

IN THE SUPREME COURT OF OHIO

STATE EX REL. DAVID M. UNTIED, :
 :
 Relator-Appellant, : Case No. 2011-1188
 :
 v. : On Appeal from the Guernsey
 : County Court of Appeals
 :
 GUERNSEY COUNTY COURT OF COMMON :
 PLEAS JUDGE DAVID A. ELLWOOD, : Fifth Appellate District
 :
 and : Court of Appeals
 : Case No. 11 CA 07
 :
 GUERNSEY COUNTY CLERK OF COURTS :
 TERESA A. DANKOVIC, :
 :
 Respondent-Appellees. :

BRIEF OF RESPONDENTS,
GUERNSEY COUNTY COURT OF COMMON PLEAS JUDGE DAVID A. ELLWOOD
AND
GUERNSEY COUNTY CLERK OF COURTS TERESA A. DANKOVIC

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PROPOSITIONS OF LAW

Appellant's Proposition of Law No. 1

MANDAMUS IS NOT APPROPRIATE TO DETERMINE THE LOCATION OF THE TIME STAMPS OF A CLERK OF COURTS.

Appellant's Proposition of Law No. 2

PROHIBITION IS NOT APPROPRIATE IN THIS CASE AS JURISDICTION HAS NOT BEEN LOST.

STATEMENT OF FACTS AND STATEMENT OF THE CASE

On February 16, 2010, Relator-Appellant (hereinafter "Appellant") was convicted of passing bad checks and was placed on community control for one year. The Entry evidencing the conviction and sentence was time-stamped February 16, 2010.

On February 16, 2011, an Entry was filed setting a hearing on a reported community control violation, namely, failure to pay all court costs. Payment of all court costs was a term of Appellant's community control.

On March 24, 2011, Appellant filed a Petition for Writs of Prohibition and Mandamus with the Fifth District Court of Appeals. By Entry and Opinion dated June 9, 2011, the Fifth District Court of Appeals dismissed Appellant's Petitions.

Appellant filed a timely notice of appeal.

APPELLANT'S PROPOSITION OF LAW NO. 1

MANDAMUS IS NOT APPROPRIATE TO DETERMINE THE LOCATION OF THE TIME STAMPS OF A CLERK OF COURTS.

“For a writ of mandamus to issue, the relator must have a clear legal right to the relief prayed for, the respondent must be under a clear legal duty to perform the requested act, and relator must have no plain and adequate remedy in the ordinary course of law.” *State ex rel. Elliott v. Haas*, 2011 Ohio 1037, P2 (5th Dist.), *citing State ex rel. Berger v. McMonagle* (1983), 6 Ohio St. 3d 28.

Appellant takes issue with the appearance that the Clerk of Courts has more than one time-stamp with which it stamps Entries and pleadings, and that one of these stamps has been permitted to be located in Judge Ellwood's office. Appellees do not disagree that there is more than one stamp in use by the Court; however, there appears no prohibition in law as to the use of more than one time-stamp by the office of the Clerk of Courts. Appellees would point out that in a larger county, such as Franklin County, there are numerous deputy clerks who accept pleadings, and each one of them possesses a time-stamp at his or her desk.

ORC 2303.08 prescribes the pertinent duties of the Clerk of Courts as follows:

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.

This section refers to the “indorsement of papers,” which is further described in ORC 2303.10 as follows:

The clerk of the court of common pleas shall indorse upon every paper filed with him the date of the filing thereof, and upon every order for a provisional remedy and upon every undertaking given thereunder, the date of its return to his office.

“Endorsing the fact and date of filing on the judgment entry itself is evidence that it was filed on that date.” *In re Hopple* (1983), 13 Ohio App. 3d 54, 55 (6th Dist.), *citing Ferrebee v. Boggs* (1969), 18 Ohio St. 2d 87 and *King v. Penn* (1885), 43 Ohio St. 57, 61. “All judgment

entries (and other papers) *must* be file-stamped on the date they are filed.” *Hopple supra*.

(Emphasis in original.)

This Court recently held:

Under several Ohio statutes, the clerk of a municipal court is required to maintain a docket for each case, enter, when each document is filed, the date of filing for each document on that docket, and endorse the time or date of filing on each document. Similarly, Sup. R. 26.05(B)(2) requires that “[u]pon the filing of any paper or electronic entry permitted by the municipal or county court, a stamp or entry shall be placed on the paper or electronic entry to indicate the day, month, and year of filing.”

