

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Case No. 2009-0897

Plaintiff-Appellee,

On Appeal from the Summit
County Court of Appeals,
Ninth Appellate District

vs.

LONDEN K. FISCHER

Court of Appeals
Case No.: 24406

Defendant-Appellant.

MERIT BRIEF of AMICUS CURIAE
THE OHIO PROSECUTING ATTORNEYS ASSOCIATION
IN SUPPORT OF PLAINTIFF-APPELLEE, THE STATE OF OHIO

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STATEMENT OF AMICUS INTEREST

The Ohio Prosecuting Attorneys Association (“OPAA”) offers this amicus brief in support of the State of Ohio’s response to Appellant’s proposition of law. The OPAA is a private non-profit membership organization that was founded in 1937 for the benefit of the 88 elected county prosecutors. Its mission is to increase the efficiency of its members in the pursuit of their profession; to broaden their interest in government; to provide cooperation and concerted action on policies that affect the office of the Prosecuting Attorney; and to aid in the furtherance of justice.

The cost of accepting the theory presented by Appellant -- that a direct appeal from a sentence based on an entry that did not include required information about post-release control is a nullity and, consequently, a defendant’s appeal after re-sentencing to correct such an error is the first appeal as of right -- is immense, and will affect every Prosecutor’s Office in Ohio. Appeals that have been prosecuted to conclusion will be resurrected, and prosecutors will be required to divert resources to answering issues that were fully considered, or could have been fully considered, in a prior appeal. And the benefit is non-existent, except to those, like Fischer, who will be given the opportunity to re-argue issues that were or could have been raised and considered by a court of competent jurisdiction. It is a windfall for a substantial number of convicted defendants, with no benefit to the citizens of the State of Ohio.

Amicus' Response to Appellant Fischer's Proposition of Law:

A sentencing entry that is later found to be void because it did not state that violation of community control sanctions could result in additional incarceration is final for purposes of precluding review of issues the person sentenced actually raised or could have raised in a direct appeal after re-sentencing.

A. Fischer's argument:

After prosecuting to finality a direct appeal of his 2002 convictions of numerous violent felonies, Londen Fischer now contends that he is entitled to begin the appeal process anew, specifically, that under the law announced by this Court, he now possesses the right to re-litigate every issue he raised or could have raised in the original appeal. His theory is simple:

- The sentence imposed after his jury trial in 2002 was void because the judgment entry did not inform him of a consequence that arose by operation of law, which was that violation of the conditions of post-release control, when he was eventually released on post-release control, could result in additional incarceration.
- Since his sentence was void, jurisdiction to decide his appeal never vested in the court of appeals, and so his direct appeal was also void. It is as if it had never happened.
- Therefore, despite having had his case decided by the court of appeals, he has never been afforded the direct appeal as of right to which he was entitled. He is entitled to a whole new round of appeals.

Fischer's contention that the Court of Appeals' reliance on the doctrine of law-of-the case to prohibit a new appeal unjustly deprived him of "his only appeal as of right from a valid sentence" touches upon another theory his appeal suggests: that *res judicata* is not a bar to his new appeal because that doctrine applies only when a prior valid, final judgment exists. *Grava v. Parkman* (1995), 73 Ohio St.3d 379, 653 N.E.2d 226. According to Fischer, in the most basic terms, he now has the right to insist the court of appeals consider every issue he raised or could have raised the first time around, seven years ago.

B. The Result: Multiply Londen Fischer by thousands.

In October, 2009, the Bureau of Sentence Computation at the Ohio Department of Rehabilitation and Correction began reviewing the sentencing entries of incarcerated offenders who were approaching their scheduled release dates as well as entries accompanying new admissions to the institution to determine whether the entries met the criteria established by this Court. As a result, according to Melissa Adams, Chief of the Bureau of Sentence of Computation, Ohio Department of Rehabilitation and Correction, as of Feb. 12, 2010, DRC had identified 1,113 inmates, just in the past few months, who must be re-sentenced for errors in the imposition of post-release control. In October, Ohio Prisons Director Terry Collins told the Columbus Dispatch that ODRC would be reviewing the sentencing entries of more than 14,000 ex-inmates to determine whether they correctly informed the inmate of post-release control.¹ Excluded from these numbers cited by Adams and Collins are inmates whose non-complying entries have yet to be identified and inmates like Fischer, who were re-sentenced before October 2009, to cure a non-complying entry. Every one of those inmates or ex-inmates will be entitled to a new appeal as of right if this Court agrees with Fischer's proposition of law.

