

ORIGINAL

IN THE SUPREME COURT OF OHIO

CITY OF ZANESVILLE,

Case No. 09-1282

Appellant.

-Vs-

RONALD T. ROUSE, JR.,

Appellee.

On Appeal from the Muskingum
County Court of Appeals, Fifth
Appellate District.

Court of Appeals Case No.
CT08-0035.

APPELLEE RONALD T. ROUSE JUNIOR'S, MEMORANDUM OPPOSING
JURISDICTION.

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FILED
AUG 14 2009
CLERK OF COURT
SUPREME COURT OF OHIO

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EXPLANATION OF WHY THIS COURT SHOULD DECLINE JURISDICTION

Appellant, City of Zanesville (“City”), by and through its Law Director’s Office seeks this Court’s jurisdiction through a Memorandum of Jurisdiction (“Memorandum”) filed, docketed and date-stamped on July 16, 2009. The City’s action is a discretionary appeal from the Fifth District Court of Appeals of Muskingum County decision in *City of Zanesville v. Rouse* (June 3, 2009) 2009-Ohio 2689. In *Rouse*, the Court sustained Assignment of Error II, which argued that the trial court was without subject matter jurisdiction, because the criminal complaint was not properly filed due to the fact that the complaint’s filing was not noted upon the docket and further, did not contain a file stamp in accord with the mandates of R.C. §§ 1903.31(E), 2303.08 and 2303.10.

Conversely, in a nutshell, the City argued that because the City delivered its complaint to the Clerk of Court, it was therefore filed. The City failed to address the mandates of R.C. §§ 2303.08 or 2303.10. The City, through incorporation of its argument in Assignment of Error I into Assignment of Error II, however did address R.C. § 1903.31(E). In short, the City blamed the Clerk of Court. The Court of Appeals rejected this argument.

The *Rouse* decision, which is at issue here, was based upon that Court’s prior holding in *State v. Sharp*, (April 20, 2009) 5th Dist. Knox App. Nos. 08CA000002, 08CA000003, and 08CA000004, 2009-Ohio-1854, *Rouse* at ¶¶ 13-15; See Memorandum at p. 1. The Appellee in *Sharp* (City of Mount Vernon) there admitted that the charging instruments were not file-stamped nor noted on the certified transcript of the docket. See *Sharp* at ¶ 13. In *Sharp*, the Fifth District cited to R.C. 1901.31(E), which mandates that,

under proper dates the clerk shall note on the docket the filing of the complaint. The Court went on to determine that the certified docket of the case as obtained from the Municipal Court failed to contain such a notation, Sharp at ¶¶ 21-23 (citing cases). Further the Court found that the charging instrument failed to contain a file-stamp. Sharp at ¶ 23. Therefore, the Fifth District held that the charging instruments were not properly before the Municipal Court at the time that Mr. Sharp was convicted and sentenced and accordingly, the Municipal Court thereon lacked subject-matter jurisdiction and as a result vacated the convictions, Sharp at ¶ 23. In applying Sharp the Appellate Court in Rouse likewise vacated the judgment of conviction. Rouse at ¶ 24. It should be noted by this Court that the State (City of Mount Vernon) did not appeal the Sharp decision to this Court.

Further, the Appellate Court having found that the Municipal Court lacked subject matter jurisdiction due to the fact that the City of Zanesville's criminal complaint was not properly "filed," then turned its attention to the issue of a temporary protection order that was set forth upon the alleged complaint. That Court cited to the mandates of R. C. § 2919.26, and accordingly held that the temporary protection order that was set forth by the lower Court in Rouse was void because the complaint was never properly "filed" and thereby vacated said order and therefore sustained Assignments of Error V, VI and VII. See Rouse at ¶¶ 17-24.

The City, for its cause in this Court, has now taken the astonishing position that the Rouse decision has rendered every case heard in the Municipal Court from 1986 until 2007, between 60,000 to 100,000 cases according to the City, void for want of subject matter jurisdiction, because as the City claims that "the complaints were not file stamped

nor was there a journal entry which specifies that the complaints were filed.” Memorandum, p. 1, ¶ 1 and p. 3, ¶ 3.

