

ORIGINAL

IN THE SUPREME COURT OF OHIO

MICHAEL LINGO, et al

* Case No. 2012-1774

Plaintiffs/Appellants,

On Appeal from the Cuyahoga
County Court of Appeals,
Eighth Appellate District

vs.

*

STATE OF OHIO, et al.

Court of Appeals

Defendants/Appellees.

*

Case No. CA 97537

JURISDICTIONAL MEMORANDUM OF AMICUS CURIAE ANDREA WHITE,
CLERK OF COURT, KETTERING, OHIO MUNICIPAL COURT, URGING THE
SUPREME COURT OF OHIO TO DECLINE TO ACCEPT JURISDICTION

Wayne E. Waite (0008352)
(COUNSEL OF RECORD)
Adam C. Armstrong (0079178)
FREUND, FREEZE & ARNOLD
Fifth Third Center
1 South Main Street, Suite 1800
Dayton, OH 45402-2017
Phone: (937) 222-2424
Fax: (937) 222-5369
wwaite@ffalaw.com
aarmstrong@ffalaw.com

W. Craig Bashein (0034591)
BASHEIN & BASHEIN CO., LPA
Terminal Tower, 35th Floor
50 Public Square
Cleveland, OH 44113
Phone: (216) 771-3239
Fax: (216) 781-5876
cbashein@basheinlaw.com

Theodore A. Hamer, III (0041886)
Law Director
CITY OF KETTERING, OHIO
3600 Shroyer Road
Kettering, OH 45429
Phone (937) 296-2400

Paul W. Flowers (0046625)
(COUNSEL OF RECORD)
PAUL W. FLOWERS CO., LPA
Terminal Tower, 35th Floor
50 Public Square
Cleveland, OH 44113
Phone: (216) 344-9393
Fax: (216) 344-9395
pwf@pwfco.com

*Counsel for Amicus Curiae
Andrea White, Clerk of Courts,
Kettering, Ohio Municipal Court*

*Counsel for Plaintiff/Appellants
Michael A. Lingo, et al.*

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SUPREME COURT OF OHIO

David M. Cuppage (0047104)
CLIMACO, WILCOX, PECA,
TARANTINO & GAROFOLI
55 Public Square, Suite 1950
Cleveland, OH 44115
Phone: (216) 621-8484

*Counsel for Defendant/Appellee,
Raymond J. Wohl, Clerk of the Berea
Municipal Court*

Frank Gallucci, III (0072680)
PLEVIN & GALLUCCI
55 Public Square, Suite 2222
Cleveland, OH 44113
Phone: (216) 861-0804
fgallucci@pglawyer.com

Patrick J. Perotti (0005481)
DWORKEN & BERNSTEIN CO.
60 South Park Place
Painesville, OH 44077
Phone: (440) 352-3391
Fax: (440) 352-3469

*Counsel for Plaintiff/Appellants
Michael A. Lingo, et al.*

TABLE OF CONTENTS

I. EXPLANATION AS TO WHY THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST..... 1

II. ARGUMENT2

 A. The Eighth District Did Not Create New Law and Therefore, Appellants’ Appeal Does Not Involve a Matter of Public or Great General Interest2

 B. Any Exercise of Authority “IN EXCESS” of That Already Granted, as Opposed to in the Absence of All Jurisdiction, Makes an Act Voidable, Not Void3

III. CONCLUSION7

CERTIFICATE OF SERVICE.....8

I. THIS CASE DOES NOT INVOLVE A MATTER OF PUBLIC OR GREAT GENERAL INTEREST

Amicus Curiae Andrea White, Clerk of the Kettering, Ohio Municipal Court has an interest in this matter by virtue of being named a defendant in an action currently pending in the Common Pleas Court of Cuyahoga County, Ohio. *Gregory B. Williams, et al. v. Deborah F. Comery, Clerk of Courts, et al.*, Case No. CV-11-768540. The *Williams* action, instituted by Appellants' counsel, is identical to the class action claims brought by Appellants. In *Williams*, the trial court indefinitely stayed the case on March 22, 2012 pending the outcome of the instant appeal as the questions of law are common to the instant appeal.