If it is true, as Fischer claims, that review by a court of competent jurisdiction means nothing because of an error that prevented the vesting of that jurisdiction, the following results are virtually certain:

- Recently convicted indigent defendants pursuing a first appeal as of right will have to compete for the limited resources of their public defenders, who are already overworked and who will now be tasked with the obligation of prosecuting new appeals for those like

¹http://www.dispatchpolitics.com/live/content/local_news/stories/2009/10/27/copy/GLITCH.ART_ART_10-27-09_A1_8UFG5I6.html?sid=101.

Fischer, whose case was reviewed to practical finality by a court of competent jurisdiction.

- Public defenders and others who represent indigent clients in criminal appeals will be called upon to divert precious time and resources from those recently convicted defendants who have never had an appeal to those whose claims have already been fully litigated on review.
- Prosecutors will be forced to answer new briefs filed by those whose claims were fully resolved in a prior appeal. In some cases, the appellant will raise new issues, which would ordinarily be barred by res judicata, which will require the prosecutor to first determine by reference to the file if the issue was even preserved for appeal, and, if it was, to answer it, taking into account any new law that might have been announced in the years between the first appeal and the present one. If the files are no longer available, the question arises whether the presumption of regularity will apply to the proceedings in the trial court, or whether an appellant in a criminal case has the right to expect the record to be available for a first direct appeal as of right. In some cases, the offender may have chosen not to appeal within 30 days of the original sentencing entry, which means that the record, including the transcript of the plea or trial has never been prepared. In a video courtroom, it is likely that the CD could be obtained, but procuring the notes of a retired court reporter will not be possible in some cases. As mentioned, any changes in the law since the last appeal will be the subject of new assignments of error, and the prosecutor will be required to sift through the record, if the record exists, to determine whether the offender preserved whatever new error he complains of by raising the issue in the trial court.

- Court of appeals' dockets will become crowded with cases presenting issues that have long ago been fully and practically decided. In reading and examining the briefs, the courts will face the same difficulties with the record spelled out above: the files may be destroyed or purged pursuant to retention schedules, new issues may require additional research, and those who chose not to appeal originally may demand an appeal as of right when the record below cannot now, due to the passage of time, be assembled. Once again, those who have had their day in court will divert resources from those who have not.
- Those whose sentences are void because the judgment entry does not state the manner in which the conviction was obtained will argue that they, too, are entitled to a new round of appeals. Crim.R. 32(C), *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, *State ex rel Culgan v. Medina Cty.* Court of Common Pleas, 119 Ohio St.3d 535, 2008-Ohio-4609, 895 N.E.2d 805.

And what happens in a capital case where the sentencing entry fails to inform the defendant of mandatory post-release control on non-capital offenses? If the failure to comply with the post-release control notification requirements renders the sentence void, and a void sentence has no effect, then the appeal to this Court was void, as was this Court's judgment. In such a case, if the punishment has been carried out, has the person been executed on the basis of a void judgment?

C. There is a distinction between the finality of judgments for the purpose of appeal and the type of finality that is required to preclude further litigation on the issue between the parties.

Public policy dictates that there be an end to litigation; that those who have contested an issue shall be bound by the results of the contest, and that matters once tried shall be forever settled as between the parties. *State v. Szefcyk* (1996), 77 Ohio St.3d 93, 95, 671 N.E.2d 233, 235, quoting *Federated Dept. Stores Inc. v. Moltie* (1981), 452 U.S. 394, 401, 101 S.Ct. 2424, 2429, 69 L.Ed.2d 103, 110-111. “We have stressed that the doctrine of res judicata is not a mere rule of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, of public policy and private peace, which should be cordially regarded and enforced by the courts.” Id.

