

In the  
Supreme Court of Ohio

13-1603

ANA M. HAMBUECHEN,

Respondent-Appellant,

v.

221 MARKET NORTH, INC. DBA  
NAPOLI'S ITALIAN EATERY,

Petitioner-Appellee.

: Case No. \_\_\_\_\_  
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: On Appeal from the  
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: Stark County  
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: Court of Appeals,  
:  
: Fifth Appellate District  
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:  
: Court of Appeals  
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: Case No. 2013CA00044  
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**MEMORANDUM IN SUPPORT OF JURISDICTION OF  
RESPONDENT-APPELLANT OHIO CIVIL RIGHTS COMMISSION**

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## INTRODUCTION

This case concerns an important and recurring legal question over which the appellate courts have disagreed—namely, the requirements for parties seeking to invoke the subject-matter jurisdiction of the common pleas courts to review final orders of the Ohio Civil Rights Commission (“Commission”). R.C. 4112.06(B) states that these trial proceedings “shall be initiated” *both* by “the filing of a petition in court” *and* by “the service of a copy of the said petition upon the commission and upon all parties who appeared before the commission.” R.C. 4112.06(H), in turn, indicates that the Commission can seek judicial enforcement of its order if this trial proceeding has not been “instituted . . . within thirty days.” In *Ramsdell v. Ohio Civ. Rights Comm.*, 56 Ohio St. 3d 24 (1990), the Court said this 30-day filing deadline was a jurisdictional prerequisite to judicial review. *See id.* at 27-28. The Court reasoned that “when the right to appeal is conferred by statute, [an] appeal can be perfected only in the mode prescribed by statute.” *Id.*

In its decision below, the Fifth District held that parties can take a year—not the 30 days required by the statute and *Ramsdell*—to perfect an appeal of a Commission order. *See Hambuechen v. 221 Market North, Inc.*, 5th Dist. No. 2013-CA-00044, 2013-Ohio-3717 ¶¶ 15-16 (Ex. A, “App. Op.”). To be sure, the court acknowledged the 30-day deadline to *file* the appeal, but said the petitioner need not initiate *service* for up to a year—potentially leaving the parties in limbo all that time. *Id.* In doing so, the Fifth District both reversed the trial court’s dismissal for lack of subject-matter jurisdiction and departed from the Commission’s traditional understanding of the statute. The Commission now asks this Court to provide guidance over whether a party seeking review of a Commission order must initiate service within the 30 days referenced in R.C. 4112.06(H) to properly invoke a trial court’s subject-matter jurisdiction.

This Court's review is warranted for several reasons. *First*, the Fifth District adopted a legal rule that ensures unequal treatment of petitions for review throughout the State. Both the First and Eighth Districts have held that a party must initiate service within the 30 days listed in the statute. *See Muhammad v. Ohio Civ. Rights Comm.*, 8th Dist. No. 99327, 2013-Ohio-3730 ¶ 22 (“Because the record reflects appellant never initiated proper service on a necessary party . . . within the 30-day time period set forth in R.C. 4112.06(B) through the clerk of court, the trial court lacked jurisdiction over his petition.”); *Ramudit v. Fifth Third Bank*, 1st Dist. No. C-030941, 2005-Ohio-374 ¶ 11 (“Because Ramudit’s appeal from the commission’s decision was not properly initiated through filing and proper service within 30 days as required by R.C. 4112.06(H), the appeal was time-barred.”). No matter which side is correct in this legal debate, this Court needs to grant jurisdiction to bring uniformity to the law.

*Second*, this case concerns the subject-matter jurisdiction of the courts of common pleas, which heightens the need for immediate clarification. As this Court has recognized, “[t]he issue of subject matter jurisdiction cannot be waived and therefore can be raised at any time during the proceedings.” *In re Byard*, 74 Ohio St. 3d 294, 296 (1996). Accordingly, unclear rules of subject-matter jurisdiction have serious repercussions. If a trial court guesses wrongly on whether it has jurisdiction to hear a case, the appellate court must wipe out everything that follows, no matter how time-consuming and expensive that litigation.

*Third*, given these stark consequences, the Commission, the business community, and potential victims of discrimination all need clear guidance. Many types of parties are affected, as many might be accused of discrimination or allege discrimination—employers and employees, landlords and tenants, and those who offer public accommodations and those who use them. All understandably need to know how to properly initiate these common judicial proceedings. The

Commission similarly needs the Court's guidance because the proper initiation of trial proceedings triggers its obligation to prepare and "file with the court a transcript of the record upon the hearing before" the Commission. R.C. 4112.06(B). If a party has a full year to initiate service, the Commission is stuck in limbo while it waits to see if an appeal is properly taken. Further, the Commission's legal obligations are even more uncertain in light of the appellate courts' conflicting rules. Because of these different rules, the Commission's obligations concerning when and whether it must file the record depends on the court in which a petition for review is filed. The Commission should be able to follow a consistent rule throughout the State, and this Court's review is needed to provide that rule.

