

ORIGINAL

In the
Supreme Court of Ohio

ANA M. HAMBUECHEN,	:	Case No. 2013-1603
	:	
Respondent-Appellant,	:	On Appeal from the
	:	Stark County
v.	:	Court of Appeals,
	:	Fifth Appellate District
221 MARKET NORTH, INC. DBA	:	
NAPOLI'S ITALIAN EATERY,	:	Court of Appeals
	:	Case No. 2013CA00044
Petitioner-Appellee.	:	
	:	

MERIT BRIEF OF RESPONDENT-APPELLANT
OHIO CIVIL RIGHTS COMMISSION

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INTRODUCTION

This case asks a simple procedural question: When a party seeks judicial review of a final order by the Ohio Civil Rights Commission, and R.C. 4112.06 requires filing within *thirty days* and requires service upon all other the parties, does that mean that the party must initiate service within that same thirty days? Or may a party invoke Civil Rule 3, which generally allows a year for service in civil cases, and thus take a full year to initiate service in a civil-rights administrative appeal under R.C. 4112.06? The answer to the first question is yes, and the answer to the second is no. The 30-day time period sets a statutory, jurisdictional prerequisite, and the service requirement is tied to filing. The Court should therefore reverse the Fifth District's contrary holding, and reinstate the common pleas court's dismissal of Appellee Napoli's Italian Eatery's ("Napoli's") administrative appeal for failure to perfect its appeal when it failed to properly serve in 30 days.

No one disputes that the filing must be in thirty days, as both the statute says and as this Court has confirmed. Final orders of the Ohio Civil Rights Commission ("Commission") may be reviewed, under R.C. 4112.06, if a party files a "petition for review" in a common pleas court. 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, says 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'n*, 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 explained that "when the right to appeal is conferred by statute, [an] appeal can be perfected only in the mode prescribed by statute." *Id.* at 27.

Separately, Napoli's does not dispute that it was required, at least at some point, to initiate service to the other parties through the clerk of courts. Several courts have held, and the Fifth District here agreed, that Civil Rules 3 and 4 apply to petitions for review under R.C. 4112.06, as such petitions initiate a case. *See, e.g., City of Cleveland v. Ohio Civil Rights Comm'n*, 43 Ohio App. 3d 153, 157-58 (8th Dist. 1988); *Hambuechen v. 221 Market North, Inc.*, 5th Dist. No. 2013-CA-00044, 2013-Ohio-3717 ¶¶ 15-16 ("App. Op.," Ex. 3).

Thus, Napoli's does not dispute that it had to *file in thirty days*, nor does it dispute that it had to initiate service at some point, but it claims—and the Fifth District agreed—that Napoli's had a year to initiate that service and thus to perfect its appeal of a Commission order. The appeals court said that because the Civil Rules applied, Rule 3(A)'s allowance for a year for service applied, too. App. Op. ¶ 15. It distinguished the statutory 30-day requirement for appealing by saying that the statute "provides only that the appeal be filed within thirty days; the statute does not clearly require that service be initiated within thirty days." *Id.*

The Commission urges the Court to reverse the Fifth District and to require *both* statutory steps—filing and initiating service—within the same 30-day period. Only that view is consistent with the statute, consistent with the Court's holding in *Ramsdell*, and consistent with the pragmatic need to have the appeal perfected (or dismissed) so that the Commission can do its job. That job includes the obligation to file the record, which would be in limbo up to a year. And it includes the power to enforce its order after 30 days, which either is left in limbo if it takes all year to know if an appeal is underway, or provides an absurdity if enforcement can be underway in one court while a party seeks review of the order elsewhere.

For the reasons below, the Fifth District's decision should be reversed.

STATEMENT OF THE CASE AND FACTS

- A. **Napoli's Italian Eatery sought judicial review of a finding against it by the Ohio Civil Rights Commission, but it did not initiate service through the clerk until 41 days after the Commission issued its order.**

Napoli's Italian Eatery, a Canton restaurant, fired Ana Hambuechen from her job as a food server soon after she announced her pregnancy. Hambuechen filed a charge with the Ohio Civil Rights Commission alleging that Napoli's fired her because she was pregnant, in violation of R.C. 4112.02(A). App. Op. ¶ 2. After the Commission investigated Hambuechen's allegations, it issued a Complaint, and the parties tried her case before an administrative law judge (ALJ). *Id.* The ALJ recommended that the Commission find that Napoli's violated R.C. 4112.02(A) when it fired Hambuechen. *Id.* The Commission adopted this recommendation, and on November 15, 2012, it issued an order finding that Napoli's had illegally fired Hambuechen. *Id.* The Commission ordered Napoli's to "cease and desist from all discriminatory practices in violation of R.C. Chapter 4112," to offer reinstatement to Hambuechen, and to pay her back pay. Cease and Desist Order at 2.

On November 26, 2012, Napoli's filed a petition for judicial review, pursuant to R.C. 4112.06(B), in the Stark County Court of Common Pleas. App. Op. ¶ 3. On the filing date, Napoli's sent a copy of the petition to the Commission and Hambuechen through regular mail, but did not request service by the clerk of court. *Id.* ¶ 4.

A month later, on December 28, the Commission moved to dismiss Napoli's petition for lack of subject-matter jurisdiction. *Id.* ¶ 4. The Commission argued that R.C. 4112.06 requires a petitioner to institute its appeal within 30 days, and Napoli's did not do so because it did not request that the clerk serve the Commission within that mandatory period.

Napoli's then sought to correct that failure belatedly, on December 31—thus 41 days after the Commission's order—by filing a praecipe instructing the clerk to serve the petition on Hambuechen and the Commission. *Id.*

B. The common pleas court dismissed Napoli's appeal for failure to serve properly and thus failure to timely institute its appeal in the manner that R.C. 4112.06 requires.