There is a distinction to be made between the finality of judgments for the purpose of appeal and the type of finality that is required to preclude further litigation on the issue between the parties. *Michaels Bldg. Co. v. City of Akron* (Nov. 25, 1987), Summit App. No. 13061; 18 Wright, Miller & Cooper, Federal Practice and Procedure, (1981), § 4434; Restatement of the Law 2d, Judgments (1982), Section 13. Making that distinction honors the principle of repose, maintains confidence in the rule of law, and makes certain that the courts are not burdened by re-hearing appeals long before decided. At the same time, it imposes no cost on those, like Fischer, who has had the opportunity for a full direct appeal of his conviction.

An interlocutory decision that is non-appealable may yet be final in the preclusive sense: “Whether a judgment, not final [for purposes of appeal under 28 U.S.C. §1291] ought nevertheless be considered “final” in the sense of precluding further litigation of the same issue, turns upon such factors as the nature of the decision (i.e., that it was not avowedly tentative), the

adequacy of the hearing, and the opportunity for review. ‘Finality’ in the context here relevant may mean little more than that the litigation of a particular issue has reached such a stage that a court sees no really good reason for permitting it to be litigated again.” *Michaels Bldg. Co. v. City of Akron* (Nov. 25, 1987), Summit App. No. 13061, quoting *Lummus Co. v. Commonwealth Oil Ref. Co.* (C.A.2, 1961), 297 F. 2d 80, 89, cert. denied sub nom. *Dawson v. Lummus Co.* (1962), 368 U.S. 986, certiorari denied (1962), 368 U.S. 986. With respect to collateral estoppel, it has been said that the concept of finality “includes many dispositions which, though not final in [the sense of a final order for purposes of appeal] have nevertheless been fully litigated.” *Metromedia Corp. v. Fugazi* (1980, C.A.2), 983 F.2d 350. This principle of “practical finality” is often applied where an appellate court has decided an appeal from a summary judgment in the absence of a Rule 54 certification. See, e.g., *O’Reilly v. Malon* (1984, C.A. 1), 747 F.2d 820.

Here, the entry from which Fischer appealed was not tentative – it was a judgment of conviction that was later found to be inadequate because it did not state a condition that arose by operation of law, but which, at the time, was considered final by the court and both parties. The parties were given an adequate hearing before the judgment was entered – Fischer was found guilty by a jury. And he prosecuted a direct appeal of the judgment to conclusion. Under these circumstances, justice is served by determining that the entry from which Fischer appealed in 2003 was final for purposes of precluding review of issues he raised or could have raised therein. This approach comports with and well serves the policy basis of finality. Cf. *Michaels Bldg. Co. v. City of Akron*, *supra*.

D. The cost of accepting Fisher's proposition of law is immense, and doing so will benefit only those who, like Fischer, have already had a full round of appeals.

This court has held that habeas corpus is not the appropriate remedy for an inmate held on the authority of an entry that does not comply with Crim.R. 32(C). Although the sentence is void and a nullity, yet it is not so invalid as to require the immediate release of the inmate. This anomaly suggests that a non-complying entry, at least where the error is inadvertent and not a deliberate attempt to disregard the law, is not utterly void ab initio, and that it is certainly sufficiently final to preclude a whole new round of appeals when corrected.

CONCLUSION

The Court of Appeals was right to determine that the 2008 entry correcting the error in the 2003 judgment of conviction did not entitle Fischer to a new round of appeals. The 2003 entry was not tentative; it was entered after a jury trial, and was the subject of Fischer's direct appeal. Under these circumstances, the entry was final for purposes of precluding further litigation on appeal. The OPAA asks the Court to affirm the decision of the Ninth District Court of Appeals.

Respectfully submitted,

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

Court of Appeals of Ohio, Ninth District,
 Summit County.
 MICHAELS BUILDING CO., et al.,
 Plaintiffs-Appellants,
 v.
 CITY OF AKRON, et al., Defendants-Appellees.
 No. 13061.

Nov. 25, 1987.

Appeal from Judgment Entered in the
 Common Pleas Court County of Summit,
 Case No. CV 83 10 3136.
 Daniel J. McGown, Akron, for plaintiffs.

Max Rothal, John W. Solomon and Linda
 B. Kersker, Richard E. Guster and Timothy
 S. Guster, Akron, James E. Young and
 Peter G. Glenn, Cleveland, John M. Genn,
 Steven E. Sigalow, and Joseph C. Weinstein,
 Akron, for defendants.

