were not filed within applicable limitation periods or suffered from other fatal defects could not have fairly and adequately protected interests of unnamed members of reputed class, if any, whose claims were not barred, no representative party had viable claim upon which relief could be granted, and statute of limitations barred large percentage of claims of hundreds of individuals who received tickets in disputed area as listed by drivers. Rule Civ.Proc., Rule 23(A).

### [16] Constitutional Law 92 ↔967

#### 92 Constitutional Law

##### 92VI Enforcement of Constitutional Provisions

##### 92VI(C) Determination of Constitutional Questions

##### 92VI(C)1 In General

##### 92k964 Form and Sufficiency of Objection, Allegation, or Pleading

##### 92k967 k. Particular Claims. Most Cited Cases

##### (Formerly 92k46(2))

Drivers who received speeding tickets, and who sought to challenge speeding ordinances as unconstitutional, failed to identify ordinance that was arguably contrary to Ohio law, even though drivers referenced missing exhibit to complaint, which pur-

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portedly listed complained-of ordinances, and in trial brief, drivers referenced two resolutions specifically, where one resolution adopted Ohio Revised Traffic Code, which drivers did not allege was unconstitutional, and second resolution, which rescinded prior resolution, did not set any speed limit, but rather simply allowed Ohio Director of Transportation to determine and approve speed limits.

Ray A. Cox, Atty. Reg. No. 0011711, Dayton, OH, for Plaintiffs-Appellants.

W. McGregor Dixon, Jr., Atty. Reg. No. 0015005, Troy, OH, for Defendants-Appellees.

WOLFF, P.J.

\*1 On April 1, 1994, Terry Bowshier and Yvonne Newport filed a complaint on behalf of themselves "and all others similarly situated" against the Village of North Hampton, its mayor, its chief of police, its clerk, and its council members (hereinafter collectively referred to as "North Hampton"). The complaint was styled as a taxpayer action to enjoin the expenditure of village monies to enforce certain speed limits and as a declaratory judgment action to have unspecified ordinances related to the speed limits declared unconstitutional. The complaint also sought class certification and damages under Section 1983, Title 42, U.S.Code. It alleged that North Hampton had been illegally issuing speeding tickets on State Route 41 based on speed limits that were below those allowed by state law. Richard Buckley was added as a plaintiff on January 22, 1996. On October 29, 1996, the plaintiffs dismissed the action without prejudice pursuant to Civ.R. 41(A) after the trial court granted North Hampton's motion to decertify the class.

On December 2, 1996, Bowshier and Newport refiled an identical complaint except that four additional plaintiffs were named: Jimmie L. Bach, Robert W. Pour, Jerry L. Harris, and William D. Deaton. Buckley was not named in this complaint. In response, North Hampton asserted that the statute of limitations had expired on many of the claims set forth in the complaint. On May 7, 1998,

the trial court found that the limitations periods set forth in R.C. 2744.04 and R.C. 2305.10 applied to the claims. Each of these statutes provide for a two-year limitation period. Thus, regarding the plaintiffs who had not been party to the prior suit, the trial court concluded that their claims were barred if they had not arisen after December 2, 1994. The savings statute applied to Bowshier's and Newport's claims. Accordingly, the trial court concluded that Bowshier's and Newport's claims were barred if they had not arisen after April 1, 1992. Bach's, Pour's, Harris's and Deaton's speeding violations all predated December 2, 1994. Newport's speeding violation predated April 1, 1992, and Bowshier had never been ticketed for speeding. The court withheld ruling on the declaratory judgment action pending "identification of a specific ordinance."

On October 1, 1999, the plaintiffs moved to file an amended complaint. The trial court sustained the plaintiffs' motion on November 16, 1999 over North Hampton's objections. The amended complaint differed from the December 2, 1996 complaint in that it added Buckley as a plaintiff and added causes of action for negligence and gross negligence, breach of fiduciary duty, fraud, and false arrest.

The parties ultimately agreed that the case would be submitted to the court for complete resolution based on a statement of stipulated facts, statements of non-stipulated facts, depositions, affidavits, and exhibits. The trial court disposed of all of the causes of action in North Hampton's favor and offered, in several instances, multiple reasons for its decision with respect to each count.