This case does not involve a matter of public or great general interest. Rather, this Court should decline to accept jurisdiction as Appellants failed to appeal their orders to pay court costs associated with their criminal convictions to the appropriate appellate court(s) within 30 days of entry. Instead, Appellants collaterally attacked their orders to pay court costs to the Common Pleas Court of Cuyahoga County, Ohio; a court that has no subject matter jurisdiction to hear appeals from municipal court judgments. R.C. 1901.30(A).

The Eighth District accurately and correctly reversed the trial court's judgment as Appellants' claims are barred by the doctrine of *res judicata*. Appellants do not dispute that municipal courts have subject matter jurisdiction to hear misdemeanors and charge court costs. Instead, Appellants allege the Appellee clerk acted "in excess" of the municipal court's jurisdiction in accepting certain court costs. This Court has long held that when a judge or judicial officer acts "in excess" of the court's jurisdiction, as opposed to in the absence of all jurisdiction, the act, which is not authorized by law, is voidable, not void. *Wilson v. Neu*, 12 Ohio St.3d 102, 104, 465 N.E.2d 854 (1984). When an act or judgment is voidable, it is subject

only to challenge on appeal. *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980. The Eighth District's holding is in line with this Court's long-standing precedent.

Appellants, not the Eighth District, seek to make new law inconsistent with this Court's precedent. Appellants seek to bypass the mandate of R.C. 1901.30(A) which requires that appeals of municipal court judgments be made to the appropriate court of appeals, not a court of common pleas. Failure to appeal to the appropriate appellate court within 30 days of entry prevents an attack on the judgment at a later date pursuant to the doctrine of *res judicata*. *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905. Appellants' claims are not of public or great general interest, but rather, self-serving attempts to side-step the foundation of final judgments and appellate law in Ohio. The Eighth District correctly determined the trial court lacked subject matter jurisdiction to consider Appellants' claims. As a result, this Court should decline to accept jurisdiction.

II. ARGUMENT

PROPOSITION OF LAW I: A VOID ORDER IS A LEGAL NULLITY THAT MAY BE DISREGARDED BY ANY COURT

A. **The Eighth District Did Not Create New Law and Therefore, Appellants' Appeal Does Not Involve a Matter of Public or Great General Interest.**

Appellants assert the Eighth District's opinion is a matter of public or great general interest based entirely upon the court's statement that "whether [a judgment or act of a judge or judicial officer is] void or voidable, the remedy lies in a direct appeal, not a collateral attack on the judgment in a different court." *Appellants' Appx. 00012*, ¶18. Despite Appellants' assertion, this statement is *dicta* when read in context with the Eighth District's ultimate holding that the trial court's judgment granting class certification is void because the trial court lacked subject matter jurisdiction. The Eighth District did not create new law; rather, it ruled consistent with

Appellant's Proposition of Law I that void orders entered without subject matter jurisdiction are mere nullities. Accordingly, this Court should decline to accept jurisdiction.

Notably absent from Appellants' Memorandum in Support of Jurisdiction is the ultimate holding by the Eighth District. The Eighth District specifically held:

It is undisputed that the class representatives paid the costs associated with their municipal court cases and declined to file a direct appeal or seek a stay of their sentences. Consequently, their current attempt to collaterally challenge those costs is barred by res judicata and their claims are moot. Without a live case or controversy, the court **lacks subject matter jurisdiction** over the case. **If a court acts without jurisdiction, then any proclamation by that court is void.** Therefore, **the trial court's judgment granting class certification is void, and the trial court should have dismissed the case as barred by res judicata and for lack of subject matter jurisdiction.**

Appellants' Appx. 00016, ¶25 (Emphasis added). Correctly, the Eighth District held the trial court's November 1, 2011 Opinion and Journal Entry is void, is a legal nullity and should be disregarded because the trial court acted without subject matter jurisdiction. This holding is in line with Appellants' Proposition of Law No. I. The court's statement that void or voidable judgments should be challenged on direct appeal neither creates new law nor involves a matter of public or great general interest. As set forth in more detail below, the Eighth District correctly determined the actions of the Appellee municipal court clerk were voidable and not void. Accordingly, this Court should decline to accept jurisdiction.

PROPOSITION OF LAW II: ANY ATTEMPT BY A MUNICIPAL COURT TO IMPOSE ADDITIONAL COURT COSTS BEYOND THAT WHICH IS AUTHORIZED BY STATUTE IS VOID AND NOT MERELY VOIDABLE

B. Any Exercise of Authority "IN EXCESS" of That Already Granted, as Opposed to in the Absence of All Jurisdiction, Makes an Act Voidable, Not Void.