The common pleas court granted the Commission's motion to dismiss, holding Napoli's "was required to both file its petition and initiate service through the clerk of courts within 30 days of the Commission's decision." *Id.* ¶ 5; *see* Judgment Entry Granting Respondent's Motion to Dismiss for Lack of Jurisdiction ("Com. Pl. Order"), Ex. 4. Specifically, the common pleas court found that "[s]ervice of process of the Petition filed on November 26, 2012, was not made by the Clerk of Courts pursuant to the Ohio Rules of Civil Procedure. It was not until after the [motion to dismiss] was filed that Respondent filed a Praecipe for Service to the Clerk of Courts for Service of the Petition in accordance with the Rules of Civil Procedure." Com. Pl. Order at 3. The common pleas court held that Napoli's late attempt "to cure the defect with regard to service by filing the Praecipe" was time-barred by R.C. 4112.06, and that consequently, the court did not have jurisdiction. *Id.*

C. The Fifth District reversed, holding that the 30-day limit in the jurisdictional statute did not apply to service of the petition, and that instead Civil Rule 3(A) gave Napoli's a year to perfect its appeal by proper service.

Napoli's appealed to the Fifth District Court of Appeals, asserting a single assignment of error: "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." *Id.* ¶ 6. The appeals court framed the issue as "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)."

The Fifth District reversed the trial court's dismissal of Napoli's petition for review. *Id.* ¶ 16. The court relied on *City of Cleveland v. Ohio Civil Rights Commission*, 43 Ohio App. 3d 153, 156 (8th Dist. 1988), to determine that the Civil Rules apply to a petitioner seeking the jurisdiction of a common pleas court pursuant to R.C. 4112.06. App. Op. ¶¶ 13-15. It concluded that "[i]f 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." *Id.* ¶ 15. Civil Rule 3(A) grants a complainant one year in which to obtain service by the clerk. Applying that timeline to Napoli's service, which it requested 41 days after the Commission's order, the court found it timely, and thus found jurisdiction was perfected: "The trial court erred in dismissing [the] petition for judicial review on the basis that the service of the petition was not obtained through the Clerk of Courts within thirty days." *Id.* ¶ 16.

The Fifth District distinguished this Court's decision in *Ramsdell v. Ohio Civil Rights Commission*, 56 Ohio St. 3d 24 (1990), as establishing a 30-day requirement for filing but not for initiating service. App. Op. ¶ 15. Thus, although *Ramsdell* held that R.C. 4112.06 requires petitions for review to be filed within 30 days, the Fifth District held that the Civil Rules give parties a year to obtain service through the clerk of courts. *Id.*

The Commission asked this Court to review the case, and it granted review. *See 1/22/2014 Case Announcements*, 2014-Ohio-176.

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 30-day deadline at issue sensibly applies to both filing and service, and adding a year for service post-filing is not allowed under R.C. 4112.06. The statute's plain text says so, and this Court's decision in *Ramsdell* confirms the point. Other principles further support this common-sense result. For example, the Court has long held that a party seeking review of an administrative decision must strictly comply with all *statutory* jurisdictional requirements. Here, the statute sets the 30-day timing, so a Civil Rule cannot overcome it. And the statute's purpose is to resolve appeals soon and allow prompt enforcement, and a year for service undercuts that.

In sum, the statute's 30-day filing requirement and its service requirement together require that service must also be initiated within 30 days, not 365 days.

- A. Judicial review of a final order of the Ohio Civil Right Commission may only be obtained by initiating proceedings—including service—within 30 days of the order.**
- 1. A petitioner seeking review of an administrative decision must strictly comply with all jurisdictional requirements in the statute creating the right to appeal.**

Administrative appeals require strict compliance with all jurisdictional requirements in a statute, and that is so because it is the *statute* that creates the right to appeal to begin with. The Court has long explained and applied this rule: When a “statute that authorizes [an] appeal prescribes the conditions and procedure under and by which such appeal may be perfected . . . adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred.” *American Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 149-50 (1946). Again: “It is, therefore, well-established that where a statute confers a right of appeal, as in the instant cause,

strict adherence to the statutory conditions is essential.” *In re Claim of King*, 62 Ohio St. 2d 87, 88 (1980) (citing *Am. Rest. & Lunch Co.*, 147 Ohio St. at 147, paragraph one of the syllabus).

The Court has specifically applied this strict-compliance standard to the context at issue, namely, judicial review of final orders of the Ohio Civil Rights Commission under R.C. 4112.06. In *Ramsdell*, the Court rejected an argument that the 30-day timeframe in which to institute an appeal in R.C. 4112.06(H) is not mandatory or jurisdictional. 56 Ohio St. 3d at 24. The Court concluded that the statute did necessarily require filing within 30 days, and it reaffirmed the longstanding importance of statutory requirements to invoke appellate jurisdiction: “We have always considered it to be fundamental that when the right to appeal is conferred by statute, the appeal can be perfected only in the mode prescribed by statute. *Id.* (citing *Zier v. Bureau of Unemployment Comp.*, 151 Ohio St. 123 (1949)). The Court concluded that “compliance with the filing requirement is necessary to invoke the jurisdiction of the court of common pleas.” *Id.*

The Court has also applied the strict-compliance standard to dismiss cases in which a party failed to serve properly at the same time as filing. *Berea City School Dist. v. Cuyahoga Cnty. Bd. of Revision*, 111 Ohio St. 3d 1219, 2006-Ohio-5601, ¶ 2 (holding that service must be initiated at same time as filing, and dismissing case); *Olympic Steel, Inc. v. Cuyahoga Cnty. Bd. of Revision*, 110 Ohio St. 3d 1242, 2006-Ohio-4091, ¶ 2 (same, and dismissing for failure to serve Tax Commissioner, who is required party in appeals of his decisions).

2. Filing and service are both jurisdictional requirements of judicial review, and both must be initiated within 30 days under R.C. 4112.06.

Since all statutory requirements must be strictly met, as shown above, the next step of course is to look at what the relevant statute requires. Here, R.C. 4112.06 governs judicial review of the Commission’s final orders, and specifically, R.C. 4112.06(B) provides that review is “initiated” by *both filing and service*, but without a timing requirement:

[Judicial review] 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. Thereupon the commission shall file with the court a transcript of the record upon the hearing before it. The transcript shall include all proceedings in the case, including all evidence and proffers of evidence. *The court shall thereupon have jurisdiction of the proceeding and of the questions determined therein*

R.C. 4112.06(B) (emphases added). The statute thus not only combines both “filing” and “service” as requirements for review to be “initiated,” but it also expressly says that after these and other requirements are met, the common pleas court “shall thereupon have jurisdiction.”