Zanesville v. Rouse (2010), 126 Ohio St. 3d 1, 2 (internal citations omitted). The Fifth District Court of Appeals correctly noted that certification by a clerk on a document attests that it was indeed filed.

Taking the statutes together with the case law, it is clear that the only requirement imposed by law is that documents be stamped with the date on which they were filed, and that the Clerk’s stamp is evidence that the document was indeed filed on that date. So long as a document is indorsed with the date on which it was filed, the statutory requirements have been met.

In addition, as the Court of Appeals also noted, even if a Clerk fails to file-stamp a document, it does not create a jurisdictional defect. See *State v. Otte* (2002), 94 Ohio St. 3d 167, 169.

The mere existence of more than one time-stamp is not illegal; nor is it the basis for the issuance of a Writ of Mandamus. There exists no right of an individual to require a Clerk of Court to only possess one time-stamp or to mandate the location of such stamps. The location of each time stamp is at the discretion of the Clerk of Courts. There is no allegation that the Clerk of Courts was unaware or in disagreement with the location of her stamps in this case. Therefore, Appellant’s request for a Writ of Mandamus must be denied.

APPELLANT'S PROPOSITION OF LAW NO. 2

PROHIBITION IS NOT APPROPRIATE IN THIS CASE AS JURISDICTION HAS NOT BEEN LOST.

The Fifth District recently addressed the standard for the issuance of a Writ of Prohibition.

In order for this court to issue a writ of prohibition, three conditions must be met:

“(1) The court or officer against whom it is sought must be about to exercise judicial or quasi-judicial power; (2) it must appear that the refusal of the writ would result in injury for which there is no adequate remedy; (3) the exercise of such power must amount to an unauthorized usurpation of judicial power.” *State ex rel. Nothern Ohio Telephone Co. v. Winter* (1970), 23 Ohio St. 2d 6, 8.

In *Kelley, Judge v. State ex rel. Gellner* (1916), 94 Ohio St 331, 341, the Supreme Court of Ohio stated the following:

“*In all cases where an inferior court has jurisdiction of the matter in controversy and keeps within the limits prescribed by law for its operation, the superior court should refuse to interfere by prohibition, for it should not consider whether the court below erred in the exercise of its powers, since it has nothing to do with the correctness of the rulings of the inferior court but only with its exercise of jurisdiction.*” (Emphasis added.)

State ex rel. Breedlove v. Henson, 2011 Ohio 1078, P2-P5 (5th Dist.).

Appellant requests a Writ of Prohibition preventing Judge Ellwood and the Guernsey County Court of Common Pleas from exercising further jurisdiction in his criminal case. As grounds for this argument, Appellant relies on his argument that the document at issue was time-stamped illegally. As argued above, the Clerk's indorsement on the document is evidence that it was filed on that date. Further, the process as it relates to Appellant was performed in compliance with law.

Further, this Court recently held that Prohibition is precluded when raising a jurisdictional challenge to a community control violation because an adequate remedy at law exists by way of appeal. *State ex rel. Hemsley v. Unruh* (2011), 128 Ohio St. 3d 107.

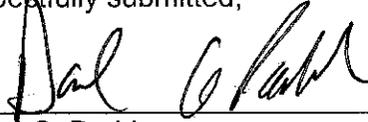
Based on the foregoing, it is clear that Prohibition is not an appropriate remedy in this case. Appellant's request for Prohibition relies completely on his argument that the process

addressed in Proposition of Law No. 1 is illegal. As argued above, the filing of the document at issue was done in compliance with Ohio law and was not done without the knowledge or consent of Appellee Dankovic. More importantly, however, is this Court's holding that Prohibition is simply not an appropriate remedy in this case. A writ is an extraordinary remedy, and since Appellant has an adequate remedy at law in this case, a writ should not issue.

CONCLUSION

Based upon the above arguments, Appellant is not entitled to either a Writ of Prohibition or a Writ of Mandamus in this case. Therefore, Appellees respectfully request that Appellant's requests be denied and that the holding of the Fifth District Court of Appeals be affirmed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true copy of the foregoing Brief of Respondents, this 13th day of October, 2011, via regular U.S. mail, postage prepaid and/or hand delivery, upon the following:

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