The City next incredibly states that the “Clerk has never been told to file stamp criminal complaints.” Memorandum, p. 2 ¶ 1. The City first blames its situation on a “program” that was purchased in 1986 for the Clerk of Court’s Office. Memorandum, p. 2. The City also claims that several other “unidentified” courts utilize the same software program. As such the City claims that the Rouse decision will also spill over into those courts. Memorandum, pp. 1-3.

Further, the City amazingly indicates in this Court that several sitting and visiting judges “[n]ot knowing there was a problem” continued to hear the cases because according to the City - this all occurred for the reason that “there was a file” which had a case number with the complaint inside of the file. Memorandum, p. 2, ¶ 1.

The City also attempts to absolve itself of any blame, and instead place blame on the Clerk of Court when it states “...that it is not the City of Zanesville’s fault if the Clerk did not file stamp complaints or make journal entries regarding the filing. When the City of Zanesville caused the complaint to be deposited with the clerk, they had met their obligation.” Memorandum, p. 7, ¶ 2.

The City’s real issue in this Court is unveiled when we discover the City’s closing remark. The City request that this Court, “... determine whether the court of appeals was too specific in identifying what constitutes filing a complaint.” Memorandum p. 3.

The City has implied that this is a case of “public or great general interest.” It is admitted that this court “may” review such cases under its authority as granted by Section 2(B)(2)(e), Article IV, Ohio Constitution.

However, the Ohio General Assembly through clear unambiguous language has for fifty-six years had the answer that the City searches for. In 1953 that body enunciated the mandates for what constitutes the proper filing of a “complaint” in the Courts of this State. These mandates are contained in the Revised Code. Revised Code §§ 1903.31(E), mandates that, “... under proper dates the clerk shall note on the docket the filing of the complaint.” In R.C. § 2303.08 we find that, “the clerk shall indorse on each pleading or paper ... the time of filing.” Lastly in R.C. § 2303.10, we find, “the clerk shall indorse upon every paper filed with him the date of the filing thereof.” R.C. §§ 2303.08 and 2303.10 are made applicable to the Clerk of the Municipal Court through R.C. § 2303.31. Said sections of the Code have been in effect in this State since 1953.

Further this very Court has also answered the question of the City by its agreement with the General Assembly in its recently enacted Sup. R. 44, which states in relevant part:

(A) “Case” means a notice of appeal, petition, or complaint filed in the court of appeals and any of the following when filed in the court of common pleas, municipal court, and county court:

* * * *

(2) A criminal indictment, complaint, or other charging instrument that charges a defendant with one or more violations of the law arising from the same act, transaction, or series of acts or transactions;

* * * *

(E) “File” means to deposit a document with a clerk of court, upon the occurrence of which the clerk time or date stamps and docket the document.

Hence, under the General Assembly’s clear and unambiguous language and this Court’s enactment, there is no issue of material fact before this Court that this Court must review.

In regard to the issue of the admission by the City to the claimed 60,000 to 100,000 criminal complaints that the City claims Rouse will affect, the failure by the City to properly follow the law of this State as enunciated by the Ohio General Assembly in §§ 1903.31(E), 2303.08 and 2303.10, constitutes invited error in each case. As such the City may not take of advantage of such an error in this Court and must be denied relief as mandated by State ex rel. Kline v. Carroll, 96 Ohio St.3d 404, 2002-Ohio-4849, 775 N.E.2d 517, ¶ 27; State ex rel. Soukup v. Celebrezze (1998), 83 Ohio St.3d 549, 550; Lester v. Leuck (1943), 142 Ohio St. 91, 26, paragraph one of the syllabus.

