

ORIGINAL

IN THE
SUPREME COURT OF OHIO

STATE OF OHIO EX REL. THE	:	NO. 2013 - 1234
VILLAGE OF ELMWOOD PLACE	:	
	:	This Case is an Original Action
Petitioner	:	
vs.	:	
THE HONORABLE, ROBERT P.	:	
RUEHLMAN, JUDGE HAMILTON	:	
COUNTY COURT OF COMMON	:	
PLEAS	:	
	:	
Respondent	:	

RESPONDENT JUDGE RUEHLMAN'S MOTION TO DISMISS

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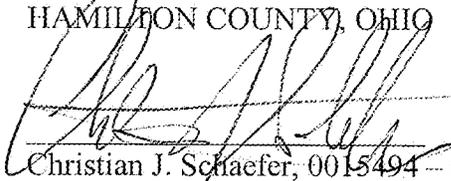
STATE OF OHIO EX REL. THE : NO. 2013-1234
VILLAGE OF ELMWOOD PLACE :
Petitioner : This Is An Original Action
 :
vs. :
THE HONORABLE ROBERT P. : **RESPONDENT JUDGE**
RUEHLMAN, JUDGE, HAMILTON : **RUEHLMAN'S MOTION TO**
COUNTY COURT OF COMMON : **DISMISS.**
PLEAS :
Respondent

MOTION

Respondent, the Honorable Robert P. Ruehlman, Judge, Hamilton County Court of Common Pleas, through counsel, moves this Court to grant dismissal of the Petition for a Writ of Mandamus or Prohibition as provided in S.Ct.Prac.R. 12.04 (A)(2) for reasons set out in the attached memorandum.

Respectfully,

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MEMORANDUM

In this case a permanent injunction was granted against Elmwood Place's traffic camera enforcement program. The original Complaint in the Court of Common Pleas requested that attorney fees be awarded. (Complaint Exhibit C, page 17). An appeal was taken to the First District Court of Appeals in case numbers C-130153 and C-130154. The appeal was filed prior to Judge Ruehlman ruling upon the request for attorney fees. For that reason the Court of Appeals dismissed the two appeals. (Complaint Exhibit M). A discretionary appeal was, thereafter, filed in this Court by Elmwood Place under case number 2013-1087. In the direct, discretionary appeal, Elmwood Place did not request a stay of Judge Ruehlman's order granting a permanent injunction.

Instead of requesting a stay pending the appeal to this Court, Elmwood Place filed this action for an extraordinary relief in case 2013-1234.

Proposition of Law I

Where a political subdivision has attempted to appeal a permanent injunction that leaves the amount of the attorney fee award unresolved, there is no final judgment and the political subdivision is not entitled to a stay under Civ. R. 62 because no appeal is pending.

In *State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas* (2011) 129 Ohio St.3d 309, 2011 -Ohio- 626 this court explained the application and enforcement of Civ. R. 62 rule that Ohio Political Subdivisions are entitled to stays pending appeal is follows:

{¶ 29} Moreover, Civ.R. 62 patently and unambiguously imposes on the court of common pleas and its judges the duty to issue a stay without a supersedeas bond upon an appeal and request for stay by a political subdivision. In such a circumstance, the availability of alternative remedies such as a discretionary appeal from the court of appeals' setting of a supersedeas bond is immaterial. See *Sapp*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 15. In addition, in these cases, we have never relegated political subdivisions or public officials to motions or actions in the court of

appeals to seek the same relief of a stay pending appeal without bond. See *State ex rel. Geauga Cty. Bd. of Commrs. v. Milligan*, 100 Ohio St.3d 366, 2003-Ohio-6608, 800 N.E.2d 361; *State ex rel. State Fire Marshal v. Curl*, 87 Ohio St.3d 568, 722 N.E.2d 73; *State ex rel. Ocasek v. Riley*, 54 Ohio St.2d 488, 8 O.O.3d 466, 377 N.E.2d 792. Thus, ECOT's mandamus claim is not precluded by the possible availability of an adequate remedy in the ordinary course of law by way of discretionary appeal from the court of appeals' ruling.

Thus, during a direct appeal from a judgment, Elmwood Place would be entitled to a stay pending appeal from the Court of Common Pleas.

In this case, however, the Court of Appeals determined that there was no judgment because the amount of the attorney fee award requested in the original Complaint has not been determined. (Complaint Exhibit C, page 17; and Complaint-Exhibit M). The amount of attorney fees is necessary to make an order a judgment.

