

ORIGINAL

IN THE SUPREME COURT OF OHIO

City of Zanesville,	:	Case No. 2009-1282
	:	
Appellant,	:	On Appeal from the Muskingum
	:	County Court of Appeals,
v.	:	Fifth Appellate District
	:	
Ronald T. Rouse, Jr.,	:	Court of Appeals
	:	Case No. CT08-0035
Appellee.	:	

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APPELLANT'S REPLY BRIEF

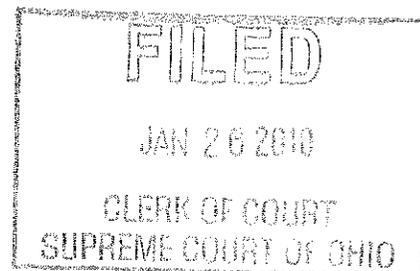
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## Introduction

Appellant brings before the Court two simple propositions related to what constitutes the filing of a complaint. Appellee understandably elaborates upon the propositions and attempts to convince the Court that the duties of the clerks of court are not only jurisdictional in nature, but that they also rise to the level of guaranteed rights of defendant's; and that if the clerk of courts do not perform their duties precisely they interfere with the defendant's due process rights. Appellant will address these issues. Other issues included in Appellee's brief are beyond the scope of the issue before the Court for review. Appellant will not address those issues, which include waiver of subject matter jurisdiction, timeliness of the motion to dismiss, and arguments regarding compelled appearances of appellee before the lower court conferring subject matter jurisdiction.

What is more difficult to deal with are the bold face allegations that the City of Zanesville, the prosecutor, the "evil government" some how sought to benefit by encouraging the clerk of court to not file stamp complaints. There is no suggestion as to how that benefitted the prosecutor or the "evil government," and the notion is totally absurd. Despite allusions that the prosecutor (actually various prosecutors over a number of years) should have superior knowledge regarding the files; the fact is that the prosecutors had no more right to rifle through the files of the court than any defense attorney, nor should they. Further, Appellee's use of the doctrine of invited error does not apply as demonstrated by the cases Appellee cites in the brief. Appellant declines to bore the Court with any further discussion of these issues.

Appellee raises the following issues that will be further discussed below:

1. Do the requirements that judgment entries and trial waivers be file stamped in order to become part of the record differ from the requirements for filing of complaints?

2. What constitutes a valid complaint?

3. Do the duties of the Clerk of Court as set forth in the Rules of Superintendence and as outlined in R.C. 1901.31(E) and R.C. 2303.08 create due process rights for defendants?

## ARGUMENT

### **1. Do the requirements that judgment entries and trial waivers be file stamped in order to become part of the record differ from the requirements for filing of complaints?**

Appellee proposes as a general proposition that all papers must be file stamped in order to be considered filed. His brief is full of cases that are intended to support that proposition. Careful review of the cases cited reveals that the vast majority of the cases relate to judgment entries that are not file stamped and to jury waivers that are not file-stamped. In a 1985 Lucas County case the entry in question was handwritten on a 10 X 15 case file envelope. *William Cherry Trust v. Hoffman* (1985, Lucas County) 22 Ohio App.3d 100; 489 N.E.2d 832. The appellate court dismissed the appeal because there was no evidence when the judgment entry was filed with the Clerk of Court and therefore it did not meet the requirements of a final appealable order and the 30 day time limit for appeal had not begun to run. *Id.* p. 106. The Court did not require “file-stamping” only that there be indication regarding when it had been filed. *Id.* In the only case presented by Appellee in which a file stamp on a complaint (traffic ticket) was in question the Court of Appeals determined that they could not hear the case for lack of a final appealable order. *State v. Callihan* (1993, Lawrence County) Case No. 93CA1 (unreported) p. 2. In *Callihan* the Court of Appeals did not question whether the court had subject matter jurisdiction due to the lack of a file-stamp on the day the ticket was filed.

The fact that judgment entries must be journalized is beyond contention. Crim R 32 ( C) provides as follows:

A judgment of conviction shall set forth the plea, the verdict, or findings, upon which each conviction is based, and the sentence. Multiple judgments of conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.

There is a similar provision in Civ R 58 (A) which states:

Subject to the provisions of Rule 54(B), upon a general verdict of a jury, upon a decision announced or upon the determination of a period payment plan, the court shall promptly cause the judgment to be prepared and, the court having signed it, the clerk shall thereupon enter it upon the journal. A judgment is effective only when entered by the clerk upon the journal.

It should be noted that despite the assertions of Appellee there is no provision that even journal entries must be file-stamped. However, there is sufficient case law that somehow there must be notice as to when the journal was filed in order to determine when the 30 days for appeal begins to run.

The fact that a judgment entry is not file-stamped or otherwise indorsed does not divest the trial court of jurisdiction, but it does divest the Appellate court of jurisdiction. In another judgment case cited by Appellee the Court recognized that the error is curable and stated that the petitioner was not forestalled from filing a later appeal after the judgment was file-stamped. *In Re Hopple* (1983, Wood County) 13 Ohio App.3d 54, 55; 468 N.E.2d 129, 130.