Another part of the statute provides the 30-day deadline for initiating judicial review, by authorizing enforcement of the Commission’s order if no appeal is “instituted” by the 30-day mark. R.C. 4112.06(H) provides: “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” This provision does not state, as directly as it could, that the petition for review must be filed in 30 days, but this Court has already held in *Ramsdell* that it sets that deadline.

In *Ramsdell*, this Court combined R.C. 4112.06(H)’s 30-day period and R.C. 4112.06(B)’s filing requirement to hold that filing within 30 days of the challenged final order was both mandatory and jurisdictional. 56 Ohio St. 3d at 28. The Court found it necessary to apply the time limit to the filing requirement for multiple reasons. First, the text suggests it logically: By allowing for enforcement after 30 days *unless* a petition is filed, the statute means that the petition must be filed by then. The Court said that the deadline for filing “necessarily follows from the practical operation of the statute,” even if “it is conceded that R.C. 4112.06(H) does not literally state that an action must be filed within thirty days of service of a commission order.” *Id.* at 24-25.

Second, the Court noted that unless that 30-day period provided a filing deadline, a practical absurdity would result, because the Commission could seek and obtain enforcement of an order after that time and thus trump a later-filed petition. *Id.* at 25. That is, “if either party filed a petition for review more than thirty days after service of the order, the commission could simply nullify it by requesting a decree enforcing its order.” *Id.* It simply makes no sense to allow later review of an already-enforced order; the whole idea is to see if the order sticks and *then* enforce it. The Court also noted that if the 30-day deadline were not used, the statute would provide no deadline at all for filing, and that of course would be absurd. *Id.*

In addition—and notably here—the Court in *Ramsdell* expressly rejected using the Civil Rules to extend this 30-day period. *Id.* at 27-28. The party there argued that Civil Rule 6(E)’s three-day mail rule should apply, so that she had 33 days from the Commission’s order. *Id.* at 27. She noted that the civil rules apply to special statutory proceedings adversary in nature, and that the lower courts had been applying the Civil Rules to review under R.C. 4112.06. *Id.* (citing *City of Cleveland v. Ohio Civil Rights Comm’n*, 43 Ohio App. 3d 153, 155 (8th Dist. 1988)). The Court agreed that the Civil Rules apply generally, but stressed that the Rules by their own terms do not apply where “by their nature” they are “clearly inapplicable.” *Ramsdell*, 56 Ohio St. 3d at 27 (citing Civil Rule 1(C)). The Court noted that the “question must be decided on a case-by-case basis,” and as to the 30-day deadline, the Rules could not apply. *Id.* That was so because applying the three-day-mail rule would result in extending the deadline beyond the statutory 30-day deadline, and that would violate the rule requiring strict adherence to all statutory, jurisdictional requirements for statutorily created appeals. *Id.* at 27-28.

Here, both the statute and *Ramsdell*’s logic dictate treating the service requirement in R.C. 4112.06(B) the same as the filing requirement in R.C. 4112.06(B)—namely, it must be met

within the 30-day period established by R.C. 4112.06(H). After all, R.C. 4112.06(B) identifies both filing and service as two constituent parts of the process by which review is “initiated.” So if filing must be done in 30 days, so should its adjunct—service. Further, R.C. 4112.06(H) ties the 30-day period to allowing enforcement actions unless review has been “instituted.” Surely, the term “instituted” in part (H) is a synonym for the term “initiated” in part (B), and that initiation, again, requires both filing *and service*. Just as *Ramsdell* held that it “necessarily follows” that part (H)’s 30-day enforcement period logically requires the *filing* under part (B) to occur within 30 days, so, too, does it logically follow that *service* occurs within 30 days.

Moreover, just as *Ramsdell*’s logic extends to service along with filing, so does its identification of practical problems that arise otherwise. Most notably, *Ramsdell* noted that *any* petition filing past 30 days would be problematic in light of the allowance for enforcement after 30 days, because it would mean that the Commission could enforce an order that was still on appeal. Here, that problem would still arise if the petition were filed in 30 days, but service could be delayed for up to a year. That is because the common pleas court’s jurisdiction is plainly not perfected until service, under R.C. 4112.06(B), and the Commission need not file the record until then, either. So the Commission could file an enforcement action in a separate case on day 31, while a filed-but-not-perfected petition for review is pending.

And that gets worse: R.C. 4112.06 allows the Commission to *choose* where to file its enforcement action, either where the discrimination occurred or in any county where the discriminator does business. But the statute also allows the petitioning party to choose among the same options. That means that two competing cases—a petition for review and an enforcement action—could be filed in different counties. That, of course, cannot be what the statute intended. Further, *Ramsdell* rightly noted that if the 30-day deadline did not apply, then

the statute would have no deadline at all. Here, although the Fifth District imported the one-year deadline from Civil Rule 3(A), it would still mean that the *statute* would have no service deadline, and that the General Assembly somehow silently relied on the Civil Rules to fill that gap. That seems unlikely.

Moreover, *Ramsdell*'s refusal to apply Civil Rule 6(E), which would have extended filing from 30 days to 33 days, surely counsels against applying a different Civil Rule to extend the time for service to 365 days.

In sum, the 30-day deadline applies to service, just as it does to filing.

3. Common pleas jurisdiction is not perfected until filing and service have been completed, and the Commission has filed the record with the court.

While the statutory text and *Ramsdell* show the need to apply the 30-day deadline to both filing and service, as shown above, two features of the statute warrant extra emphasis. The statute says that jurisdiction is not perfected until, first, both filing and service have occurred, and second, until the Commission files the record with the court. That latter duty is not triggered until after service. The text is plain. R.C. 4112.06(B)'s first sentence says that review is "initiated by the filing of a petition in court . . . and the service of" it. Then, the second sentence says, "[t]hereupon the commission shall file with the court a transcript of the record upon the hearing before it," showing that the Commission's record-filing need not happen until after filing *and service*. The third sentence specifies what the record must contain. Finally, the fourth sentence concludes that "the court shall *thereupon have jurisdiction* of the proceeding and of the questions determined therein," and specifies what the court may do on review.