DECISION AND JOURNAL ENTRY

*1 This cause was heard upon the record in
 the trial court. Each error assigned has
 been reviewed and the following disposition
 is made:
 CACIOPPO, Judge.

Plaintiffs-appellants, Michaels Building
 Company and Andrew J. Michaels, filed
 suit claiming inverse condemnation,

slander of title, tortious interference with
 business opportunities, and conspiracy in
 restraint of trade. Named as defendants
 were the City of Akron, several develop-
 ment corporations and their officers and
 directors, several former and current public
 officials, and several banks.

The suit arose out of a pattern of urban
 planning and redevelopment activity in-
 volving the City and the other defendants.
 All four of appellants' claims were based
 on the contention that this activity caused
 real property, known as the Law and Com-
 merce Building, to lose economic value.
 Specifically, appellants claimed that a
 concept plan for redevelopment, endorsed
 by the City through adoption of a resolu-
 tion, caused them damage evidenced by
 loss of existing and potential tenants and
 loss of opportunities to sell.

The trial court bifurcated appellants'
 claims, ordering the inverse condemnation
 claim against the City to proceed in manda-
 mus. An eleven day trial commenced; ap-
 proximately seven hundred exhibits were
 introduced and forty one witnesses testi-
 fied, among them were many of the de-
 fendants and their representatives. The
 evidence received concerned the pattern of
 activity which appellants claimed to have
 caused them economic damage. On March
 12, 1986, the trial court found that appel-
 lants failed to prove that the City's activi-
 ties substantially interfered with their prop-
 erty rights so as to amount to a taking of
 the property. The court further found that
 appellants failed to prove that they suffered
 any economic damage due to the planning
 activity, and also found that assuming ap-
 pellants had suffered any damage, the evi-
 dence suggested it was a result of their own
 actions.

Not Reported in N.E.2d, 1987 WL 25758 (Ohio App. 9 Dist.)
 (Cite as: 1987 WL 25758 (Ohio App. 9 Dist.))

On February 12, 1987, the trial court granted summary judgment to the City and most of the private defendants on the basis of collateral estoppel, as the issues of causation and damages had been litigated and adjudicated in the mandamus proceeding. The appellants timely filed a notice of appeal.

ASSIGNMENT OF ERROR I

"The trial court erred in finding that the primary action against the City of Akron was in mandamus for inverse condemnation and further erred in denying plaintiffs their direct action for just compensation based upon the Fifth Amendment to the United States Constitution."

Appellants contend that by proceeding in mandamus, the trial court ignored the complaint's allegations of violations of Section 1983, Title 42, U.S.Code and the federal constitution. We disagree.

"The Fifth Amendment does not proscribe the taking of property; it proscribes taking without just compensation." *Williamson County Regional Planning Comm. v. Hamilton Bank of Johnson City* (1985), 473 U.S. 172, 194 (citation omitted). It is elementary that entitlement to just compensation is contingent upon a finding that a taking occurred through inverse condemnation. In Ohio, mandamus is the appropriate procedure for making a determination as to whether there was a taking, and if so determined, for providing just compensation. *Preston v. Weiler* (1963), 175 Ohio St. 107; *Akron-Selle Co. v. City of Akron* (1974), 49 Ohio App.2d 128.

*2 " * * * [I]f a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a viola-

tion of the Just Compensation Clause until it has used the procedure and been denied just compensation."

" * * * "

Williamson, supra, at 195.

Until a claimant has used the state procedures provided, his federal claims are not ripe for review. *First Evangelical Lutheran Church of Glendale v. County of Los Angeles* (1987), 482 U.S. 304, 96 L.Ed.2d 250, at 262 n. 6; *Four Seasons Apartment v. City of Mayfield Heights* (C.A. 6 1985), 775 F.2d 150.

Accordingly, the first assignment of error is overruled.

ASSIGNMENT OF ERROR II

"The trial court erred in holding that a taking of private property requiring a just compensation does not occur in the absence of a physical intrusion or encroachment upon the property in question."

This assignment of error ignores the fact that the trial court did consider that a taking could occur in a manner other than physical encroachment.