\*2 The trial court found that the plaintiffs had "failed to identify a representative party who suffered any damage within the appropriate statute of limitations for any of the causes of action set forth" in the amended complaint. With respect to the causes of action for negligence or gross negligence and breach of fiduciary duty, the trial court found that North Hampton was immune from liability pursuant to R.C. 2744.02 because the actions at

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issue were governmental functions, that “[n]one of the facts alleged by plaintiffs \* \* \* rise to the level of wanton or willful misconduct which would except the individual defendants from immunity \* \* \*,” and that the plaintiffs had therefore failed to state a claim against the village. The court further found that these causes were governed by the two-year statute of limitations set forth in R.C. 2744.04 and were time-barred because none of the plaintiffs had received a speeding ticket within two years of the refiled complaint or, pertaining to Bowshier and Newport, within two years of the filing of the original complaint. With respect to the claim of breach of fiduciary duty, the trial court also found that this claim was “not substantially similar to the original [1994] complaint,” and therefore had not been “saved” by R.C. 2305.19.

Regarding the claim of false arrest, the trial court found that the two-year limitations period set forth in R.C. 2744.04 applied and that none of the plaintiffs had received a ticket within this period. The court also found that receipt of a traffic citation for speeding does not amount to an arrest. The court found that the cause of action for a civil rights violation pursuant to Section 1983, Title 42, U.S.Code was also governed by a two-year statute of limitations, set forth in R.C. 2305.10, and was time-barred.

The trial court rejected the plaintiffs’ taxpayer action because it found such action to have a one year limitations period and because the plaintiffs had not provided security for such an action as required by R.C. 733.59. The court found that the plaintiffs had also failed to properly serve the Attorney General with a copy of the complaint, a jurisdictional requirement pursuant to R.C. 2721.12(A) when one is seeking to have a municipal ordinance declared unconstitutional. Moreover, the court concluded that the plaintiffs had failed to identify the ordinance that they claimed was unconstitutional.

With respect to the fraud claim, the trial court found that this claim was “not substantially similar to the original complaint” and therefore was not

“saved” by R.C. 2305.19. The court also held that the plaintiff had failed to allege fraud with sufficient specificity to satisfy the pleading requirements of Civ.R. 9(B).

The plaintiffs raise eight assignments of error on appeal. We will discuss these assignments in the order that facilitates our discussion, rather than the order in which they are presented.

#### I. THE COURT ERRED IN HOLDING THAT THE MAXIMUM TIME APPLICABLE TO PLAINTIFFS’ COMPLAINT IS A TWO-YEAR STATUTE OF LIMITATIONS PURSUANT TO § 2744.04 O.R.C. OR § 2305.10 O.R.C.

\*3 The plaintiffs claim that, because they have alleged fraud in support of their taxpayer action, the four year statute of limitations for fraud applies. They claim that the trial court erred in applying the two-year limitation periods set forth in R.C. 2744.01 and R.C. 2305.10 because the issues in this case are not encompassed by R.C. 2744.01 and because R.C. 2305.10 is not implicated when there is no personal or bodily injury involved.

[1] In determining the applicable statute of limitations in a given action, the supreme court has held that the crucial consideration is the actual nature or subject matter of the cause, rather than the form in which the complaint is styled or pleaded. *Hunter v. Shenango Furnace Co.* (1988), 38 Ohio St.3d 235, 237, 527 N.E.2d 871. Thus, the fact that the plaintiffs characterize the village’s conduct as fraud is not controlling. The plaintiffs’ claims related to North Hampton’s role in setting and enforcing the speed limits within the village. These are traditional governmental functions, and the plaintiffs claim that they were injured by the manner in which North Hampton performed these functions. This action is properly characterized as one for political subdivision tort liability pursuant to R.C. Chapter 2744, and the trial court did not err in applying the limitation period set forth therein at R.C. 2744.04.