For the above reasons, the Court should accept review of this case.

#### STATEMENT OF THE CASE AND FACTS

**A. The trial court dismissed an appeal because Napoli's did not initiate service within 30 days of the order it sought to appeal.**

Respondent Ana Hambuechen filed a complaint with the Commission alleging that Petitioner-Appellee 221 Market North Inc., doing business as Napoli's Eatery ("Napoli's"), fired her because she became pregnant. App. Op. ¶ 2. After the Commission investigated Hambuechen's allegations, the parties tried her case before an administrative law judge. *Id.* The judge recommended that the Commission find that Napoli's violated R.C. 4112.02(A) when it fired Hambuechen. *Id.* The Commission made the recommended finding in a final order dated November 15, 2012. *Id.*

Napoli's filed a petition for review of the Commission's order, as R.C. 4112.06 authorizes, in the Stark County Court of Common Pleas. *Id.* ¶ 3. Napoli's sent both the Commission and Hambuechen a copy of the petition through regular mail, but did not initiate service on either party through the clerk of court. *Id.* Because Napoli's did not initiate service

through the clerk within 30 days, the Commission moved to dismiss Napoli's petition for lack of subject-matter jurisdiction. *Id.* ¶ 4. Napoli's opposed the motion and also filed a praecipe instructing the clerk to serve the petition on all parties under the civil rules, but this request came after 30 days from the Commission's final order. *Id.* The trial court granted the Commission's motion to dismiss, holding that it lacked subject-matter jurisdiction because Napoli's failed to initiate service through the clerk within 30 days of the Commission's decision. *Id.* ¶ 5.

**B. The Fifth District reversed, holding that parties have up to a year to initiate service and thus to perfect an appeal.**

Napoli's appealed. In its single assignment of error, it challenged the trial court's application of the 30-day timeframe in R.C. 4112.06(H) rather than the one-year timeframe in Civ.R. 3(A). Specifically, Napoli's assignment of error stated that: "The trial court erred in dismissing Napoli's appeal from the Commission's order because R.C. 4112.06 requires an appeal be served through the clerk of court within one year, not 30 days." *Id.* ¶ 6.

The Fifth District reversed the trial court's dismissal of Napoli's petition for review. *Id.* ¶ 16. That court initially noted that Napoli's had improperly served the Commission by sending its petition through the mail, because "it is clear from the case law that service is required to be instituted with the Clerk of Courts in accordance with the Civil Rules." *Id.* ¶ 12. In doing so, it relied on an Eighth District decision holding that "[t]he Rules of Civil Procedure apply to an action commenced in common pleas court pursuant to R.C. 4112.06." *Id.* ¶ 13 (quoting *City of Cleveland v. Ohio Civ. Rights Comm.*, 43 Ohio App. 3d 153, 156 (8th Dist. 1988)).

The question then became whether initiating service through the clerk was part of the jurisdictional requirements for "institut[ing]" a trial proceeding in 30 days under R.C. 4112.06(H) or whether a party could initiate service anytime within a year of the filing of the petition under Civ.R. 3(A). *See App. Op.* ¶¶ 11-14. That rule notes that "[a] civil action is

commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant.” *Id.* ¶ 11. The Fifth District adopted the latter rule. The court reasoned that Civ.R. 3 and 4 apply in their entirety to petitions filed pursuant to R.C. 4112.06—including the one-year service requirement found in Civ.R. 3(A). *Id.* ¶ 15. It distinguished this Court’s decision in *Ramsdell* as establishing a 30-day requirement for filing but not initiating service. *Id.* Thus, although this Court has held that R.C. 4112.06 requires petitions for review to be *filed* within 30 days, the court of appeals held, the Civil Rules give parties a year to initiate *service* through the clerk. *Id.*

### **THIS CASE IS OF GREAT PUBLIC AND GENERAL INTEREST**

The Fifth District’s decision raises an important and recurring issue that needs this Court’s immediate attention. Without this Court’s review, trial courts must treat petitions filed in the Fifth District differently from those filed in the First and Eighth Districts. This disagreement, moreover, concerns the courts’ subject-matter jurisdiction, so it has the potential to waste substantial resources if this Court takes a view different from the Fifth District’s. Finally, because a failure to follow the rules for subject-matter jurisdiction has significant consequences, the Commission and parties need guidance on the proper method to appeal.