The trial court expressly stated the very proposition that appellants now urge us to recognize-that in the absence of a physical taking of property, a taking occurs only when there is substantial interference with the rights of ownership of private property. This standard was enunciated in *Smith v. Erie Rd. Co.* (1938), 134 Ohio St. 135, paragraph one of the syllabus. See, also, *J.P. Sand & Gravel Co. v. State* (1976), 51 Ohio App.2d 83, 89.

The appellants had two burdens of proof

Not Reported in N.E.2d, 1987 WL 25758 (Ohio App. 9 Dist.)
 (Cite as: 1987 WL 25758 (Ohio App. 9 Dist.))

under this standard: that the City's activities substantially interfered with their property rights and that the City's actions were the cause of economic damage.

The record supports the trial court's conclusions that appellants failed to meet either of these burdens. As to the fact of the existence of economic damage, the record contains evidence in direct conflict with appellants' claim. There is ample evidence showing that at the same time the City is alleged to have been causing them economic damage, the appellants, on more than several occasions, represented to various lenders that the property was appreciating in value, that rental profits were up, that new tenants were being acquired, and that old leases were being renewed.

The record shows that appellants turned away potential tenants and refused to renew leases because of a certain image they envisioned for the building. There is also evidence showing that many tenants left the building for reasons unrelated to the proposed development plans.

The weight of the evidence and the credibility of the witnesses are issues primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Judgments supported by competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, syllabus.

Because the record contains ample competent, credible evidence to negate appellants' claims of substantial interference and economic damage the trial court was correct in finding that a *de facto* taking had not occurred. This assignment of error is over-

ruled.

ASSIGNMENT OF ERROR III

*3 "The trial court erred in refusing plaintiffs' request, pursuant to Ohio Civil Ruel (sic) 52, that the court state in writing its conclusions of fact found separately from its conclusions of law."

Appellants contend that the trial court's "finding and judgment entry" of March 12, 1986, "is a melange of findings of fact, conclusions of law, dictum, extraneous comment and personal observations about the parties." Appellants' brief at 20. Appellants further claim that the trial court's failure to comply with their request to enter written findings of fact found separately from its conclusions of law was prejudicial to their rights on appeal and prejudicial to the court's disposition of the other claims in the case. We disagree.

Civ.R. 52 provides in pertinent part:

"When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties in writing or orally in open court requests otherwise before the journal entry of a final order, judgment, or decree has been approved by the court in writing and filed with the clerk of the court for journalization, or not later than seven days after the party filing the request has been given notice of the court's announcement of its decision, whichever is later, in which case, the court shall state in writing the conclusions of fact found separately from the conclusions of law."

" * * * "

"The purpose of separately stated findings of fact and conclusions of law is to enable

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a reviewing court to determine the existence of assigned error.” *Davis v. Wilkerson* (1986), 29 Ohio App.3d 100, 101 (citations omitted). There is substantial compliance with Civ.R. 52 where the trial court’s ruling or memorandum opinion, when considered together with other parts of the record, forms an adequate basis upon which to review the assigned errors. *Stone v. Davis* (1981), 66 Ohio St.2d 74, 84-85, certiorari denied (1981), 454 U.S. 1081; *Davis v. Wilkerson, supra*.

The journal entry in the case *sub judice* meets this standard. Accordingly, the third assignment of error is overruled.

ASSIGNMENT OF ERROR IV

“The trial court erred in granting summary judgment in favor of all parties, including all non-government related parties, based solely upon collateral estoppel arising out of the trial on the mandamus issues involving only the City of Akron”

The doctrine of *res judicata* has two basic aspects—claim preclusion and issue preclusion. The latter aspect, collateral estoppel, is the one applied by the court below; it precludes the relitigation, in a second action, of an issue that has been actually and necessarily litigated and determined in a prior action which was based on a different cause of action.

Application of collateral estoppel generally requires a mutuality of parties or their privies, and an identity of issues. However, nonmutuality of parties has been acceptable where it is shown that the party seeking to avoid collateral estoppel clearly had his day in court on the specific issue brought into litigation within the later proceeding. See *Goodson v. McDonough*

Power Equip., Inc. (1983), 2 Ohio St.3d 193, 200 (discussing *Hicks v. De La Cruz* (1977), 52 Ohio St.2d 71).

