

IN THE SUPREME COURT OF OHIO

STATE OF OHIO  
Appellee

Case No.13-0842

VS.

On Appeal From The Lucas County  
Court Of Appeals, Sixth Appellate  
District, case No. L 11-1276

JORGE ROJAS  
Appellant

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MEMORANDUM IN OPPOSITION TO MOTION TO STRIKE

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PRO SE FOR APPELLANT,

FILED  
JUN 11 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

RECEIVED  
JUN 11 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

MEMORANDUM IN  
OPPOSITION

On May 30, 2013, the Appellee (prosecution), filed a "waiver of response". However, the very next day, prosecution filed a "motion to strike" Appellants Notice of Appeal and Memorandum, alleging as the only reason that prosecution did not [recieve] a copy of it.

Appellant asserts that the motion to strike is improper and dilatory in nature. Firstly, prosecution filed a waiver of response, which attests to the fact that there was never any intent to oppose the memorandum for jurisdiction. Further, this case is still pending and prosecutions waiver of response was timely. Making it plain that there is no adverse harm or consequences done, by the purported non-reciept of service. For that reason alone, the motion to strike should be denied.

Moreover, however, "service by mail is effected (completed) by depositing the copy with the U.S. Postal Service for mailing," S.Ct.R.14.2(B)(1) That same principle follows in Ch.Civ.R.5(B)... "service is complete upon mailing". Non-reciept or non-acceptance does not affect the validity of that service. See eg., DUNLAP V. TRANSAMERICA OCCIDENTAL, 858 F.2d 629 (11th.Cir.1988); U.S. V. KENNEDY, 133 F.3d 53,59 (D.C.Cir.1998); U.S. v. CLINGMAN, 288 F.3d 1183,1185 (10th.Cir.2002).

In this case, however, Appellant [DID] send a copy of ALL FILED DOCUMENTS to the prosecutor. And at any rate, there was no harm done, as a waiver of response was filed the previous day. The motion to strike was therefor baseless, and seems to be dilatory in nature, and constitutes nothing more than a burden to the dockets of this Honorable Court.

In sum, there is actually grounds to strike-(the Motion to Strike), if you please, to clean up the pleadings and streamline the litigation, sidestepping unnecessary efforts on "immaterial" issues. See McINERNEY V. MOYER LUMBER, 244 F.Supp. 2d 393,402 (E.D.Pa.2002); CHAO V. LINDER, 421 F.Supp.2d 1129,1133 (N.D.Ill.2006); FANTASY, INC. V. FOGERY, 984 F.2d 1524,1527 (9th.Cir.1993), rev'd on other grounds, 510 U.S. 517 (1994).

For all the above reasons the Motion to Strike should be DENIED. Appellant did not recieve the motion to strike until, June 06, 2013, so this opposition is mailed the next day.

RESPECTFULLY SUBMITTED,

June 07, 2013/x

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APPELLANT, PRO SE

PROOF OF SERVICE

I certify that on this 07 day of June, 2013, I sent a copy of the foregoing by U.S. Mail, at: DAVID F. COOPER, 711 Adams St., 2nd Floor, Toledo, Ohio 43604.

x *Jorge Rojas*