**A. The Court should grant review because the Fifth District’s decision conflicts with decisions from the First and Eighth Districts.**

Review is warranted in this case principally because the Fifth District’s decision conflicts with decisions from the First and Eighth Districts interpreting the same statute. To begin with, the Fifth District’s decision is irreconcilable with *Muhammad v. Ohio Civ. Rights Comm.*, 8th Dist. No. 99327, 2013-Ohio-3730. In *Muhammad*, the Commission held that the petitioner, who was the complainant before the Commission, did not present probable cause that a company had discriminated against him in providing a public accommodation. *Id.* ¶ 6. The petitioner filed a

petition for review in the court of common pleas, and obtained service on the Commission through the clerk of court, *id.* ¶ 9, but only mailed copies of the petition to T.D. Security Limited, Inc., a party that had also appeared before the Commission. *Id.* ¶ 7. Because the petitioner had not initiated service through the clerk of court on all parties that had appeared before the Commission within that 30-day period, the Commission moved to dismiss the petition for lack of subject-matter jurisdiction. *Id.* ¶¶ 9-10; *see* R.C. 4112.06(B). The court of common pleas dismissed for lack of jurisdiction. *Muhammad*, 2013-Ohio-3730 ¶ 13.

The Eighth District affirmed. *Id.* ¶¶ 15-25. It began by noting that this Court in *Ramsdell* had “held that the requirements of R.C. 4112.06 are jurisdictional,” recognizing that a contrary interpretation would allow petitioners to seek review of ““commission orders months or even years after their issuance, when the evidence had become stale and the parties had died or disappeared.”” *Id.* ¶ 19 (quoting *Ramsdell*, 56 Ohio St. 3d at 28). The Eighth District also highlighted this Court’s conclusion “that, while the civil rules cannot be used to extend the jurisdictional time period, the rules indeed may apply after the petition for review is filed in the common pleas court.” *Muhammad*, 2013-Ohio-3730 ¶ 20. Thus, the civil rules apply only if they do not conflict with the statutory requirements for appealing, *id.* ¶ 21, which include service within 30 days, *id.* ¶ 19. Applying this rule, the Eighth District held that the trial court lacked subject-matter jurisdiction because the petitioner had “never initiated proper service on a necessary party . . . within the 30-day time period set forth in R.C. 4112.06(B) through the clerk of court.” *Muhammad*, 2013-Ohio-3730 ¶ 22 (citing *Ramudit*, 2005-Ohio-374 ¶ 11).

In addition, the Fifth District’s decision below conflicts with the First District. The First District has also recognized a 30-day timeframe for both the “filing and proper service” of a petition for review under R.C. 4112.06. *Ramudit*, 2005-Ohio-374 ¶ 11. In *Ramudit*, the

Commission issued an order finding that it was “not probable” that the employer discriminated against the petitioner. *Id.* ¶ 1. The petitioner filed a petition for review in the court of common pleas as the second count of her complaint. *Id.* ¶ 2. The employer moved to dismiss for lack of subject-matter jurisdiction because the petitioner never served the Commission. *Id.* ¶ 3. The trial court agreed, dismissing this count with prejudice. *Id.* ¶¶ 5-6. The First District affirmed this portion of the trial court’s order, holding that “[b]ecause Ramudit’s appeal from the [C]ommission’s decision was not properly initiated through filing and proper service within 30 days as required by R.C. 4112.06(H), the appeal was time-barred.” *Id.* ¶ 11.

These decisions from the First and Eighth Districts cannot be reconciled with the Fifth District’s decision below, which held that a party has one year—not 30 days—to initiate proper service with the clerk of court. *See* App. Op. ¶ 15. The conflicting legal rules adopted by the appellate courts treat some litigants more favorably than others. If the Fifth District’s decision is allowed to stand, a party filing an appeal in Canton will have a year to initiate service of a petition, while a party in Cincinnati or Cleveland will be limited to 30 days. Only this Court can eliminate that obvious unfairness and establish the necessary uniformity throughout the State.