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[2]R.C. 2305.10 was applicable because it related to the plaintiffs' claim, pursuant to Section 1983, Title 42, U.S.Code, that their civil rights had been violated when they were ticketed under an illegal ordinance and illegal "signage," causing them to pay fines and costs under duress. Section 1983 does not contain a statute of limitations. *Wilson v. Garcia* (1985), 471 U.S. 261, 266, 105 S.Ct. 1938, 1942, 85 L.Ed.2d 254. For purposes of "firmly defined, easily applied rules," the Supreme Court has held that the proper statute of limitations for all Section 1983 claims is the personal injury statute of limitations in the state where the claim arises, rather than basing the limitation period in each case upon the varying factual circumstances and legal theories presented. *Id.* at 270, 276, 105 S.Ct. at 1944, 1947. When faced with this issue, the Sixth Circuit Court of Appeals has consistently held that the appropriate statute of limitations for Section 1983 actions in Ohio is the two-year period set forth in R.C. 2305.10, Ohio's statute of limitations for bodily injury and injury to personal property. See, e.g., *Browning v. Pendleton* (C.A.6, 1989), 869 F.2d 989, 992; *Kuhnle Brothers, Inc. v. Geauga Cty.* (C.A.6, 1997), 103 F.3d 516, 519. See, also, *Gaston v. Toledo* (1995), 106 Ohio App.3d 66, 78, 665 N.E.2d 264.

Moreover, we are unpersuaded by the plaintiff's argument that their action sounded in fraud. Fraud requires proof of a representation that is material to the transaction, made falsely, with knowledge or reckless disregard of its falsity, with the intent of misleading another into relying on it, justifiable reliance on the misrepresentation, and damages proximately caused by the reliance. *Kelley v. Ford Motor Credit Co.* (2000), 137 Ohio App.3d 12, 16, 738 N.E.2d 9. The alleged "representation" in this case—presumably the speed limit signs along State Route 41—is simply not the type of representation contemplated by the common law definition of fraud, nor is the issuance of a speeding ticket the kind of "transaction" contemplated therein. Further, the plaintiffs can hardly argue that they relied on the representations in question; they were only ticketed

by virtue of driving in excess of the posted speed limits. For these reasons and others, the trial court properly rejected the plaintiffs' contention that their claim sounded in fraud and that the four year statute of limitations applied.

\*4 The first assignment of error is overruled.

## II. THE COURT ERRED IN FAILING TO CONSIDER THE EFFECT OF § 2305.19 O.R.C.

The plaintiffs allege that the trial court did not consider the applicability of R.C. 2305.19, the savings statute. The plaintiffs assert that the savings statute applied to all of their claims because the 1996 complaint "was exactly the same when refiled" as the 1994 complaint and that all additional parties and causes of action contained in the amended complaint "must survive."

R.C. 2305.19 provides:

In an action commenced, or attempted to be commenced, \* \* \* if the plaintiff fails otherwise than upon the merits, and the time limited for the commencement of such action at the date of \* \* \* failure has expired, the plaintiff \* \* \* may commence a new action within one year after such date.

The plaintiffs argue that R.C. 2305.19 saved all of the plaintiffs and claims in their 1996 refiled complaint and in their 1998 amended complaint, although some of the plaintiffs and causes of actions in the amended complaint had not been set forth in either of the previous complaints. The trial court found that the plaintiffs' claims for breach of fiduciary duty and fraud were not "saved" because they were "not substantially similar to the original complaint." Because we concluded under the first assignment of error that the plaintiffs' claim was not properly styled as a claim for fraud, we will not revisit that claim here. Rather, we will focus on whether the breach of fiduciary duty claim was "saved" under R.C. 2305.19.

[3] As a general rule, a claim asserted in an

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amended pleading relates back to the date of the original pleading if it arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. Civ.R. 15(C); *Kraly v. Vannewkirk* (1994), 69 Ohio St.3d 627, 631, 635 N.E.2d 323. The relevant inquiry, then, for whether the 1998 amended complaint related back to the 1996 refiled complaint is whether the claim for breach of fiduciary duty arose out of the same conduct, transaction, or occurrence upon which the causes of action in the original complaint were based. Based on our review of the complaints, the conduct at issue was the same throughout. Thus, the breach of fiduciary duty claim in the amended complaint related back to the refiled complaint.