Thus, no one can dispute that jurisdiction is not perfected or complete until *after service*; service is not some non-jurisdictional procedural requirement. No one can dispute that the record need not be filed until after service. And that means that the case stemming from the

petition for review cannot be heard yet. So if that extends past 30 days, that means, as noted above, that the Commission could file a separate enforcement action—even in another county—while the review case remains half-filed in some imperfect jurisdictional limbo. That, of course, is precisely the problem that the Court identified in *Ramsdell*, and although that case involved filing and not service, the problem is the same here, so the Court’s logic applies the same way here. That absurdity must be avoided by reading *all* of part (B)’s requirements as applying before part (H)’s 30-day period expires and allows for an independent enforcement action.

4. Other courts have properly applied the 30-day deadline to service as well as filing of a petition for judicial review.

While not binding on this Court, of course, Ohio’s lower courts have repeatedly applied R.C. 4112.06(H)’s 30-day deadline to both filing and service, and the Fifth District is, to the Commission’s knowledge, the sole exception. That shows that the need for compliance has been publicly available and that such compliance is simple, as it has presumably been occurring in those other districts in the many petitions filed in other cases.

While some courts applied this rule as early as 1983 and 1988, an especially notable example is the Eighth District’s 1988 decision in *City of Cleveland v. Ohio Civil Rights Commission*, because this Court cited *City of Cleveland* approvingly in *Ramsdell* for its general approach to applying the Civil Rules in a way that puts statutory requirements first. *City of Cleveland*, 43 Ohio App. 3d at 157-58 (common pleas court lacks jurisdiction to review Commission order where petitioner failed to properly serve a required party); *Westinghouse Credit Corp. v. Ohio Civil Rights Comm’n*, No. A-8302179, 1984 WL 6857, at *1-2 (1st Dist. Apr. 11, 1984) (same); *Laughlin v. Liberty Folder Corp.*, No. 17-82-14, 1983 WL 7238 (3d Dist. Mar. 31, 1983) (same). In *Ramsdell*, the Court did not discuss the part of *City of Cleveland* that specifically dismissed a petition for late service, but the *Ramsdell* Court quoted *City of Cleveland*

for its explanation that “the Civil Rules will be applicable to special statutory proceedings adversary in nature unless there is a good and sufficient reason not to apply the rules.” *Ramsdell*, 56 Ohio St. 3d at 27 (quoting *City of Cleveland*, 43 Ohio App. 3d at 155). In *City of Cleveland*, the Eighth District applied that principle to find that R.C. 4112.06(B)’s service requirement was subject to R.C. 4112.06(H)’s 30-day timeframe. *Ramsdell*, although facing a different precise issue, already endorsed the Eighth District’s reasoning, which the Eighth District applied to today’s issue. And even if *Ramsdell*’s invocation of *City of Cleveland* did not add weight—though it does—the Eighth District’s own reasoning is persuasive.

The Eighth District applied its rule again last year, in *Muhammad v. Ohio Civil Rights Commission*, 2013-Ohio-3730, ¶ 4 (8th Dist.). There, the petitioner sought judicial review of a commission order finding no probable cause presented by his charge of discrimination. The petitioner timely filed his petition in the common pleas court and even initiated clerk service on the Commission in time. But the petitioner did not initiate service on the other party that had appeared before the Commission (i.e., the alleged discriminator), and that was a fatal flaw, given the strict compliance required. *Id.* ¶ 10. The Eighth District affirmed the trial court’s dismissal, holding that the 30-day time limit in R.C. 4112.06(H) applies to service. Thus, it concluded, “[b]ecause 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.” *Id.* ¶ 22.

Similarly, in *Ramudit v. Fifth Third Bank*, 2005-Ohio-374 (1st Dist.), the appeals court held that the common pleas court lacked jurisdiction to review a commission order where the petitioner “had never served the complaint on the civil rights commission as required by R.C. 4112.06(B).” *Id.* ¶ 3.

In other contexts as well, this Court and other Ohio courts have held that timely service is a jurisdictional requirement; it goes hand-in-glove with filing itself. In *In re Claim of King*, this Court held that timely service was a jurisdictional requirement for seeking judicial review of a decision of the Ohio Bureau of Employment Services. 62 Ohio St. 2d 87, 88-89 (1980). “In order to perfect an appeal under R.C. 4141.28(O), the statute explicitly requires that the party appealing serve all other interested parties with notice. Appellee herein failed to follow this directive when he failed to serve notice on appellant. Therefore, this court finds that the Court of Common Pleas lacked subject-matter jurisdiction in this matter.” *Id.*; see also *In re Claim of: Lowell S. Chapman*, No. 79-C-35, 1980 WL 351558 (7th Dist. June 27, 1980) (“Failure to make the Administrator of the Bureau of Employment Services a party appellee and serve him within 30 days where such appeal is otherwise perfected is jurisdictional . . .”).

Thus, applying the Commission’s view here would align perfectly with several cases, whether lower-court cases on the precise issue or this Court’s cases in similar contexts, while the Fifth District’s outlier view does not.

5. R.C. 4112.06’s purpose is efficient resolution of judicial review, which would be undercut by allowing delay up to a year.

Finally, if any doubt remained—though it should not in light of the above—the tiebreaker would be Chapter 4112, liberal-construction mandate, which says that statutes in the Chapter “shall be construed liberally for the accomplishment of its purposes, and any law inconsistent with any provision of this chapter shall not apply.” R.C. 4112.08. In enacting R.C. 4112.06, the General Assembly instructed reviewing courts to hear and determine petitions for judicial review “as expeditiously as possible.” R.C. 4112.06(I). Following that statutory command, the jurisdictional statute must be interpreted to achieve judicial review, as well as judicial enforcement of a final commission order, “expeditiously.” Allowing a year for service by a

party seeking judicial review of a final commission order would undercut both goals and the timely finality of commission orders.