**B. The Court should grant review because the appellate disagreement concerns the subject-matter jurisdiction of the courts of common pleas.**

This Court’s immediate review is all the more necessary because this appellate conflict concerns the subject-matter jurisdiction of the courts of common pleas. It is black-letter law that the parties cannot agree to a court’s power to hear a case. *See State ex rel. Lawrence Dev. Co. v. Weir*, 11 Ohio App. 3d 96, 97 (10th Dist. 1983). Accordingly, “[t]he issue of subject matter jurisdiction cannot be waived and therefore can be raised at any time during the proceedings.” *In re Byard*, 74 Ohio St. 3d at 296. Indeed, questions of subject-matter jurisdiction can be “properly raised by this court sua sponte.” *State v. Noling*, 136 Ohio St. 3d 163, 2013-Ohio-

1764 ¶ 10. Likewise, traditional equitable exceptions for missed deadlines do not apply to time limits that narrow the courts' subject-matter jurisdiction. *See Skye Metals Recovery, Inc. v. Nally*, 10th Dist. No. 12AP-836, 2013-Ohio-1522 ¶¶ 7-8; *cf. Bowles v. Russell*, 551 U.S. 205, 214 (2007).

These strict rules for subject-matter jurisdiction heighten the need for immediate clarity because any continued uncertainty carries high costs. As an initial matter, the Court should grant review because significant “[j]udicial resources . . . are at stake” when interpreting jurisdictional prerequisites. *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2009). If such a jurisdictional prerequisite is allowed to remain unclear, the lower courts could guess wrong on whether they have jurisdiction, risking the entire litigation that follows this mistaken jurisdictional ruling. *See Patton v. Diemer*, 35 Ohio St.3d 68, syl. ¶ 3 (1988) (“A judgment rendered by a court lacking subject matter jurisdiction is void *ab initio*.”); *Jenkins v. Keller*, 6 Ohio St.2d 122, 126 (1966) (“[I]t is well settled that, where a court has no jurisdiction over the subject matter of an action, a challenge to jurisdiction on such ground may effectively be made for the first time on appeal in a reviewing court.”); *cf. Hampton v. R.J. Corman R.R. Switching Co.*, 683 F.3d 708, 714 (6th Cir. 2012) (dismissing for lack of subject-matter jurisdiction “despite the time, effort, and money that unfortunately have been wasted on litigating this matter”); *Belleville Catering Co. v. Champaign Market Place, L.L.C.*, 350 F.3d 691, 693 (7th Cir. 2003) (same). Accordingly, the courts (and ultimately the taxpayers that pay for them) “benefit from straightforward rules under which they can readily assure themselves of their power to hear a case.” *Hertz*, 559 U.S. at 94.

Just as lower courts need guidance on this issue, so too do the many parties that appear before the Commission. Those parties need to know what they must do to perfect their appeals, and the Court should grant review because their cases and resources are at stake. Since courts

must strictly enforce the rules of subject-matter jurisdiction, “administrative simplicity is a major virtue in” those rules. *Hertz*, 559 U.S. at 94. This policy fully applies when determining jurisdictional rules for appealing. For example, “[t]he time of appealability, having jurisdictional consequences, should above all be clear.” *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202 (1988). The Commission recognizes that parties need to know how to invoke a court’s subject-matter jurisdiction in circumstances where even honest mistakes cannot be forgiven. And if the parties are given clear rules to follow, and know when to file and serve, they can then follow those rules, and eliminate the need for courts to even face and resolve such disputes.

The Commission needs guidance, too, along with litigants and courts. If this Court does not provide uniformity, the Commission will be subject to different requirements depending on the court in which an appeal gets filed. When a party petitions for review of a Commission order, the Commission must file with the court of common pleas a transcript of the record of the hearing before it. *See* R.C. 4112.06(B). The record must include “all proceedings in the case, including all evidence and proffers of evidence.” *Id.* The Commission’s obligation to prepare and file the record, however, gets triggered only if the appealing party properly initiates the trial proceedings in accordance with R.C. 4112.06. *Id.* By giving parties up to a year to perfect an appeal, the Fifth District’s decision creates uncertainty about precisely when—and even whether—the Commission must prepare the hearing record. The Commission may have to wait up to a year after a petition for review is filed to learn whether or not a proceeding for review has been properly instituted in the first place. To the extent it has prepared and/or filed the transcript in the interim, it will have simply wasted its limited resources. Meanwhile, the Commission will not be able to enforce its order during this time.

In short, the Court's review is necessary to provide immediate clarity to the courts, the Commission, and the parties that appear before it about the manner for perfecting appeals, and to ensure that these entities do not end up wasting their resources litigating cases that the courts of common pleas never had the power to resolve.