[4] Whether this claim was saved by the savings statute depends on whether it was “substantially the same” as the claims set forth in the original complaint. See *Rios v. The Grand Slam Grille* (Nov. 18, 1999), Cuyahoga App. No. 75150, unreported. As noted *supra*, the trial court found that breach of fiduciary duty was not substantially similar to the claims in the original complaint, namely a taxpayer action, declaratory judgment action, and civil rights claim. In our view, however, both the breach of fiduciary duty claim and the taxpayer action asserted that North Hampton officials had abused the authority with which they had been entrusted by enforcing a “speed trap.” In our view, these claims were substantially the same, and the savings statute did apply to the breach of fiduciary duty claim. The trial court erred in concluding otherwise. However, in light of our disposition of the third assignment of error, *infra*, the plaintiffs were not prejudiced by this error.

\*5 [5][6] We now turn to the plaintiffs’ argument that the savings statute applied to the four plaintiffs who were named for the first time in the refiled complaint because they were “members of the unnamed class.” This argument lacks merit. No class was certified in the original action. In fact, the plaintiffs appear to have dismissed their original claim because the trial court refused to certify a

class when the plaintiffs failed to properly identify and notify the potential members of the class. The case was not treated as a class action when it was refiled.<sup>FN1</sup> Thus, we fail to see how the savings statute could have applied to the new plaintiffs by virtue of their membership in an “unnamed” class. Moreover, by its plain language, R.C. 2305.19 applies to *the plaintiff* in the original action. Bach, Pour, Harris, and Deaton were not plaintiffs in the 1994 action. The plaintiffs’ effort to add Buckley as a plaintiff was also improper because he was a plaintiff in the original action but did not refile his complaint within one year of the dismissal of that case, as required by R.C. 2305.19.

FN1. The trial court did certify the class at one point, but it vacated that order a short time later when the parties “agreed” that class certification was “premature.” Journal Entry, July 3, 1997.

The second assignment of error is overruled.

#### V. THE COURT ERRED IN HOLDING THE PLAINTIFFS DID NOT PROVIDE SECURITY AS DEFINED AND REQUIRED BY § 733.59 O.R.C.

Plaintiffs contend that it “was impossible” for them to have posted any security pursuant to R.C. 733.59 because North Hampton did not request any security and the trial court did not determine what amount was required. Plaintiffs also claim that their payment of filing fees amounted to “security for the cost of the proceeding” pursuant to R.C. 733.59.

[7] The supreme court has held that “R.C. 733.59 unequivocally withholds jurisdiction to bring a statutory taxpayer action unless [the required security] is given.” *State ex rel. Citizens for a Better Portsmouth v. Snyder* (1991), 61 Ohio St.3d 49, 54, 572 N.E.2d 649. Without such security, the action is not a proper statutory taxpayer action. *Id.* Moreover, *Snyder* implicitly held that the payment of the initial filing fee did not satisfy the security require-

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ment set forth at R.C. 733.59. *Id.*; *National Elec. Contrs. Assn., Inc. v. Mentor* (1995), 108 Ohio App.3d 373, 381, 670 N.E.2d 1042, citing *Snydor*, 61 Ohio St.3d at 54, 572 N.E.2d 649 (Douglas, J., concurring in part and dissenting in part). Thus, we reject the plaintiffs' argument that they had satisfied the requirement of R.C. 733.59 by paying the filing fee. We are also unpersuaded that the plaintiffs were unable to pay security for the cost of proceeding by virtue of the fact that neither North Hampton nor the trial court had taken the initiative in that regard. The plaintiffs should have sought to have the trial court determine the required security.

The fifth assignment of error is overruled.

**VIII. THE COURT ERRED IN HOLDING INDIVIDUAL COUNCIL MEMBERS AND ALL DEFENDANTS ARE IMMUNE UNDER § 2744.01(C)(2)(f), § 2744.02 O.R.C., AND § 2744.03 O.R.C.**

The plaintiffs argue that the officials of North Hampton were not immune from liability because willful and wanton misconduct is excepted from the general grant of immunity contained at R.C. 2744.02(A). The plaintiffs also contend that North Hampton was not immune from liability because maintaining a "speed trap" is not a governmental function.