The interpretation requiring prompt service, by contrast, is a neutral rule furthering this statutory purpose of prompt resolution. The interpretation enforces efficiency as to all, and it applies to *any petitioning party*. For example, in *Muhammad*, a service failure led to dismissal of a petition by a party claiming discrimination, while here, it is the party charged with discrimination whose petition was dismissed. That approach ensures everyone's rights to petition are honored, while everyone is held to the strict compliance that is the hallmark of statutory appeals and that leads to efficient resolution.

For all the above reasons, a petitioner seeking judicial review of a final Commission order pursuant to 4112.06 must initiate both filing and service within 30 days in order to vest the common pleas court with jurisdiction. Because Napoli's did not properly initiate service through the clerk until 41 days after the Commission's order—that is, after R.C. 4112.06(H)'s 30-day period expired—the common pleas court properly determined that it lacked jurisdiction.

B. Civil Rule 3(A)'s one-year period for service cannot trump R.C. 4112.06's 30-day period, and the Fifth District was wrong to invoke the Rule and grant a year.

The Fifth District was wrong to apply Civ. R. 3(A) in order to extend the time in which a petitioner may perfect jurisdiction in a common pleas court pursuant to R.C. 4112.06. First, the Fifth District read R.C. 4112.06 in a way that cannot be reconciled with the statute's plain text. Second, the Fifth District erred by relying upon a civil rule to expand the statutorily created and statutorily limited jurisdiction of the common pleas court to review the Commission's final orders. The Civil Rules apply only when not "clearly inapplicable," and it is clearly inapplicable for a rule to be used to trump a statutory jurisdictional requirement.

1. The Fifth District failed to follow R.C. 4112.06's plain text and *Ramsdell* when it held that petitioners have a year to initiate service through the clerk.

As shown in Part A above, R.C. 4112.06, on its own terms and as confirmed by *Ramsdell*, requires a petitioner to initiate proceedings for judicial review within 30 days of a final order, and that applies to both the filing and service components of initiation. The Fifth District was mistaken when it artificially separated the service component from the filing component. The court below concluded that “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.” App. Op. ¶ 15. That conclusion cannot be squared with the statute’s plain text or with *Ramsdell*.

First, as noted above, the 30-day deadline is admittedly not in R.C. 4112.06(B) itself, but exists from applying R.C. 4112.06(H)’s 30-day period to R.C. 4112.06(B)’s requirements for petitioning for review. Neither part (B) nor (H) alone does the trick; they apply together. On one hand, (B) provides no deadline or time period at all. On the other hand, part (H) does not directly address filing requirements, but instead provides for the Commission to seek *enforcement* if “no proceeding to obtain judicial review is instituted . . . within thirty days from the service of order of the commission pursuant to this section.” But, as *Ramsdell* held, parts (B) and (H) logically combine to yield a 30-day *filing* requirement. That should be the same for service, as it is filing’s partner in (B)’s twin requirements for review to be “initiated.”

The Fifth District’s contrary view—separating “service” from “filing”—cannot be reconciled with the plain text or *Ramsdell*. True, the Fifth District was right in noting that *Ramsdell* formally applied only to filing, as there, the filing itself was late. But *Ramsdell* did so by reading (B) and (H) together, and service is in (B) along with filing. And *Ramsdell* tied (H), which allows enforcement in 30 days unless review is “instituted,” to (B), which refers to filing and service as two parts of having review “initiated.” Thus, *Ramsdell* already equated the terms

“initiated” in (B) and “instituted” in (H). *Ramsdell* did not somehow tie its reading of (H) *only* to the “filing” component of (B).

The Fifth District offered little textual analysis and little distinction of *Ramsdell*. Indeed, its analysis of the core issue is just one paragraph, in which it says only that *Ramsdell* involved filing and not service. App. Op. ¶ 15. That is true, but is not enough. *Ramsdell*’s logical treatment of (B) and (H) leaves no room to carve the service component (B) away from the filing component of (B). While the Fifth District offered no more justification for dividing the different components of (B) in that way, it *implicitly* may have also separated the meaning of “initiated” in (B) from the meaning of “instituted” in (H). That is possible because it is indisputable that initiation in (B) requires both filing and service—as the text plainly says so—and it is also indisputable that the 30-day period in (H) allows for enforcement unless review has been “instituted.” Thus, perhaps the Fifth District meant that a petition that has been filed but not served—and thus has not yet “initiated” review under (B)—has somehow nevertheless “instituted” review, thus forestalling the enforcement that (H) allows. That reading, although mistaken, is the only possible way that the Commission sees that would possibly cover the plain text at even a superficial level. But that reading would be sorely mistaken, because, as noted above, this Court already linked—for good reason—the “initiation” requirements of (B) to the “institution” that forestalls enforcement under (H).

In other words, it is implausible that “initiating” judicial review could require *both* filing and service under R.C. 4112.06(B), while “instituting” judicial review under R.C. 4112.06(H) could require only filing. Rather, the words should be interpreted using their natural meaning. Here, the words “initiated” and “instituted” are used synonymously, and *Ramsdell* rightly treated

the terms that way. In R.C. 4112.06, both words refer to the steps necessary to invoke a common pleas court's jurisdiction to review the Commission's final orders.

Thus, the Fifth District's conclusion cannot be squared with the statute itself, regardless of any role that the Civil Rules might play. The statute alone answers the question conclusively in favor of the 30-day deadline for both filing for initiating proper service. Moreover, as shown below, bringing the Rules into play does not change that outcome.

2. The Fifth District erred by applying Civil Rule 3(A) in a way that trumps R.C. 4112.06's statutory limits on jurisdiction.

The Fifth District held that Civil Rule 3(A) applies here, supplying a one-year timeframe for service. The court was wrong, not just because the statute requires service within 30 days, but because the Civil Rules do not apply when such application would improperly override statutory jurisdictional requirements.