*4 In the instant case, appellants assert that because the City was the only party to the mandamus action, there is no mutuality. However, in a memorandum in opposition to bifurcation of the inverse condemnation claim, appellants stated that:

“ * * * Although having various legal aspects, as reflected in the various causes of action, there was only one pattern of activity. Precisely the same evidence which is needed to support the first cause of action is needed to support the second through fourth causes of action. Are the Court, two juries and the parties to be put through two full scale trials encompassing exactly the same presentation of evidence each time?”

“ * * * ”

Appellants, therefore, would seem to have conceded the issue of mutuality. The trial court found that there was only one pattern of activity by all of the defendants. 1987 Journal Entry.

Assuming, *arguendo*, that there was no mutuality, the outcome on this issue would remain the same, as we would choose to adopt the reasoning of the court in *McCroy v. Children’s Hospital* (1986), 28 Ohio App.3d 49. In that case, now Chief Justice Moyer reasoned that where the plaintiffs have had their day in court on the specific issues of causation and damages, and those issues were actually litigated, directly determined, and essential to the judgment in the first action, the general rule of mutuality of parties will be relaxed to permit collateral estoppel to preclude the relitigation of certain issues inherent in the plaintiff’s claims.

Not Reported in N.E.2d, 1987 WL 25758 (Ohio App. 9 Dist.)
 (Cite as: 1987 WL 25758 (Ohio App. 9 Dist.))

Appellants further claim that the use of collateral estoppel was inappropriate because the 1986 order in the mandamus proceeding was not a final, appealable order, but rather interlocutory in nature. The federal courts distinguish between the finality of a judgment for appeal purposes and the type of finality required for the use of collateral estoppel. See, generally, Restatement of the Law 2d, Judgments (1982), Section 13; 18 Wright, Miller, & Cooper, Federal Practice and Procedure, (1981), Section 4434.

“ * * * Whether a judgment, not ‘final’ [for purposes of appeal] ought nevertheless be considered ‘final’ in the sense of precluding further litigation of the same issue, turns upon such factors as the nature of the decision (i.e., that it was not avowedly tentative), the adequacy of the hearing, and the opportunity for review. ‘Finality’ in the context here relevant may mean little more than that the litigation of a particular issue has reached such a stage that a court sees no really good reason for permitting it to be litigated again.”

“ * * * ”

Lummas Co. v. Commonwealth Oil Refining Co. (C.A.2 1961), 297 F.2d 80, 89, certiorari denied (1962), 368 U.S. 986. We agree with this approach, and find that the trial court's ruling in the mandamus proceeding was not tentative, that appellants were afforded an extremely adequate hearing, and that they have been afforded an opportunity for review. This approach comports with and well serves the policy basis for collateral estoppel which is the conservation of judicial resources, see *McCrory, supra*, at 54, and is in keeping with the trend to relax strict adherence to old rules upon the basis of serving justice within the framework of sound public policy. See, *Goodson, supra*, at 202; see, also, *Mc-*

Crory, supra.

*5 We find that the trial court's grant of summary judgment was appropriate. Accordingly, the fourth assignment of error is overruled and the judgment is affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this court, directing the County of Summit Common Pleas Court to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E).

Costs taxed to appellant.

Exceptions.

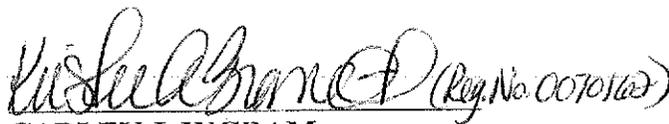
BAIRD, P.J., and GEORGE, J., concur.
 Ohio App., 1987.

Michaels Bldg. Co. v. City of Akron
 Not Reported in N.E.2d, 1987 WL 25758
 (Ohio App. 9 Dist.)

END OF DOCUMENT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Amicus Brief was sent by regular U.S. mail this 16th day of February, 2010, to: Heaven DiMartino, Assistant Summit County Prosecutor, 53 University Avenue, 7th Floor, Safety Building, Akron, OH 44308; Claire R. Cahoon, Assistant State Public Defender, Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, OH 43215; Kelly K. Curtis, Cleveland Marshall College of Law, 1801 Euclid Avenue, Cleveland, OH 44115 and John T. Martin, Assistant Public Defender, 310 Lakeside Avenue, Suite 200, Cleveland, OH 44113.

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