Several other cases cited by Appellee for the proposition that all papers must be file-stamped deal with jury waivers. In a 1996 case this court determined that if a defendant elects to waive the right to trial by jury the waiver must be in writing, signed by the defendant, filed in the

criminal action and made part of the record. *State of Ohio v. Pless* (1996) 74 Ohio St. 3d 333; 1996 Ohio 102; 658 N.E.2d 766 at syllabus 1. In *Pless* it was uncontroverted that the defendant signed a jury waiver form in open court, but the jury waiver form never made it into the record. The Court determined that R.C. 2945.05 required that the jury waiver form be made a part of the record and the Court remanded to the trial court. *Id* at 339, 340. R.C. 2945.05 provides in part as follows:

**Defendant may waive jury trial**

In all criminal cases pending in courts of record in this state, the defendant may waive a trial by jury and be tried by the court without a jury. Such waiver by a defendant, shall be in writing, signed by the defendant, and filed in said cause and made a part of the record thereof.

As is the case with judgment entries so is the case with jury waivers; there is a specific statutory provision upon which the Courts rely as the basis for their decision. That creates a clear difference between filing of judgment entries and jury waivers and filing of complaints. If the legislature wanted there to be such a provision for filing of complaints they could have drafted such a provision into the Civil and Criminal Rules of Procedure. However, there are no statutory provisions in the Criminal Rules of Procedure requiring that complaints be file-stamped or listed by name on the journal.

Another difference between the filing of judgment entries and jury waivers and the filing of complaints can be found in case law. There are numerous cases that have dealt with the issue of the filing of judgment entries and jury waivers. Appellee out of 56 cases cited provides the Court with only one case that has such a holding requiring that complaints be file-stamp and/or journalized in order to be considered filed. That case is the Fifth District Court of Appeals case

of *State of Ohio v. J. Ro Sharp* (2009, Knox County) Case Nos. 98 CA 000002, 08 CA 000003, 08 CA 000004. As is fully discussed in Appellant's merit brief, none of the cases cited in that decision, which was the sole basis for the decision in the instant case, required complaints to be file-stamped.

## 2. What constitutes a valid complaint?

The definition of a complaint is set forth in Crim R 3 which states:

The complaint is a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance. It shall be made upon oath before any person authorized by law to administer oaths.

Appellee states that a valid complaint must be filed and that the complaint was not a valid complaint because the clerk of courts did not follow the mandates of R.C. 1901.31(E) and R.C. 2303.08. Those code sections deal with the ministerial duties of the clerks of court. Appellee addresses this issue with a plethora of cases in which the various courts found that there was not a valid complaint filed. Most of those cases have a common theme; to wit, that the complaint did not meet the requirements of Crim R 3. In some cases the affidavit was not sworn.<sup>1</sup> In other cases the essential facts constituting the crime were lacking.<sup>2</sup> Those cases are distinguishable from the instant case in that the complaint that was filed with the clerk met the requirements for a complaint as set forth in Crim R 3.

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<sup>1</sup> See for example *State v. Zdove* (1958, Cuyahoga County) 106 Ohio App. 481, 151 N.E.2d 672; *City of Columbus v. Jackson* (1952, Franklin County) 93 Ohio app. 526, 114 N.E.2d 60; *State of Ohio v. Miller* (1988, Hamilton County) 47 Ohio App. 3d 113, 547 N.E.2d 399; *Akron v. Meissner* (1993, Summit County) 92 Ohio App.3d 1, 633 N.E.2d 1201.

<sup>2</sup> See for example *City of Newburgh Heights v. Hood* (2004, Cuyahoga County) 2004 Ohio 4236 Cuyahoga App. No. 84001 (unreported); *Stol v. State* (1998) Court of Criminal Appeals of Alabama CR-95-1346, 724 So.2d 90.

Appellee also presents cases that relate to a complaint not being filed. One case was reversed because there was no complaint and therefore the case was not properly before the court. *State, ex rel Clark v. Allamen* (1950, Montgomery County) 87 Ohio App. 101, 90 N.E.2d 394. In *Allamen* there was a transfer from Probate Court to Juvenile Court when an adoption did not go forward. The transfer was not effective; because there was no complaint filed the Juvenile Court lacked jurisdiction. *Id* 108-110. In a criminal case the judgment of the trial court was reversed when it was found that there was not a sufficient complaint filed. *Stewart v. State of Ohio* (1932, Hocking County) 41 Ohio App. 351, 181 N.E. 111. The complaint was not sufficient in that it was not in the right form. The charges in *Stewart* were felony charges and the prosecutor brought the cases before the court on “informations” when they could only properly be brought before the Court upon indictment. *Id* 352-354. There was a complaint filed in the instant case and the complaint was in a proper form.

According to the foregoing a proper complaint must meet the requirements of Crim R 3; and a proper complaint must be in the correct form for the offense charged. Neither of those facts are at issue in the case being appealed. Yet, Appellee argues that a proper complaint was not filed because the complaint was not file-stamped and/or appropriately journaled. Neither of those duties are assigned to the complaining party and those issues do not appear as related to complaints in case law. This court should not accept Appellee’s unsupported proposition.