As the Court explained in *Ramsdell*, application of the Civil Rules to statutory proceedings in general is not a black-and-white matter; "it must be decided on a case-by-case basis, depending on the statute involved." 56 Ohio St. 3d at 27. The starting point is Civil Rule 1(C), which limits application of the Civil Rules "on appeal to review any judgment, order or ruling," "to the extent they would by their nature be clearly inapplicable." As *Ramsdell* further explained, that means that the "rules are not categorically inapplicable to appeals from administrative orders." Nor do they categorically apply, either. *Ramsdell* quoted *City of Cleveland* and the staff notes from the Rule 1(C)'s adoption, noting that "the Civil Rules will be applicable to special statutory proceedings adversary in nature unless there is a good and sufficient reason not to apply the rules." 56 Ohio St. 3d at 27 (quoting *City of Cleveland*, 43 Ohio App. 3d at 155, in turn quoting the Staff Notes to the July 1, 1971 amendment to Civ.

R. 1(C)). Thus, the question should be whether “good and sufficient reason” exists for the particular rule at issue to apply to the particular statute at issue.

The Fifth District misapplied that standard, at a minimum, and may have misstated the standard, too. It said that the rules “apply in their entirety unless the statute clearly indicates otherwise.” App. Op. ¶ 15. To the extent that statement, by asking if the statute “clearly indicates otherwise,” is requiring an express statutory reference to the Rules and a disavowal—i.e., something like a provision stating that “the Civil Rules shall not apply to proceedings brought under this section”—then such a requirement misstates the law. But to the extent that the Fifth District meant only to restate the settled law—namely, that a “clear indication” may arise from the statute’s structure and purpose—then the court stated the proper standard, but reached the wrong result in applying it.

This Court has shown the proper meaning of the standard in several cases describing and applying the standard. For example, the Court has explained that “The civil rules should be held to be clearly inapplicable only when their use will alter the basic statutory purpose for which the specific procedure was originally provided in the special statutory action.” *Tower City Props. v. Cuyahoga Cnty. Bd. of Revision*, 49 Ohio St. 3d 67, 69 (1990) (quoting *Millington v. Weir*, 60 Ohio App. 2d 348, 349 (10th Dist. 1978)). The Court also demonstrated the application of the standard in *Ramsdell*, when it held that Civil Rule 6(E)’s three-day mail rule could not be used to extend the statutory time for appeal from 30 days to 33 days. 56 Ohio St. 3d at 28.

The Court has also explained how Civil Rule 82 comes into play in cases involving a court’s jurisdiction. Rule 82 says: “These rules shall not be construed to extend or limit the jurisdiction of the courts of this state.” The Court has explained that Rule 82’s limit on extending jurisdiction means specifically that the Civil Rules may not grant additional time *for*

service beyond the time established by a jurisdictional statute. *Proctor v. Giles*, 61 Ohio St. 2d 211, 212 (1980). In *Proctor*, the Court rejected a party's claim that Civil Rule 6(E) gave the party three extra days to mail his notice of appeal when he sought review of a decision of the Bureau of Employment Services. The Court held that timely receipt of the notice of appeal by the board was jurisdictional, and that "an extension of this limitation by the application of Civ. R. 6(E) to [the jurisdictional statute] would serve to expand the jurisdiction of the Court of Common Pleas, in direct violation of Civ. R. 82." *Id.* at 214. And *Ramsdell*, while not citing Rule 82, was consistent in refusing to apply Civil Rule 6(E) to extend the time to file under R.C. 4112.06. 56 Ohio St. 3d at 27.

Thus, several factors all show a "clear indication" against applying Civil Rule 3(A)'s one-year timeframe to override the 30-day timeline in R.C. 4112.06(H). Those factors include R.C. 4112.06 itself, the interplay between R.C. 4112.06(B) and (H), the overall purpose of R.C. 4112.06 to get review or enforcement going in 30 days, and *Ramsdell's* refusal to apply the Civil Rules to the other part of R.C. 4112.06(B) regarding filing. Consequently, Civil Rule 3(A) does not apply here, and it does not override in R.C. 4112.06(H)'s 30-day deadline.

Ironically, while the Fifth District erred in applying Rule 3(A) to trump R.C. 4112.06(H)'s 30-day deadline, the Fifth District's decision below also includes an example of how the Civil Rules can supplement R.C. 4112.06 without producing an improper clash. Before reaching the issue raised here regarding the *deadline* for initiating service through the clerk, the court below first explained why the Civil Rules apply at all to require service in that manner. App. Op. ¶¶ 12-14. The court did not need to address that issue, as Napoli's agreed that service through the clerk was required, and it challenged only the timing issue. Napoli's had stated in its assignment of error that "R.C. 4112.06 requires an appeal be served through the clerk of courts

within one year, not 30 days,” App. Op. ¶ 6, so service through the clerk was not (and is not here) at issue. Nevertheless, the Fifth District explained how other cases adopted that rule, by applying the principle that the Civil Rules apply unless clearly inapplicable. As those cases found, and the Fifth District agreed, the proceeding at issue is the type of adversary proceeding to which the Rules may apply; the statute says nothing about manner of service; the Rules therefore provide a manner without conflicting with the statute. *Id.* ¶¶ 12-14 (citing *Abbyshire Constr. Co. v. Civil Rights Comm’n*, 39 Ohio App. 2d 125 (8th Dist. 1974); *City of Cleveland*, 43 Ohio App. 3d at 156; *Donn, Inc. v. Ohio Civil Rights Comm’n*, 68 Ohio App. 3d 561, 565 (8th Dist. 1991)). Thus, that example of using the Civil Rules as a supplement—where there is no statutory conflict with the Rule and thus no indication that the Rules are “clearly inapplicable”—is a good contrast with the Fifth District’s mistaken use of the Rules to override the statutory service deadline.

Not only does that example provide a good contrast, but it is also notable because the Fifth District appears to have leapt straight from that uncontested, common-sense use of the Civil Rules to its mistaken use of the Rules on the deadline issue. The court indicated that linkage when it segued from the one usage to the next, saying that “[i]f 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*.” App. Op. ¶ 16 (emphasis added). In other words, the court adopted an all-or-nothing approach, reasoning that if the Rules applied for one purpose—supplying a manner of service—then they applied “in their entirety” for all purposes—including supplying a new deadline for service. That view of uniformity or “entirety” might have some superficial attraction, but this Court rejected that categorical approach long ago, as it noted in *Ramsdell*: “The decisions of this court, going both ways on the question of the applicability of the Civil Rules, suggest that the

question must be decided on a case-by-case basis, depending on the statute involved.” 56 Ohio St. 3d at 27. The Fifth District failed to consider the case-by-case approach, and thus failed to look at the particular statute involved, which does govern timing. And that, in the end, is the heart of this case: The statute involved *does* provide a 30-day timeline, and it does apply to filing and service, so invoking a Rule to override the statute and provide otherwise is wrong.