\*6 [8][9] The trial court concluded that "[n]one of the facts alleged by plaintiffs in the Second Amended Complaint rise to the level of wanton or willful misconduct which would except the individual defendants from immunity under R.C. Chapter 2744." We agree with this conclusion. Although the plaintiffs claim that officials knew for a fact that the posted speed limit was improper sometime before the speeding tickets in question were issued, their exhibits merely show that the proper speed limit had been in dispute for some time. The trial court did not rule that any of the posted speed limits were improper until 1996. This evidence fails to establish that North Hampton knowingly en-

forced an illegal speed limit from 1990 through 1994, as the plaintiffs suggest. Moreover, even if wanton and willful misconduct had been established, the plaintiffs' claims would fail because they were not filed within two years of their speeding violations, as required by R.C. 2744.04(A).

[10] The plaintiffs' argument that enforcing a "speed trap" is not a governmental function is likewise without merit. R.C. 2744.01(C)(2) defines governmental functions so as to include police services, judicial and legislative functions, regulation of traffic, and the erection of traffic control devices. This definition compels the conclusion that North Hampton's implementation and enforcement of speed limits was a governmental function, notwithstanding the fact that its officials may have made errors in performing this function.

The eighth assignment of error is overruled.

**III. THE JUDGMENT IS NOT SUSTAINED BY THE EVIDENCE AND IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE ON EACH OF THE CAUSES OF ACTION.**

Under this assignment of error, the plaintiffs argue that the trial court's finding with respect to each of its causes of action was against the manifest weight of the evidence.

[11] The plaintiffs contend that they complied with the statutory requirements for a taxpayer action because they had first requested that the village take action and it had refused to do so. The trial court dismissed this cause of action based on the statute of limitations and the fact that security had not been provided as required by statute. North Hampton makes the additional argument that the action was properly dismissed because the plaintiffs' written demand upon the village to enjoin the allegedly illegal activity was not sufficiently clear or specific.

We have already discussed the fact that posting security was a jurisdictional requirement for bringing a taxpayer action and that the plaintiffs failed to

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comply with this requirement. See discussion of Fifth Assignment of Error, *supra*. Notice to the village solicitor of the alleged illegality with a request that the solicitor seek an injunction to restrain the misapplication of funds was also a jurisdictional requirement pursuant to R.C. 733.56 and R.C. 733.59. North Hampton correctly points out that the plaintiffs' written request to the village solicitor that he seek an injunction alleged that the posted speed limits along State Route 41 in North Hampton were illegal but did not implicate any village ordinance or resolution in the illegality. This written request was inadequate to put the village on notice regarding the nature of the taxpayers' complaint, and thus the plaintiffs had not properly invoked R.C. 733.59. For these reasons, the trial court did not err in dismissing the taxpayer action.

\*7 We do express some doubt, however, about the trial court's conclusion that the taxpayer action was barred by the one year statute of limitations set forth at R.C. 733.60. R.C. 733.60 provides that "[n]o action to enjoin the performance of a contract entered into or the payment of any bonds issued by a municipal corporation shall be brought or maintained unless commenced within one year from the date of such contract or bonds." Several courts have held that R.C. 733.60 only applies to a R.C. 733.56 action for the misapplication of funds where the misapplication of funds is rooted in a contract. See *Berea ex rel. Ward v. Trupo* (2001), 141 Ohio App.3d 772, 776, 753 N.E.2d 286; *Lordstown ex rel. Kibler v. Craigo* (June 30, 1994), Trumbull App. No. 93-T-4919, unreported; *Model Neighborhood Residents Assn. v. Owens* (1989), 61 Ohio Misc.2d 40, 43, 573 N.E.2d 790. See, also, *Cuyahoga Falls v. Robart* (1991), 58 Ohio St.3d 1, 3, 567 N.E.2d 987 (holding that the one year statute of limitations in R.C. 733.60 applies to the misapplication of funds when the misapplication of funds is the result of an illegal contract). Because the misapplication of funds alleged in this case did not relate to a contract, we question whether the one year limitation period set forth at R.C. 733.60 applied. However, we need not reach this issue in light of the other

valid bases for the trial court's decision.

[12] The plaintiffs further contend that the trial court improperly failed to address the merits of its declaratory judgment action. The trial court found that the declaratory judgment action failed to state a claim upon which relief could be granted because "no remedy was offered and no damage was incurred." The trial court also found that the plaintiffs had failed to notify the Attorney General of their challenge to the constitutionality of the ordinance as required by R.C. 2721.12(A) and Civ.R. 4(E).