Further, when we review the on-line docket of the Zanesville Municipal Court we find that on July 21, 2009, one day after the Sharp decision and approximately six weeks before the Rouse decision, in case numbers CRB 0900484 City of Zanesville v. Barbara J. Norris and CRB 0900485 City of Zanesville v. David Mayle, there is found upon the on-line docket of these cases the first notation "COMPLAINT & COPIES FILED WITH COURT." The City's apparent compliance with law of this State, as cited *supra*, precludes a finding that this issue is capable of repetition by that Court. Moreover, it belies the City's claim that a "program" caused its situation. Because if the City can comply with the mandate that "under proper dates the clerk shall note on the docket the filing of the complaint" as mandated under R.C. § 1903.31(E) now, it could have at all times relevant, also complied.

In that same vein, in addressing the City's claim that the Rouse decision will cause chaos in the courts of this State, because other courts have used the same "program," we find on a review of the Muskingum County Court in CRA 0600100, State v. Charles L. Hill (2-13-2006) the first notation "CASE WAS FILED WITH COURT."

The Muskingum County Court as shown by its on-line docket uses Henschen & Associates, Inc. software. This is the same software that the Zanesville Municipal Court utilizes. See on-line docket, Zanesville Municipal Court. This notation, strangely, complies with Sup. R. 44 (A) (2) and (E), 3 years prior to the said Rule's enactment and also to when the Rouse decision was filed. Consequently, the City's promise of great chaos in the court system if the Rouse decision is left to stand, is to say the least - spurious.

Accordingly, due to the well-known and unambiguous sections of the Code as enacted by the General Assembly, along with this Court's recent adoption of Sup. R. 44, combined with the invited error of the City, and the facts that belie any program problem along with the evidence that contravenes the threat of chaos in the courts, this Court should forthwith deny to the City of Zanesville its grant of Jurisdiction because this case presents no genuine case of "public or great general interest."

APPELLEE'S STATEMENT OF THE CASE AND FACTS

This case originally arose from an alleged conviction of Appellee, Ronald Rouse in the Zanesville Municipal Court and the issuance of a temporary protection order thereof. On July 6, 2007, Mr. Rouse appeared with Counsel and filed a Motion to, *inter alia*, dismiss the case with prejudice prior to a finding of guilt. The Judge recused himself and the matter was scheduled for trial.

On July 9, 2008, Mr. Rouse appeared again with Counsel, in front of another Judge. The Judge overruled the said Motion and proceeded to find guilt and pronounce sentence.

Mr. Rouse appealed to the Fifth District Court of Appeals for Muskingum County, Ohio. That Court in a decision rendered on June 3, 2009 vacated the conviction and the temporary protection order.

The City of Zanesville then appeared in this Court, through a Memorandum in Support of Jurisdiction seeking the jurisdiction of this Court through a discretionary appeal. It is duly noted that the City's Memorandum is file stamped July 16, 2009, indicating that, according to the law of this State, it has been filed and docketed in this Court and is properly before this Court.

**APPELLEE'S RESPONSE TO APPELLANT'S ARGUMENT IN SUPPORT OF
PROPOSITION OF LAW**

ARGUMENT

Response to Argument in Support of Proposition of Law: A Municipal Court does not obtain subject matter jurisdiction of a criminal complaint until it is properly before the Court. To be properly before the Court it first must be submitted to the Clerk of Court who then as a matter of law is required to, inter alia, note under the proper date the filing of the complaint on the docket, and then shall endorse on the complaint the time and date of filing pursuant to R.C. §§ 1903.31(E), 2303.08 and 2303.10.

A.

The proposition of law that Appellant has set before this Court, in reality seeks a determination from this Court on the definition of "filed." See Memorandum p. 3.

The Appellate Court's decision in *Rouse* or *Sharp* has nothing to do with the filing of a complaint, but rather it determines when a complaint is properly before the court. The Court in *Rouse* via the *Sharp* decision, states that for the municipal court to have subject matter jurisdiction, a criminal complaint has to be properly before the court, meaning, that it must be noted upon the certified transcript of the docket, and contain a file stamp, showing the date and time of filing. See *Sharp* ¶¶ 21-24.

Thus, the City of Zanesville does not attack or show error in the Appellate Court's determination on when a criminal complaint is properly before the Court. Memorandum, p. 5-8. As such, the City having shown no error in the *Rouse* holding, their proposition of law must be overruled.

B.