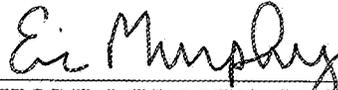
In sum, R.C. 4112.06 as a whole requires that R.C. 4112.06(H)’s 30-day timeline must apply to both components for initiating review under R.C. 4112.06(B)—filing and service. Consequently, the common pleas court was right to dismiss Napoli’s petition for failure to serve properly in time, and the Fifth District was wrong to reverse. This Court should, then, reverse the Fifth District and reinstate the common pleas court’s dismissal.

CONCLUSION

For these reasons, the Court should conclude that the 30-day time limit in R.C. 4112.06(H) applies to the service requirement of R.C. 4112.06(B), and it should accordingly reverse the Fifth District Court of Appeals and reinstate the common pleas court's dismissal of Napoli's petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

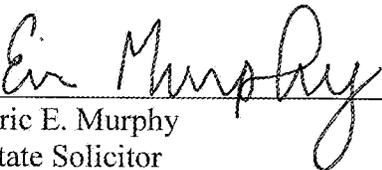
I certify that a copy of the foregoing Merit Brief of Appellant Ohio Civil Rights Commission was served by regular U.S. mail this 31st day of March, 2013 upon the following:

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Ana M. Hambuechen


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APPENDIX

EXHIBIT 1

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. _____
:
: On Appeal from the
: Stark County
: Court of Appeals,
: Fifth Appellate District
:
: Court of Appeals
: Case No. 2013CA00044
:

NOTICE OF APPEAL OF RESPONDENT-APPELLANT
OHIO CIVIL RIGHTS COMMISSION

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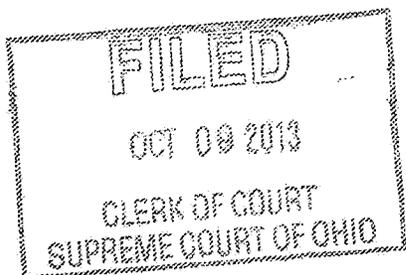
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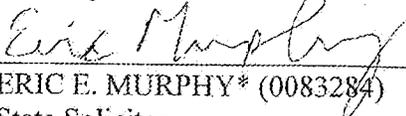
**NOTICE OF APPEAL OF RESPONDENT-APPELLANT
OHIO CIVIL RIGHTS COMMISSION**

Respondent-Appellant Ohio Civil Rights Commission gives notice of its jurisdictional appeal to this Court, pursuant to Ohio Supreme Court Rule 5.02 and 7.01, from a decision of the Fifth District Court of Appeals captioned *Ana M. Hambuechen v. 221 Market North, Inc. dba Napoli's Italian Eatery*, No. 2013CA00044 and journalized on August 26, 2013. Date-stamped copies of the Fifth District's Opinion and Judgment Entry are attached as Exhibits A and B, respectively.

For the reasons set forth in the accompanying Memorandum in Support of Jurisdiction, this case involves a question of public and great general interest.

Respectfully submitted,

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Ohio Civil Rights Commission

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Appeal of Respondent-Appellant Ohio Civil Rights Commission was served by U.S. mail this 9th day of October, 2013, upon the following counsel:

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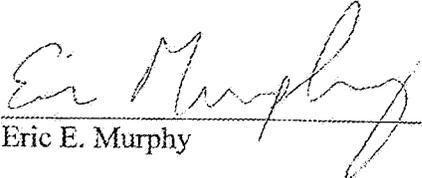

Eric E. Murphy

EXHIBIT 2

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-

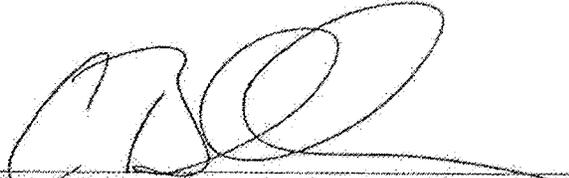
221 MARKET NORTH, INC.
DBA NAPOLI'S ITALIAN EATERY

Defendant - Appellant

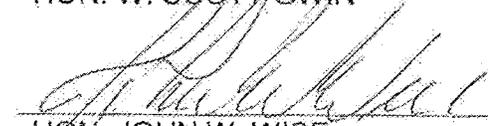
JUDGMENT ENTRY

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

ATRUE COPY TESTE:

NANCY S. DEINBOLD, CLERK

By Deputy

Date 8/27/13

EXHIBIT 3

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

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

13 AUG 26 PM 2: 01

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:

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TRUE COPY FILED
NANCY S. REINHOLD, CLERK
8/27/13

Stark County, Case No. 2013CA00044

2

For Respondent- Appellee
Ana M. Hambuechen

TODD W. EVANS
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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:

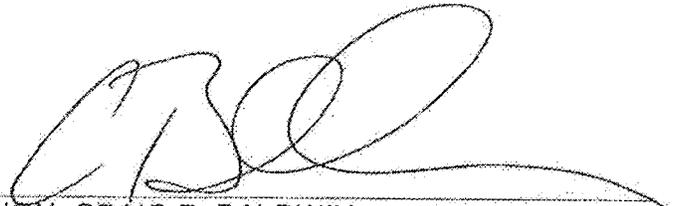
{¶13} "The Rules of Civil Procedure apply to an action commenced in common pleas court pursuant to R.C. 4112.06. *Abbyshire Constr. Co. v. Civil Rights Comm.* (1974), 39 Ohio App.2d 125, 68 O.O.2d 319, 316 N.E.2d 893. R.C. 4112.06 is silent as to whether the petition initiating the appeal must be served 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."