**C. The Court should grant review because the Fifth District's rule allowing a year for service waters down the statutory requirements for obtaining review of the Commission's orders.**

Finally, this case raises an issue of public importance because the decision below establishes a rule of law that is at odds with the well-settled principle that "when the right to appeal is conferred by statute, [an] appeal can be perfected only in the mode prescribed by statute." *Ramsdell*, 56 Ohio St. 3d at 27. Instead of holding Napoli's to the service requirements of R.C. 4112.06, the Fifth District relied on Civ.R. 3(A) to dramatically extend to one year the time within which parties are permitted to initiate service of their petitions for review. App. Op. ¶¶ 15-16. When lower courts have relaxed statutory requirements for invoking jurisdiction in this manner, this Court has intervened to ensure that those decisions properly interpreted the jurisdictional statute at issue. *See Ramsdell*, 56 Ohio St. 3d at 27; *Proctor v. Giles*, 61 Ohio St. 2d 211, 214 (1980); *In re King*, 62 Ohio St. 2d 87, 88 (1980); *see also Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, syl. ¶1 (1946) ("Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred."). It should do so again here.

## ARGUMENT

### Appellant Ohio Civil Rights Commission's Proposition of Law:

*R.C. 4112.06 requires a party seeking review of a final order of the Ohio Civil Rights Commission to initiate service of a copy of the petition for review upon the Commission, and upon all parties who appeared before the Commission, within 30 days from the Commission's service of that final order.*

The plain language of R.C. 4112.06 requires a party seeking to appeal an order of the Commission to initiate service within 30 days of the Commission's order. The Fifth District's decision in this case, by contrast, departed both from this plain language and from the well-settled rule that courts should strictly construe jurisdictional statutes.

**A. The plain language of R.C. 4112.06 requires a party appealing a Commission order to institute the appeal by both filing a petition for review and initiating service of the petition within 30 days.**

The plain language of R.C. 4112.06, when read in conjunction with this Court's decision in *Ramsdell*, shows that the First and Eighth Districts correctly held that parties have 30 days to initiate service of a petition for review of a Commission decision.

Start with the plain language. See *In re M.W.*, 133 Ohio St. 3d 309, 2012-Ohio-4538 ¶ 17 (“When analyzing a statute, [this Court] first examine[s] its plain language and appl[ies] the statute as written when the meaning is clear and unambiguous.”); *Symmes Twp. Bd. of Trustees v. Smyth*, 87 Ohio St.3d 549, 553 (2000) (“When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need for this court to apply the rules of statutory interpretation”). R.C. 4112.06(B) indicates the method for appealing a Commission order in the court of common pleas: “Such proceedings shall be *initiated* by the filing of a petition . . . *and* the service of a copy of the said petition upon the commission and upon all parties who appeared before the commission.” *Id.* (emphases added). This language

requires a party to *both* (1) file a petition for review in court *and* (2) initiate service on the Commission and the other parties. Filing alone is not enough; service is also required.

Now turn to this Court's decision in *Ramsdell*. There, this Court interpreted R.C. 4112.06(H), which notes that the Commission can seek judicial enforcement of its order "[i]f no proceeding to obtain judicial review is *instituted* by a complainant, or respondent within thirty days from the service of [the] order . . . ." 56 Ohio St.3d at 25 (emphasis added). While that language did "not literally state that an action *must* be filed within 30 days of service of a commission order," that was the practical result of the provision. *Id.* Because the Commission may obtain judicial enforcement of its order after 30 days, the Commission can "simply nullify" any petition filed after that time by requesting that enforcement. *Id.* *Ramsdell* held, therefore, that compliance with the 30-day time limit in R.C. 4112.06(H) "is necessary to invoke the jurisdiction of the court of common pleas." *Id.* at 27.

Finally, combine R.C. 4112.06's language with *Ramsdell*. *Ramsdell* held that parties may invoke the subject-matter jurisdiction of the courts of common pleas only by "institut[ing]" proceedings within 30 days under R.C. 4112.06(H). And R.C. 4112.06(B) tells parties what must be done to "initiate" these proceedings—a party must both file a petition and initiate service on the Commission and the other parties. If a party merely files a petition within the 30 days without serving the Commission, the party has not properly instituted the proceedings under R.C. 4112.06(B) and thus has not properly invoked the court's subject-matter jurisdiction under *Ramsdell*. In other words, the logic of *Ramsdell* applies with equal force here; the same reasoning that supports a 30-day *filing* requirement necessarily supports a 30-day *service* requirement as well.

Lest there be any remaining doubt, the interpretive canon applicable to statutes granting appellate rights would resolve it. “Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred.” *Am. Restaurant & Lunch Co.*, 147 Ohio St. 147 at syl. ¶ 1. Indeed, the importance of strict compliance with statutory requirements is heightened in the case of administrative appeals. *See State ex rel. Arcadia Acres v. Ohio Dept. of Job & Family Services*, 123 Ohio St. 3d 54, 2009-Ohio-4176 ¶ 12 (“[A]dministrative appeals are authorized by statutes that set forth the conditions for the exercise of judicial authority, and those conditions call for strict compliance.”). To the extent that the statute contains any ambiguity, therefore, it should be resolved in favor of the Commission’s interpretation in this case.