Appellant’s Supported Proposition of Law No. I is stated as follows: **Complaints are filed when they are delivered to the Clerk for filing.** Appellee correctly states that in order for a court to have subject matter jurisdiction a proper complaint must be filed. A proper complaint meets the requirements of Crim R 3 and it is filed when the complaining party delivers it to the

clerk for filing. Accordingly this Court should find that a proper complaint was filed in the instant case.

**3. Do the duties of the Clerk of Court as outlined in R.C. 1901.31(E) and R.C. 2303.08 create due process rights for defendants?**

Appellee would have us believe that the duties of the clerk of court are jurisdictional and that if he/she does not enter a complaint by name upon the docket/journal that the defendant's due process rights have been violated. The most interesting feature of this argument is that it is totally unsupported by any case law. The sum of the argument is that the clerk has duties set by statute and that if she does not perform those duties the rights of the accused have been violated. Chapter 1901 of the Ohio Revised Code sets forth the operational and organizational guidelines for Municipal Courts and this includes the duties of the clerk. Chapter 2303 sets forth how clerks of court of common pleas courts are elected, their duties and how they operate. Those chapters should not be seen as setting forth rights of the citizens, but exactly as what they are guidelines for operation.

This court has consistently held that the duties of the clerk of courts are ministerial in nature. *King v. Kenny* (1820) 4 Ohio 79; *King v. Penn*, (1885) 43 Ohio St. 57, 1 N.E. 84. In 1885 the Court proclaimed "The jurisdiction of this court to hear and determine a proceeding in error does not depend upon the docketing of such proceeding by the clerk." *King v. Penn*, supra at Syllabus 5.

The duties set forth in R.C. 1901.31(E) and R.C. 2303.08 are ministerial in nature. R.C. §1901.31(E) provides in part:

The clerk shall do all of the following: file and safely keep all journals, records, books, and papers belonging or appertaining to the court; record the proceedings

of the court; perform all other duties that the judges of the court may prescribe; and keep a book showing all receipts and disbursements, which book shall be open for public inspection at all times.

The clerk shall prepare and maintain a general index, a docket, and other records that the court, by rule, requires, all of which shall be the public records of the court. In the docket, the clerk shall enter, at the time of the commencement of an action, the names of the parties in full, the names of the counsel, and the nature of the proceedings. Under proper dates, the clerk shall note the filing of the complaint, issuing of summons or other process, returns, and any subsequent pleadings. The clerk also shall enter all reports, verdicts, orders, judgments, and proceedings of the court, clearly specifying the relief granted or orders made in each action.

R.C. § 2303.08 provides as follows:

### **General duties**

The clerk of the court of common pleas shall indorse on each pleading or paper in a cause filed in the clerk's office the time of filing, enter all orders, decrees, judgments, and proceedings of the courts of which such individual is the clerk, make a complete record when ordered on the journal to do so, and pay over to the proper parties all moneys coming into the clerk's hands as clerk. The clerk may refuse to accept for filing any pleading or paper submitted for filing by a person who has been found to be a vexatious litigator under section 2323.52 of the Revised Code and who has filed to obtain leave to proceed under that section.

Ministerial duties are those done as a routine to keep things running smoothly. By journaling the arrival of a pleading, the clerk acknowledges that she/he received the pleading. But if she did not journal the arrival it does not mean it did not arrive. The arrival may be apparent as it was in the instant case by the fact that it was in the file, a file was opened with a file date that corresponded to the arrival of the complaint as noted at the top of the docket "File Date: February 28, 2006." (See Appellee's Appendix 3.) The indorsement of the clerk and the date of filing are only evidence of the filing; and without the indorsement there may be a presumption that the document was not timely filed. *Wagner v. Fulton Industries* (Fulton County, 1997) 116 Ohio

App. 3d 51, 54; 686 N.E.2d 559, 561. In the instant case there is no question regarding the timeliness of filing so that the indorsement is not an issue.

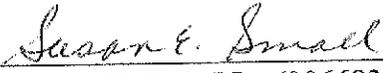
Appellee's proposition that his due process rights were violated because of the ministerial nonfeasance of a clerk of the court must fail. This court said 180 year ago "(it) would seem unreasonable that such ministerial *nonfeasance* should render the whole proceedings nugatory." *King v. Kenny* (1820) 4 Ohio 79, 83. The Court was clearly not comfortable 180 years ago with letting the clerk of court hold the key to the entrance into the courts through his/her ministerial duties; and nothing has changed that would give the Court reason to do so today. The power to file an action belongs to the complainant, and so long as the complainant files an appropriate complaint the power to determine whether it holds subject matter jurisdiction lies with the Court. The clerk is but an agent to assure an orderly transition between the two.

### CONCLUSION

For the reasons set forth in Appellant's Merit Brief and as elaborated above the Court must reverse the decision of the Muskingum County Court of Appeals.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Reply Brief was served by ordinary U.S. Mail postage prepaid upon Elizabeth N. Gaba, Attorney for Appellee, at 1231 East Broad Street, Columbus, Ohio 43205 on this 26<sup>th</sup> day of January, 2009.

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