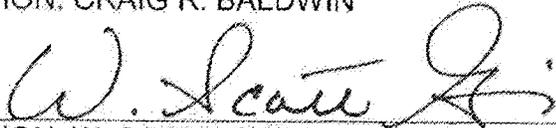
{¶15} If Civil Rules 3 and 4 apply to the commencement and service of a petition filed pursuant to R.C. 4112.06, they apply in their entirety unless the statute clearly indicates otherwise. R.C. 4112.06(H) provides only that the appeal be filed within thirty days; the statute does not clearly require 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.



HON. CRAIG R. BALDWIN



HON. W. SCOTT GWIN



HON. JOHN W. WISE

EXHIBIT 4

The Commission now moves the Court to dismiss the within action for lack of jurisdiction based upon the Petitioner's failure to properly initiate service on all necessary parties as required by R.C. 4112.06(B), within the required thirty day period for filing as set forth in R.C. 4112.06(H).

With regard to service, R.C. 4112.06 (B) states:

(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. Thereupon the commission shall file with the court a transcript of the record upon the hearing before it. The transcript shall include all proceedings in the case, including all evidence and proffers of evidence. The court shall thereupon have jurisdiction of the proceeding and of the questions determined therein, and shall have power to grant such temporary relief, restraining order, or other order as it deems just and proper and to make and enter, upon the record and such additional evidence as the court has admitted, an order enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the commission or remanding for further proceedings.

While the statute does not set forth the manner in which service is to be made, Courts have held that, where judicial review of a decision by the civil rights commission is sought, ordinary mail service is insufficient and service of process by the clerk of courts pursuant to the Ohio Rules of Civil Procedure is necessary for the court to have jurisdiction. *City of Cleveland v. Ohio Civil Rights Commission* (Cuyahoga 1988), 43 Ohio App. 3d 153. See also, *Ramudit v. Fifth Third Bank*, 2005WL267661 (Ohio App. 1 Dist.) at 11, ("Because *Ramudit's* appeal from the commission's decision was not properly initiated through filing and proper service within thirty days as required by R.C.4112.06(H), the appeal was time-barred"), and *Donn, Inc. v. Ohio Civ. Rights Commission* (Ohio App. 8 Dist), 68 Ohio App.3d 561 (failure to serve all parties as required under R.C. 4112.06 results in a lack of

jurisdiction), and *Mercy Hosp. Assn v. Ohio Civ. Rights Comm.* (Franklin 1989), 65 Ohio App. 3d 613, (Judicial review of a final order of the civil rights commission is not properly commenced except by compliance with the exacting procedures of RC 4112.06(B), which requires the filing of a petition in court and the service of a copy of the petition upon all parties who appeared before the commission; the complainant's receipt of a notice or copy of the petition from the civil rights commission attorney is insufficient to commence judicial review.)

The statute requires that the Petition be filed and served upon the parties within thirty days of the Final Order of the Commission and case law dictates that service of the Petition must be by service of process by the Clerk of Courts.

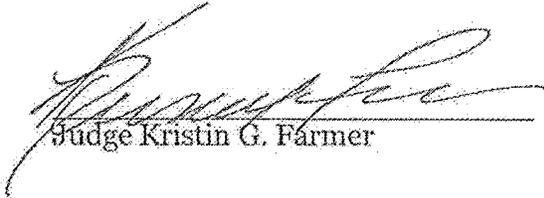
In the instant case, the Petition was served upon the parties by regular mail on November 26, 2012, as set forth in the Certificate of Service attached to the Petition filed on November 26, 2012. Service of process of the Petition filed on November 26, 2012, was not made by the Clerk of Courts pursuant to the Ohio Rules of Civil Procedure. It was not until after the instant motion was filed that Respondent filed a Praecipe for Service to the Clerk of Courts for Service of the Petition in accordance with the Rules of Civil Procedure. Said Praecipe was filed on December 31, 2012.

While Respondent attempted to cure the defect with regard to service by filing the Praecipe on December 31, 2012, the Court finds that the within appeal is time-barred as the statute requires that the appeal be filed and properly served within thirty days of the Commission's Final Order. The Commission's Order in the instant case was issued on November 20, 2012.

The Court finds that the Respondent did not properly initiate service of its Petition

on the Commission and Complainant through the Clerk of Courts within 30 days of the Commission's Final Order, as such, the Court finds that it does not have jurisdiction to hear the within matter and grants the Respondent's motion to dismiss with prejudice.

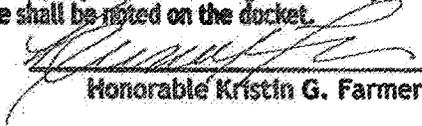
IT IS SO ORDERED.



Judge Kristin G. Farmer

Copies by fax to: Stan Rubin, Esq.
Wayne D. Williams, Esq.

**NOTICE TO CLERK:
FINAL APPEALABLE ORDER**
IT IS HEREBY ORDERED that notice of the foregoing Judgment Entry shall be served on all parties of record within three (3) days after docketing of this Entry and the service shall be noted on the docket.



Honorable Kristin G. Farmer

EXHIBIT 5

4112.06 Judicial review of final commission order.

(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.

(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. Thereupon the commission shall file with the court a transcript of the record upon the hearing before it. The transcript shall include all proceedings in the case, including all evidence and proffers of evidence. The court shall thereupon have jurisdiction of the proceeding and of the questions determined therein, and shall have power to grant such temporary relief, restraining order, or other order as it deems just and proper and to make and enter, upon the record and such additional evidence as the court has admitted, an order enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the commission or remanding for further proceedings.

(C) An objection that has not been urged before the commission shall not be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(D) The court may grant a request for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the commission.

(E) The findings of the commission as to the facts shall be conclusive if supported by reliable, probative, and substantial evidence on the record and such additional evidence as the court has admitted considered as a whole.

(F) The jurisdiction of the court shall be exclusive and its judgment and order shall be final subject to appellate review. Violation of the court's order shall be punishable as contempt.

(G) The commission's copy of the testimony shall be available at all reasonable times to all parties without cost for examination and for the purposes of judicial review of the order of the commission. The petition shall be heard on the transcript of the record without requirement of printing.

(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.

(I) All suits brought under this section shall be heard and determined as expeditiously as possible.

Effective Date: 06-30-1992