This straightforward logic explains why more district courts support the Commission’s view. As the First District noted, R.C. 4112.06(H) “require[s]” that an appeal be “properly initiated through filing *and* proper service within thirty days.” *Ramudit*, 2005-Ohio-374 ¶ 11 (emphasis added). The Eighth District agreed, noting that any other provision in the Civil Rules with longer time limits are inoperative because “the civil rules cannot be used to extend the jurisdictional time period.” *Muhammad*, 2013-Ohio-3730 ¶ 20.

**B. Because R.C. 4112.06 establishes a 30-day timeframe for initiating service, the Fifth District wrongly relied on the one-year timeframe in Civ.R. 3(A).**

In reaching a contrary result, the Fifth District relied entirely on Civ.R. 3(A) to extend the amount of time parties have to initiate service of a petition for review from 30 to 365 days. App. Op. ¶ 15. But the service requirements of R.C. 4112.06(H) are jurisdictional. *See Ramsdell*, 56 Ohio St.3d at 27 (“[C]ompliance with the filing requirement [of R.C. 4112.06(H)] is necessary to invoke the jurisdiction of the court of common pleas.”). The Civil Rules therefore cannot expand those service requirements. *See id.* at 28; *see also* Civ.R. 82 (“These

rules shall not be construed to extend or limit the jurisdiction of the courts of this state.”). The Fifth District’s decision construes the Civil Rules to do just that; it construes Civ.R. 3(A) in a way that improperly expands the jurisdiction of the courts of common pleas. *See App. Op.* ¶¶ 15-16. Nor can the Fifth District’s decision be saved by reference to Civ.R. 1(C) (which states that the Civil Rules will only be inoperative “to the extent that they would by their nature be clearly inapplicable.”). Because the one-year service requirement of Civ.R. 3(A) conflicts with the 30-day service requirement of R.C. 4112.06(H), it is “clearly inapplicable.”

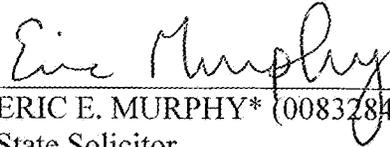
Indeed, this Court in *Ramsdell* already rejected an attempt to use the civil rules to expand R.C. 4112.06’s 30-day timeframe for instituting proceedings for review of a Commission decision. In that case, the appellant argued that Civ.R. 6(E) added three days to the time in which a petition for review could be filed. The Court rejected that argument, holding that “the Civil Rules may not be applied to extend or reactivate jurisdiction. Thus, Civ.R. 6(E) may not be applied to grant the appellant three additional days to file her petition for review.” *Ramsdell*, 56 Ohio St.3d at 28. As explained above, no sound reason exists to apply R.C. 4112.06’s 30-day timeframe to filing but not to service of a petition for review. Just as Civ.R. 6(E)’s three-day extension cannot be applied to the 30-day time limit, so too Civ.R. 3(A)’s much longer extension cannot be applied to that time limit. Accordingly, the Court should reject the Fifth District’s expansion of jurisdiction under Civ.R. 3(A), and reverse the judgment below.

**CONCLUSION**

For the above reasons, the Court should accept jurisdiction over this case and reverse the Fifth District's judgment.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

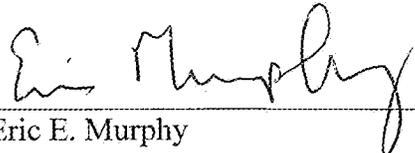
I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction of Respondent-Appellant Ohio Civil Rights Commission was served on October 9<sup>th</sup>, 2013, by U.S. mail on the following counsel of record:

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# **APPENDIX**

NANCY S. REINGOLD  
CLERK OF COURT OF APPEALS  
STARK COUNTY, OHIO

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

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ANA M. HAMBUECHEN

Respondent- Appellee

-vs-

221 MARKET NORTH, INC.  
DBA NAPOLI'S ITALIAN EATERY

Petitioner - Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.  
Hon. John W. Wise, J.  
Hon. Craig R. Baldwin, J.