In *Internatl. Bhd. of Electrical Workers, Local Union No. 8 v. Vaughn Industries, L.L.C.* 116 Ohio St.3d 335, 2007 -Ohio- 6439, the syllabus paragraphs set out Ohio law as follows:

1. When attorney fees are requested in the original pleadings, a party may wait until after the entry of a judgment on the other claims in the case to file its motion for attorney fees.
2. When attorney fees are requested in the original pleadings, an order that does not dispose of the attorney-fee claim and does not include, pursuant to Civ.R. 54(B), an express determination that there is no just reason for delay, is not a final, appealable order.

The Order of Judge Ruehlman, granting the permanent injunction also awarded attorney fees. But while attorney fees were awarded, the amount of those attorney fees was not determined. (Complaint Exhibit D, page 6).

The basis of the decision in *Electronic Classroom* is *Civ. R. 62* which provides in pertinent part:

(B) Stay upon appeal. When an appeal is taken the appellant may obtain a stay of execution of a **judgment** or any proceedings to enforce a **judgment** by giving an adequate supersedeas bond. The bond may be given at or after the time of filing the

notice of appeal. The stay is effective when the supersedeas bond is approved by the court.

(C) Stay in favor of the government. When an appeal is taken by this state or political subdivision, or administrative agency of either, or by any officer thereof acting in his representative capacity and the operation or enforcement of the **judgment** is stayed, no bond, obligation or other security shall be required from the appellant.

These two subsections were construed in *State ex rel. State Fire Marshal v. Curl* (2000) 87 Ohio St.3d 568 as follows:

Therefore, pursuant to *Ocasek*, the State Fire Marshal is entitled to the requested writs because he should have been granted a stay pending his appeal from the trial court's **judgment**. No bond was necessary. Civ.R. 62(C). Because the State Fire Marshal was entitled to a stay of the **judgment**, Judge Curl patently and unambiguously lacked jurisdiction either to enforce the **judgment** or to conduct contempt proceedings.

* * *

Here, Judge Curl had no discretion to deny the State Fire Marshal's motion for a stay. *Ocasek*, 54 Ohio St.2d at 490, 8 O.O.3d at 467, 377 N.E.2d at 793; see, generally, McCormac, Ohio Civil Rules Practice, at 385, Section 13.33 ("Where the government is seeking a stay [in an appeal from a **judgment** in a civil case], the court has no discretion to deny it.").

* * *

Based on the foregoing, the State Fire Marshal is entitled to the requested writs of prohibition and mandamus. Accordingly, we grant the State Fire Marshal a writ of prohibition to prevent Judge Curl from conducting contempt proceedings or attempting to enforce the **judgment** in the underlying case pending the State Fire Marshal's appeal of the **judgment** to the court of appeals, and we grant a writ of mandamus to compel Judge Curl to issue a stay of the **judgment** pending appeal.

(Emphasis added)

The pre-requisite, for the operation of the automatic stay provisions of *Civ. R. 62* pending appeal, is that a final judgment exists from which an appeal may be taken. In this case, there is no final Judgment because the amount of attorney fees is yet to be determined. Therefore, *Civ.*

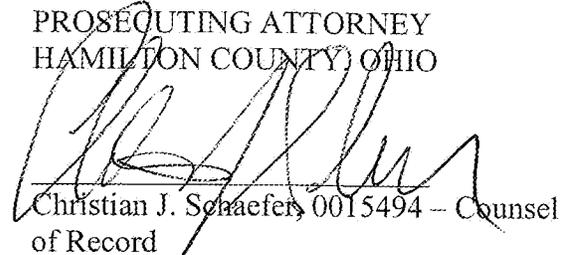
R. 62 is not applicable to the case pending before Judge Ruehlman. Elmwood Place has no right to a stay of a non-final Judgment pending an appeal because there is nothing from which an appeal may be taken.

CONCLUSION

This Court should dismiss this case.

Respectfully,

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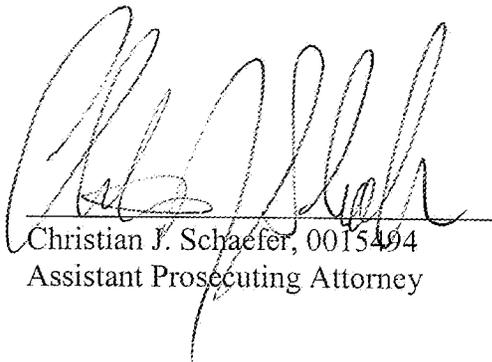
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon each party of record in this case by U.S. mail on the 20th day of August, 2013 addressed to:

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