R.C. 2721.12(A) provided, in pertinent part, that:

In any action or proceeding that involves the validity of a municipal ordinance or franchise, the municipal corporation shall be made a party and shall be heard, and, if any statute or the ordinance or franchise is alleged to be unconstitutional, the attorney general also shall be served with a copy of the proceeding and shall be heard.

The language of R.C. 2721.12(A) is mandatory, and compliance with this provision is jurisdictional. *Cicco v. Stockmaster* (2000), 89 Ohio St.3d 95, 100, 728 N.E.2d 1066. Moreover, the Attorney General must be served when the constitutional challenge is initially pleaded to provide a reasonable amount of time for the Attorney General to evaluate the issues and determine whether to participate in the case. *Id.* at 99, 728 N.E.2d 1066. The plaintiffs' attempt to serve the Attorney General in May 2000 failed to satisfy this requirement. Because the supreme court has held that this requirement is jurisdictional, the trial court did not err in dismissing the declaratory judgment action.

[13] The plaintiffs also contend that the trial court's determination on their negligence or gross negligence cause of action was against the manifest weight of the evidence. As discussed *supra*, this claim had a two year statute of limitations pursuant to R.C. 2744.04, and none of the plaintiffs had received a speeding ticket within the prescribed two year period. The plaintiffs' claim for breach of fidu-

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ciary duty suffers from the same infirmity. The plaintiffs argue that the trial court's conclusion that they had failed to state a claim for fraud is also against the manifest weight of the evidence. We discussed the merits of the fraud claim *supra*, and we rely on that discussion here.

\*8 [14] Finally, the plaintiffs argue that the evidence supported their claims of false arrest "[i]f police officers held Plaintiffs for one minute, against their will, for speed limits that were in violation of the law." This argument ignores the legal definition of an arrest and supreme court precedent holding that a brief roadside confrontation with a police officer for the purpose of issuing a citation is not an arrest. *State v. Darrah* (1980), 64 Ohio St.2d 22, 26-27, 412 N.E.2d 1328. See, also, *State v. Barker* (1978), 53 Ohio St.2d 135, 139, 372 N.E.2d 1324. The evidence did not support a finding of false arrest because it did not establish an arrest at all.

The third assignment of error is overruled.

We will address the fourth and seventh assignments of error together.

IV. THE COURT ERRED IN FAILING TO ESTABLISH A CLASS AS DEMANDED, OR, IN THE ALTERNATIVE, ALLOCATE IDENTIFIED PLAINTIFFS AS JOHN/JANE DOES.

VII. THE COURT ERRED IN HOLDING THE PLAINTIFFS HAVE FAILED TO IDENTIFY ANYONE WHO SUFFERED MONETARY DAMAGES OR ANY REPRESENTATIVE PARTY WHO SUFFERED DAMAGES FOR PURPOSES OF THIS CLASS ACTION.

The plaintiffs claim that they should have been permitted to maintain a class action because they satisfied the requirements set forth in Civ.R. 23.

Civ.R. 23(A) provides:

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1)

the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

[15] We disagree with the plaintiffs' claim that they had satisfied all of these requirements. Given our conclusion *supra* that the named plaintiffs' claims were not filed within the applicable limitation periods or suffered from other fatal defects, we are unpersuaded that they could have fairly and adequately protected the interests of the unnamed members of the reputed class, if any, whose claims were not barred. Although the fact that a statute of limitations may bar the claims of some, but not all, class members does not automatically preclude certification of the class, it is beyond dispute that a class action cannot survive without a representative party who has a viable claim upon which relief can be granted. See *Hamilton v. Ohio Savings Bank* (1998), 82 Ohio St.3d 67, 84, 694 N.E.2d 442.

We are unimpressed by Plaintiffs' Exhibit Z, upon which the plaintiffs rely in arguing for the appropriateness of class certification. They contend that the trial court "apparently did not consider" Exhibit Z or it would have recognized that the plaintiffs had identified individuals "who [had] suffered damages for purposes of this class action." Exhibit Z lists hundreds of names of individuals who received tickets in the disputed area between 1990 and 1994. The statute of limitations would have barred the actions of a large percentage of those listed in Exhibit Z because their tickets were issued more than two years prior to the filing of the April 1994 original complaint. Furthermore, we concluded under the second assignment of error, *supra*, that the savings statute did not apply to those who were not named plaintiffs in the original action because the class had not been certified when that case was voluntarily dismissed.