The City has posed another question, this time within its Proposition of Law. At the City's Memorandum, page 6 we find "does the law require a 'file stamp' or a separate notation that the complaint was filed; or is the fact that the clerk received the complaint and assigned it a case number sufficient evidence that the complaint was filed." Again the holding of Rouse via Sharp has nothing to do with filing, but rather of when a complaint is properly before the Court as to invoke the subject matter jurisdiction of that Court. See Sharp, *passim*.

Nevertheless again, we turn to Revised Code §§ 1903.31(E), which mandates that under proper dates the clerk shall note on the docket the filing of the complaint, then to R.C. § 2303.08 which states, the clerk shall indorse on each pleading or paper ... the time of filing, then lastly to R.C. § 2303.10, which states, the clerk shall indorse upon every paper filed with him the date of the filing thereof. R.C. §§ 2303.08 and 2303.10 are made applicable to the Clerk of the Municipal Court through R.C. § 2303.31. Said sections of the Code have been in effect in this State since 1953.

The Appellate Court in Sharp relied upon R.C. § 1903.31(E) (Sharp at ¶¶ 18-20) and cited to In re Hopple (1983) 13 Ohio App.3d 54, for the proposition that "[a]ll judgments and other papers must be filed stamped on the date they are filed." Sharp at ¶ 21. Hopple for authority, cited R.C. §§ 2303.08 and 2303.10. *Id* at 54-55.

In its effort to gain a definition of when a document is filed, rather than when a complaint is properly before the court thereby invoking subject matter jurisdiction, the City attempted an attack on In re Hopple, State v. Dillon (Licking County, 1994) 1994 Ohio App. Lexis, unreported, and Holland v. Mike Amer. Db a American Designers

Company (Franklin County 1979) 1979 Ohio App. Lexis 11482, as cited by the Fifth District in the Rouse case. See Memorandum, p. 7. These cases dealt with the issue as to when a document was properly before the court as shown by the City's own Memorandum at page 7. These cases fully support the Fifth District's decision in Rouse. The City failed to address R.C. § 1903.31(E). Further, the City ignored the authority as cited by the Appellate Court in Sharp. Memorandum, pp. 6-7.

In short the law is that a Municipal Court does not obtain subject matter jurisdiction of a criminal complaint until it is properly before the Court. To be properly before the Court it first must be submitted to the Clerk of Court who then as a matter of law is required to, *inter alia*, note under the proper date the filing of the complaint on the docket, and then shall endorse on the complaint the time and date of filing pursuant to R.C. §§ 1903.31(E), 2303.08 and 2303.10. The Fifth District Court of Appeals in Rouse and Sharp followed the law. As the City has not addressed the Appellate Court's holding and thusly, has shown no error, its Proposition of Law must be overruled.

CONCLUSION

This case does not present a case of genuine "public or great general interest." This Court could not provide to the bench or bar of this State any further guidance as to the law, in regards to the plain, clear and unambiguous language that is contained in R.C. §§ 1903.31(E), 2303.08 and 2303.10 as enunciated by the General Assembly in 1953. This law was recognized in this Court's own Sup. R. 44 (A), (2) and (E). As to the argument of the City for such jurisdiction, as has been shown, is without merit when the facts are unveiled. There is no material fact, there is absent any chance of repetition, and there is lacking any chance of chaos in the courts of this State. What is apparent however is that there is invited error in 60,000 to 100,000 cases all induced by the City of Zanesville, for which the City is precluded from gaining relief in this Court.

The City has come into this Court and chosen not to challenge the issue of when a complaint is properly before the Court, as was the holding of the case it attempts to appeal to this Court. It has by its own choice failed in this Court.

WHEREFORE, this Court should forthwith, decline jurisdiction to decide this case on its merits.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Undersigned hereby certifies a true copy of the foregoing Memorandum Opposing Jurisdiction was served upon the Counsel for Appellant Susan Small, Assistant City Law Director, City of Zanesville, at 825 Adair Avenue, Zanesville, OH 43701 by ordinary U.S. Mail postage prepaid on this the 14th day of August 2009.



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