

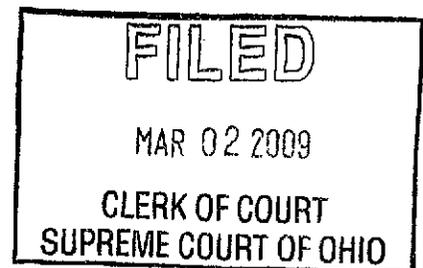
IN THE SUPREME COURT OF OHIO

National Solid Wastes Management Association,)	Case No. 09-0211
)	
Appellant,)	
)	
v.)	On Appeal from the Stark County Court of Appeals, Fifth Appellate District
)	
Stark-Tuscarawas-Wayne Joint Solid Waste Management District,)	
)	
)	Court of Appeals
)	Case No. 2008-CA-00011
Appellee.)	
)	

**APPELLEE'S MEMORANDUM IN RESPONSE TO
APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION**

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RULES

App. R. 121

**EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC
OR GREAT GENERAL INTEREST**

Appellant overstates the scope of the appellate court's decision in this case, and as a result, improperly frames its argument regarding whether the case is of public or great general interest. The appellate court's ruling reversed and remanded this case for dismissal on the grounds that the director of the Ohio Environmental Protection Agency ("Ohio EPA") was an indispensable party, and therefore, did not address the issue of whether appellee's rules are valid and enforceable. While the trial court did hold that the appellee's rules were enforceable, that decision has been reversed on the grounds that the trial court lacked jurisdiction to make that judgment. As a result of the limited scope of the court of appeals' decision, the basis for any argument that this case involves an issue of public or great general interest is much narrower than indicated by appellant's argument.

The court of appeals' decision only addresses the question of whether the Ohio EPA director is a necessary party in this case. Since the court of appeals' decision did not address the enforceability of appellee's rules, it cannot be argued that this case involves issues of public or great general interest because of the alleged impact of those rules.

The issue more properly framed is whether the determination that the Ohio EPA director is a necessary party is an issue of public or great general interest. While appellee agrees that the court of appeals' decision was erroneous, the present posture of the case is such that this issue does not currently rise to the level of being of a public or great general interest.

The court of appeals remanded this case to the trial court for further proceedings pursuant to App. R. 12(D). The court of appeals did not enter judgment dismissing the appeal, or remand with instructions to render a specific judgment, as allowed by App. R. 12(B). Accordingly, the

trial court is free to conduct proceedings consistent with the court of appeals' decision, other than the mere entry of judgment of dismissal. Since these other possible proceedings may impact the issues presented to this court, it is not yet clear whether the issues arising from the lower court proceedings will be of public or great general interest.

Furthermore, the parties to this case have the right to appeal the results of the remand proceedings, and have the court of appeals review its determination to the extent that it is unjust. *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, 3; *New York Life Ins. Co. v. Hosbrook* (1935), 130 Ohio St. 101, 106. The *Nolan* court emphasized that the doctrine of the law of the case is not a binding rule of substantive law and will not be applied to achieve unjust results. *Nolan*, 11 Ohio St.3d at 3.

Given that both parties to this case acknowledge and agree that the court of appeals' decision was erroneous in determining that the director of the Ohio EPA has authority to enforce the rules of a solid waste management district, it is likely that this issue will not need to be addressed by this court. Accordingly, it cannot be said that this case presents an issue of public or great general interest.

It should also be considered, that appellant declined to avail itself of the opportunity to file a motion for reconsideration with the court of appeals, under a circumstance where both parties acknowledged and agreed that its decision was erroneous as a matter of law. Instead, appellant is attempting to use the court of appeals limited determination, as a means of having this court address the numerous complex issues that the court of appeals declined to address. This factor also weighs against a determination that this case, as presently postured, is one of public or great general interest.

STATEMENT OF THE CASE AND FACTS

The facts relevant to the court of appeals determination are those relevant to the undisputed fact that the director of the Ohio EPA was not named as a party in the subject case. The facts adduced by appellant regarding whether appellee was within its authority in enforcing its rules are not pertinent to the court of appeals' decision.

ARGUMENTS REGARDING PROPOSITIONS OF LAW

Proposition of Law No. I: The Ohio EPA is not an indispensable party to the determination of whether a waste management district promulgated and attempted to enforce *ultra vires* rules.

While appellee disputes that it is attempting to enforce *ultra vires* rules, appellee agrees that R.C. 343.01(G) provides solid waste management districts with authority to adopt and enforce local rules within a district's jurisdiction. Appellee also acknowledges that the director of the Ohio EPA does not have the power of the enforcement of the rules at issue in this case. The parties are not in dispute on this issue, and therefore it is likely that this issue will be resolved during the remand process or any subsequent appeal.

Proposition of Law No. II: The rule-making authority of the STW District is limited to only that authority granted to it by the legislature and neither includes (1) the authority to enforce any existing rules after the Ohio EPA issued its own plan for the STW District; nor (2) the authority to enforce any rules that exceed the limited rule-making power granted the STW District by R.C. 343.01(G).

Appellee disputes the legal and factual arguments presented by appellant, but will not address them in detail, because they have not been addressed by the court of appeals in its decision and therefore are not appropriate for review by this court.

Appellant moves this court to take jurisdiction of this case pursuant to Article IV, Sec. 2(B)(2)(e) of the Ohio Constitution, which provides:

"The supreme court shall have appellate jurisdiction as follows:

...

In cases of public or great general interest, the supreme court may direct any court of appeals to certify its record to the supreme court, and may review and affirm, modify, or reverse the judgment of the court of appeals."

This court's appellate jurisdiction in cases of public or great general interest is delineated as involving the judgment of the court of appeals, and review, affirmation, modification or reversal of same. The court of appeals decision does not address the limits of appellee's rule-making authority and thus such issue does not fall within the appellate jurisdiction defined by the Ohio Constitution.

In effect, appellant is requesting this court to exercise original jurisdiction over the subject issue. Article IV, Sec. 2(B)(1)(f) of the Ohio Constitution provides that "The supreme court shall have original jurisdiction ... in any cause on review as may be necessary to its complete determination ..." This court has interpreted this provision "... to authorize judgments in this court that are necessary to achieve closure and complete relief in actions pending before the court." *State of Ohio v. Steffen* (1994), 70 Ohio St.3d 399, 407.

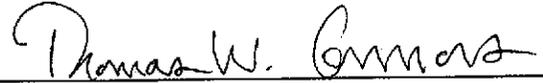
The meaning of Section 2(B)(1)(f) was further addressed by Justice Douglas in a concurring opinion, which described this section as allowing the exercise of original jurisdiction where the relief sought was unprecedented and extraordinary. *Berger v. City of Cleveland Heights* (1999), 87 Ohio St.3d 188, 197.

In the present case, appellant is requesting this court to exercise appellate jurisdiction over issues which are not the subject of the judgment to be reviewed. Accordingly, this court should not exercise appellate jurisdiction over these issues. Moreover, the exercise of original jurisdiction is not justified by this court's precedent because the relief being sought is not unprecedented and extraordinary. Furthermore, the relief being sought is not necessary, as required by Section 2(B)(1)(f), given the posture of this case.

CONCLUSION

For the reasons discussed above, this case does not involve matters of public or great general interest. Appellee therefore requests that this court deny appellant's request that the court exercise appellate jurisdiction in the subject case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed by regular U.S. Mail this 27th day of February, 2009 to

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