Case No. 2013CA00044

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court  
of Common Pleas, Case Number  
2012CV03644

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT:

APPEARANCES:

For Respondent-Appellee  
Ohio Civil Rights Commission

WAYNE D. WILLIAMS  
State Office Building, 11th Floor  
615 W. Superior Ave  
Cleveland, OH 44113-1899

For Petitioner-Appellant

STANLEY R. RUBIN  
437 Market Avenue North  
Canton, OH 44702

THIS COPY IS FOR THE  
COURT CLERK  
8/27/13

EXHIBIT A

For Respondent- Appellee  
Ana M. Hambuechen

TODD W. EVANS  
4505 Stephen Circle, Suite 101  
Canton, OH 44718

*Baldwin, J.*

{¶1} Appellant 221 Market North, Inc., dba Napoli's Italian Eatery, appeals a judgment of the Stark County Common Pleas Court dismissing its petition for judicial review of a decision of appellee Ohio Civil Rights Commission.

STATEMENT OF FACTS AND CASE

{¶2} In 2007, appellee Ana M. Hambuechen filed a charge with the Ohio Civil Rights Commission alleging that appellant fired her because she was pregnant. The Commission issued a complaint charging appellant with a violation of R.C. 4112.02(A). The case proceeded to trial in front of an administrative law judge, who recommended that the Commission find a violation by appellant. The Commission made such a finding on November 15, 2012.

{¶3} On November 26, 2012, appellant filed a petition for judicial review in the Stark County Common Pleas Court pursuant to R.C. 4112.06. Counsel for appellant served appellees by regular mail rather than through the clerk of courts.

{¶4} The Commission moved to dismiss the petition for lack of subject matter jurisdiction on December 28, 2012, arguing that appellant had to both file its petition and initiate service through the clerk of courts within 30 days of the Commission's decision. On December 31, 2012, appellant filed a response to the motion to dismiss and also filed a praecipe for the clerk of courts to serve the petition in accordance with the Civil Rules.

{¶5} The trial court dismissed the petition, finding that appellant was required to both file its petition and initiate service through the clerk of courts within 30 days of the Commission's decision. Appellant assigns one error to this Court on appeal:

{¶6} "THE TRIAL COURT ERRED IN DISMISSING NAPOLI'S APPEAL FROM THE COMMISSION'S ORDER BECAUSE R.C. 4112.06 REQUIRES AN APPEAL BE SERVED THROUGH THE CLERK OF COURTS WITHIN ONE YEAR, NOT 30 DAYS."

{¶7} R.C. 4112.06 governs an appeal from a decision of the Ohio Civil Rights Commission to the Common Pleas Court, and provides in pertinent part:

{¶8} "(A) Any complainant, or respondent claiming to be aggrieved by a final order of the commission, including a refusal to issue a complaint, may obtain judicial review thereof, and the commission may obtain an order of court for the enforcement of its final orders, in a proceeding as provided in this section. Such proceeding shall be brought in the common pleas court of the state within any county wherein the unlawful discriminatory practice which is the subject of the commission's order was committed or wherein any respondent required in the order to cease and desist from an unlawful discriminatory practice or to take affirmative action resides or transacts business.

{¶9} "(B) Such proceedings shall be initiated by the filing of a petition in court as provided in division (A) of this section and the service of a copy of the said petition upon the commission and upon all parties who appeared before the commission. \*\*\*

{¶10} "(H) If no proceeding to obtain judicial review is instituted by a complainant, or respondent within thirty days from the service of order of the commission pursuant to this section, the commission may obtain a decree of the court for the enforcement of such order upon showing that respondent is subject to the

commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought."

{¶11} The sole issue before this court is whether appellant was required to serve all parties within 30 days pursuant to R.C. 4112.06(H), or whether the Civil Rules apply to service, giving appellant one year to perfect service on all parties pursuant to Civ. R. 3(A), which states in pertinent part, "A civil action is commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant[.]" Civ. R. 4(A) provides that upon the filing of the complaint, the clerk shall issue a summons for service upon each defendant listed in the caption.

{¶12} None of the cases cited by the parties directly address the issue before this Court. Nevertheless, it is clear from the case law that service is required to be instituted with the Clerk of Courts in accordance with the Civil Rules. In finding that service was not proper because it was sent by ordinary mail and not served through the clerk within one year, the Court of Appeals for the Eighth District held:

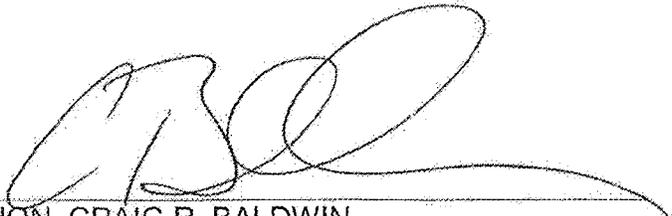
{¶13} "The Rules of Civil Procedure apply to an action commenced in common pleas court pursuant to R.C. 4112.06. *Abbyshire Constr. Co. v. Civil Rights Comm.* (1974), 39 Ohio App.2d 125, 68 O.O.2d 319, 316 N.E.2d 893. R.C. 4112.06 is silent as to whether the petition initiating the appeal must be served through the clerk of courts. However, a *de novo* hearing of a Civil Rights Commission decision on the merits is clearly adversarial in nature. Therefore, Civ.R. 3(A) and Civ.R. 4(A) and (B) apply absent a good and sufficient reason not to apply those rules. We cannot find such good and sufficient reason." *City of Cleveland v. Ohio Civil Rights Comm'n*, 43 Ohio App.3d 153, 156, 540 N.E.2d 278 (1988).

{¶14} The Eighth District reaffirmed this holding in *Donn, Inc. v. Ohio Civil Rights Comm'n*, 68 Ohio App. 3d 561, 565, 589 N.E.2d 110 (1991), stating that R.C. 4112.06 requires service on all parties who appeared before the Commission, and "Civ.R. 3 and 4 further provide that a civil action is commenced by the filing of a complaint with the court and service upon the defendant through the clerk of courts within one year of filing."

{¶15} If Civil Rules 3 and 4 apply to the commencement and service of a petition filed pursuant to R.C. 4112.06, they apply in their entirety unless the statute clearly indicates otherwise. R.C. 4112.06(H) provides only that the appeal be filed within thirty days; the statute does not clearly require that service be initiated within thirty days. Appellee's reliance on *Ramsdell v. Ohio Civ. Rights Comm'n*, 56 Ohio St. 3d 24, 563 N.E.2d 285 (1990), is misplaced. In *Ramsdell*, the issue was whether Civ. R. 6(E) added three days to the thirty day time period within which a petition must be filed pursuant to R.C. 4112.06(H). The case did not address the applicability of the Civil Rules to service of a petition filed pursuant to R.C. 4112.06.

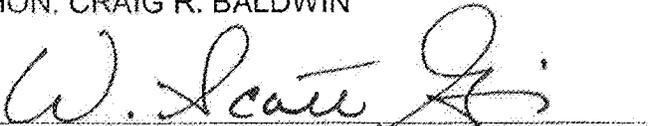
{¶16} The trial court erred in dismissing appellant's petition for judicial review on the basis that the service of the petition was not obtained through the Clerk of Courts within thirty days. The assignment of error is sustained. The judgment of the Stark County Common Pleas Court is reversed, and this case is remanded to that court for further proceedings according to law and consistent with this opinion. Costs assessed to appellee.

By: Baldwin, J.  
Gwin, P.J. and  
Wise, J. concur.



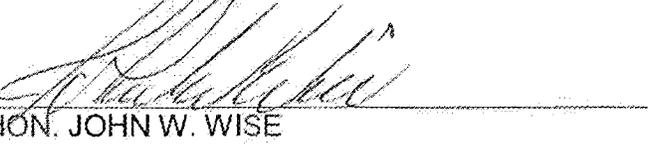
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HON. CRAIG R. BALDWIN



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HON. W. SCOTT GWIN



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HON. JOHN W. WISE

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IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

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CLERK OF COURT OF APPEALS  
STARK COUNTY, OHIO

ANA M. HAMBUECHEN

Plaintiff - Appellee

-vs-

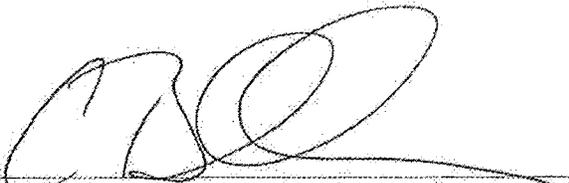
221 MARKET NORTH, INC.  
DBA NAPOLI'S ITALIAN EATERY

Defendant - Appellant

JUDGMENT ENTRY

CASE NO. 2013CA00044

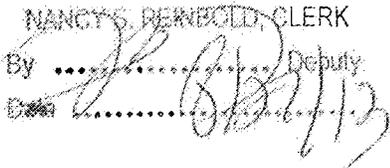
For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio is reversed and remanded. Costs assessed to appellee.

  
HON. CRAIG R. BALDWIN

  
HON. W. SCOTT GWIN

  
HON. JOHN W. WISE

A TRUE COPY TESTED:  
NANCY S. RENFELD, CLERK

By  Deputy

Date 

EXHIBIT B