Appellants' class action claims are based upon the allegation that court costs were collected by the Appellee clerk "in excess of [his] statutory authority." *Appellants' Memo in Support*, p. 1. Appellants assert the alleged collection of court costs in excess of statutory

authority rendered the actions void, not voidable. This argument is not of public or great general interest as it has been answered in the negative by this Court for many years.

It is not disputed that municipal, county and mayor's courts (statutory courts) have subject matter jurisdiction over misdemeanors. It is also not disputed that statutory courts have subject matter jurisdiction to impose court costs. As determined by this Court, subject matter jurisdiction is made up of two different and distinct levels. *Pratts v. Hurley, supra*. The first level of subject matter jurisdiction is a court's power over a type of case, which is determined as a matter of law and once given, remains. *Id.* This would include a statutory court's power to hear misdemeanors as well as the power to impose court costs. At this level, a lack of subject matter jurisdiction renders a court's judgment void. *Id.* The second level of subject matter jurisdiction focuses on courts which improperly exercise subject matter jurisdiction already given to it. Any judgment that results from the exercise of jurisdiction "in excess" of that given renders the judgment voidable and properly subject to challenge on direct appeal. *Id.; see, also, Wilson v. Neu, supra*. Appellants acknowledge these separate and distinct levels of subject matter jurisdiction. *Appellants' Memo in Support*, p. 11-12.

Appellants' position invokes the second level of subject matter jurisdiction (i.e. exercise of jurisdiction in excess of that already conferred). As correctly noted by the Eighth District, "it is well settled that when a judge or judicial officer acts 'in excess' of the court's jurisdiction, as opposed to in the absence of all jurisdiction, the act, which is not authorized by law, is voidable, not void." *Appellants' Appx. 00012*, ¶18, citing *Wilson, supra*. (Emphasis added). In Appellants' own words, the class action claims center around the alleged excessive exercise of authority rather than acting without authority at all. *Appellants' Memo in Support*, p. 1. This Court has determined that such actions are voidable.

Appellants suggest the Eighth District “stopped short of explicitly overturning [the trial court’s] determination that the imposition of costs beyond that which is statutorily allowed [is void].” *Id.*, p. 12. While the Eighth District did not explicitly use those words, it necessarily determined the actions of the Appellee clerk were simply voidable. The Eighth District noted “[Appellants] assert their claims are not barred by *res judicata* because their judgments of conviction were not final, appealable orders. [Appellants] claim that [clerk] Wohl **exceeded his jurisdiction** by imposing unlawful court costs and that, as a result, the **judgments** imposing court costs **are void**.” *Appellants’ Appx. 00012*, ¶18. The Eighth District did not agree with Appellants’ assertion, and in denying same, held “**it is well settled that when a judge or judicial officer acts ‘in excess’ of the court’s jurisdiction, as opposed to in the absence of all jurisdiction, the act, which is not authorized by law, is voidable, not void.**” *Id.* (Emphasis added). The Eighth District did not tiptoe around any issue as Appellants suggest. Rather, it directly denied Appellants’ argument and found the actions of the Appellee clerk voidable as they were, at most, actions **in excess** of authority already given.

Despite same, Appellants still contend their class action claims should be permitted to proceed rather than be barred by the doctrine of *res judicata* for failure to appeal the criminal convictions to the appropriate appellate court within 30 days of entry. Pursuant to R.C. 1901.30(A), appeals from final judgments of a municipal court may be taken to the appropriate court of appeals, not courts of common pleas. This was correctly recognized by the Eighth District. *Appellants’ Appx. 00015*, ¶23. In *State v. Threatt*, *supra*, this Court held that sentencing entries relating to the imposition and collection of court costs are final judgments. Like other final judgments, the 30-day window to object to an order imposing costs begins to run on the date of the sentencing entry. *Id.* If an appeal is not taken within 30 days and a defendant attempts to raise an objection at a later date, such issues are barred by the doctrine of *res*

judicata. Id.; see also State v. Walker, 8th Dist. No. 96305, 2011-Ohio-5270 (holding the “appropriate forum for challenging court costs is by way of direct appeal from the sentencing entry and the defendant is barred under the doctrine of *res judicata* from raising the issue in a subsequent motion or pleading”); *State v. Pasqualone*, 140 Ohio App.3d 650, 657 (11th Dist. 2000); *State v. Clevenger*, 114 Ohio St.3d 258, 2007-Ohio-4006; *State v. Loyer*, 5th Dist. No. 2008 CA 58, 2008-Ohio-5570.