\*9 For the foregoing reasons, the trial court did not

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err in failing to certify a class. The fourth and seventh assignments of error are overruled.

**VI. THE COURT ERRED IN HOLDING THAT THE PLAINTIFFS HAD NOT IDENTIFIED AN ORDINANCE OR RESOLUTION THAT IS UNCONSTITUTIONAL.**

The plaintiffs claim that the trial court erred and must not have considered the parties' stipulations in arriving at the conclusion that they had failed to identify an ordinance or resolution that was unconstitutional.

[16] This case originated in 1994 with the filing of a complaint in which the plaintiffs alleged that North Hampton had "passed an Ordinance reducing the speed limit on State Route 41." The ordinance was not identified with specificity. The same was true of the refiled complaint in 1996. In May 1998, the trial court ruled on the applicable statute of limitations but withheld judgment on the declaratory judgment action until "an appropriate time after the identification of a specific ordinance in question." By December 1999, the plaintiffs had still failed to specifically identify the ordinance or ordinances that they claimed were unconstitutional, and North Hampton filed a Motion to Dismiss or in the Alternative for a More Definite Statement asking that the plaintiffs identify the alleged illegal ordinance(s). In response, the plaintiffs stated:

\* \* \* Attached to the Second Amended Complaint as Exhibit D is [sic] all the ordinances of Defendants provided pursuant to Plaintiffs' discovery requests. If there are others, they were not provided. Those are, therefore, the ordinances at issue. \* \* \*

In our record, there is no Exhibit D attached to the amended complaint. The tenor of the plaintiffs' response, however, implies that they sought to have all of the village's ordinances declared unconstitutional or that they thought that a comprehensive list of the village's ordinances was responsive to the request for more specificity.

In May 2001, in their trial brief, the plaintiffs for the first time referenced Village Ordinance 93-8 and Resolution 93-8 specifically. Pursuant to Ordinance 93-8, North Hampton adopted the Ohio Revised Traffic Code as the official village ordinances for all traffic matters. The plaintiffs, however, do not contend that the Ohio Revised Traffic Code is unconstitutional. In fact, this is the law that they want North Hampton to enforce.

Pursuant to Resolution 93-8, North Hampton rescinded Resolution 93-4, which had authorized the Ohio Director of Transportation to conduct a study and to determine the "reasonable and safe prima facie speed limits on State Route 41" and had authorized the posting of signs in accordance with that determination. The plaintiffs also submitted subsequent Resolution 94-2, which reflected North Hampton's view that it had "grandfather type approval" of speed limits that were apparently lower than those determined by the Director of Transportation and requested that the Director of Transportation approve the lower speed limits as "reasonable, valid, and safe." While the plaintiffs' belated references to these resolutions shed light on their objections to North Hampton's speed limits, these resolutions do not expressly establish a speed limit that is contrary to the Revised Traffic Code. They do not establish a speed limit at all. Rather, they request the Ohio Director of Transportation to determine and to approve speed limits. As such, the trial court could have reasonably concluded that the plaintiffs had failed to identify an ordinance that was arguably contrary to Ohio law. Moreover, we note that this issue is academic in light of our conclusion under the third assignment of error that the constitutional challenge had not been properly brought because the Attorney General had not been notified.

\*10 The sixth assignment of error is overruled.

The judgment of the trial court will be affirmed.

BROGAN, J. and FAIN, J., concur.  
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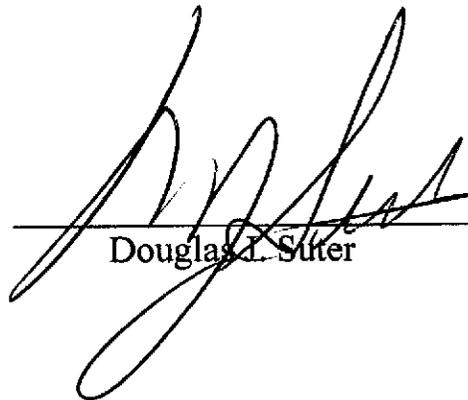
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served by regular U.S. mail, postage prepaid, this 28<sup>th</sup> day OCTOBER, 2008, upon the following:

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