This is further supported by this Court’s holding in *Pratts v. Hurley, supra*. In *Pratts*, a criminal defendant filed a petition for writ of habeas corpus after a court accepted his guilty plea without first convening a three-judge panel as required under R.C. 2945.06. *Id.*, ¶3. He argued the court’s failure to convene a three-judge panel divested the court of subject matter jurisdiction, thereby rendering his sentencing entry void. *Id.* This Court rejected the criminal defendant’s arguments, holding:

Although R.C. 2945.06 mandates the use of a three-judge panel when a defendant is charged with a death-penalty offense and waives the right to a jury, the failure to convene such a panel does not divest a court of subject-matter jurisdiction so that a judgment rendered by a single judge is void ab initio. Instead, it constitutes an error in the court’s exercise of jurisdiction of a particular case, for which there is an adequate remedy at law by way of direct appeal.

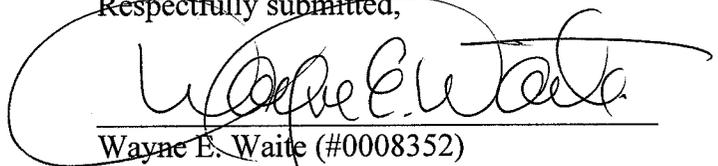
Id., ¶24.

As identified by the Eighth District, the trial court had no subject matter jurisdiction to hear Appellants’ claims; rather, appeals from final judgments of a municipal court may only be taken to the appropriate court of appeals pursuant to R.C. 1901.30(A). *Appellants’ Appx. 00015-16*, ¶¶23 and 25. Failure to do so within 30 days of the sentencing entry prohibits a collateral attack on such issues at a later date by the doctrine of *res judicata. State v. Threatt, supra*.

III. CONCLUSION

The principles of appellate law with respect to appeals of final judgment from municipal courts, as well as what constitute void and voidable judgments, are well settled. Appellants' attempt to sidestep these foundational principles does not create a matter of public or great general concern. Accordingly, this Court should refuse to accept jurisdiction of Appellants' appeal.

Respectfully submitted,



Wayne E. Waite (#0008352)
Adam C. Armstrong (#0079178)
Freund, Freeze & Arnold
1800 Fifth Third Center
1 South Main Street
Dayton OH 45402-2017
(937) 222-2424 bus
(937) 425-0207 fax

and

Theodore A. Hamer, III (0041886)
Law Director
Law Department
City of Kettering
3600 Shroyer Road
Kettering, OH 45429
(937) 296-2400
Counsel for Amicus Curiae
Andrea White, Clerk of Courts,
Kettering, Ohio Municipal Court

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 16 day of November 2012, by regular U.S. mail, postage prepaid upon the following:

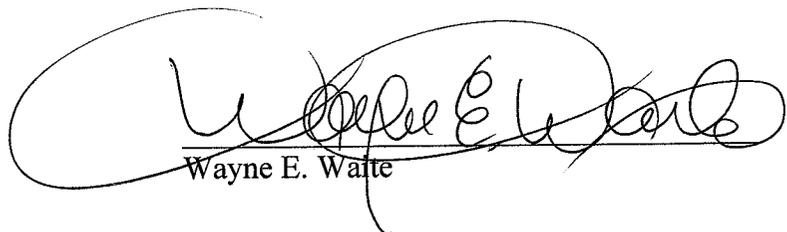
W. Craig Bashein (0034591)
Terminal Tower, 35th Floor
50 Public Square
Cleveland, OH 44113

Paul W. Flowers (0046625)
Terminal Tower, 35th Floor
50 Public Square
Cleveland, OH 44113

Frank Gallucci, III (0072680)
55 Public Square, Suite 2222
Cleveland, OH 44113

Patrick J. Perotti (0005481)
60 South Park Place
Painesville, OH 44077
Counsel for Plaintiff/Appellants
Michael A. Lingo, et al.
David M. Cuppage (0047104)
55 Public Square, Suite 1950
Cleveland, OH 44115

Counsel for Defendant/Appellee,
Raymond J. Wohl, Clerk of the Berea Municipal Court



Wayne E. Waite