

IN THE SUPREME COURT OF OHIO

DARLA J. HOLTKAMP,  
FRANK M. NAGY

14-0665

Appellants,

v.

JOINT BOARD OF COUNTY  
COMMISSIONERS, KNOX AND  
RICHLAND COUNTY, OHIO

On Appeal from the  
Richland County Court of Appeals  
Fifth Appellate District  
Court of Appeals  
Case No.: 13-CA-117

Appellees

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MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANTS  
DARLA J. HOLTKAMP & FRANK M. NAGY

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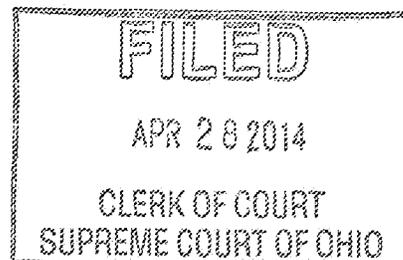
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**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC  
OR GREAT GENERAL INTEREST AND INVOLVES CONSTITUTIONAL QUESTION**

This case is of public or great general interest and it involves multiple issues and constitutional questions on basic substantial rights that has the potential to impact every citizen of the State of Ohio.

How can an interlocutory order summarily deny standing to appellant Mr. Nagy, a person with a recognizable stake in an interest, violating his inalienable right to defend, protect, and enjoy his property, freedom and liberties and then, if this is allowed, how can this substantial right be adequately restored after a trial decision? Every person has a Constitutional right to defend their personal freedoms and no interlocutory decision should have the power to strip them of such without any basis in statutes or case law without immediate review.

Can only the adjoining property owners of a road appeal a public road vacation decision? Adjoining landowners and leaseholders are not in control of public highways or bridges – they are not the primary funding for them, nor are they the sole recipients of their benefit. The roads and bridges are, by definition, the right of all people within the public domain. The care and maintenance of public roads and bridges is primarily funded by vehicle fuel tax revenues and license registration taxes, not by the property owners whose land(s) adjoin the roads and bridges. If this was not true – there would be an unfair burden put on all property owners, especially those residing in rural settings, where they, solely would be held responsible for the mile(s) of roadway and bridges abutting their lands but ALL the public would have a right to their use.

The 2010 Federal U.S. Census Bureau report on Ohio states there are 8,805,753 voting age adults in Ohio, of which only 3,111,054 are home owners. Renter-occupied households account for 1,492,381. Chapter 5563 recognizes that a road vacation can affect many people – not just adjoining property owners – and grants the right to appeal a road vacation decision to any

person, firm or corporation. Yet, an interlocutory decision of a Probate Court ignored the wording in the statutes and determined only adjoining property owners and/or leaseholders have standing to appeal. This dangerous precedent denies almost one-half of the entire population - 4,202,318 voting age citizens - without any rights to have any say in any road improvement proceeding, and, since most road vacations have only few adjoining property owners, the vast majority of the population would be denied **any** rights in **all** road improvement proceedings.

**This road and bridge has never been vacated and it is NOT a private drive**

Can County bridges flanked by Township Highways be vacated by default if a township petitions for a vacation of a township highway adjoining a county bridge? An inferior political subdivision has no authority over a superior political subdivision. Just as a Board of County Commissioners has no authority to vacate a State Highway or State Bridge, a Board of Township Trustees would have no authority to vacate a County Road or County Bridge. The township has consistently asserted they cannot maintain or work on a county bridge, because it is a county structure, yet they expect to be able to vacate it as a portion of a road. Arguments that the road and bridge have previously been abandoned are also without merit, as Appellants presented in their summary pleadings on --- the decision of this court from 2008-0574. , *Bigler v. York Twp.* (1993) ...

“to be dispositive. In *Bigler*, we examined the means by which a township could abandon township roads. The relevant statute in that case was R.C. 5553.042, which empowers a board of county commissioners to vacate a township road upon petition by an abutting land owner. We held, “[I]f this court were to hold that an action could also be brought in a court of common pleas to quiet title to a township road on the grounds of abandonment, we would directly undermine the discretion which the General Assembly expressly granted to the board of county commissioners in R.C. 5553.042. With this separate means to the same end, the statutory powers conveyed to the county commissioners in R.C. 5553.042 would be rendered meaningless.” (See also paragraphs 9-22 of that decision to further clarify abandonment issue).

**The revisions of R.C. 5553.11 ARE unconstitutional, affecting millions of citizens**

There is no question that when there is a regulatory taking (eminent domain / inverse condemnation) there must be damages and compensation hearings held for the taking of property, and any law written to negate this substantial right is in violation of both the Federal and State Constitutional doctrine must be found unconstitutional. That a road vacation is considered a taking is supported by the common law principle firmly established over a century ago in the Ohio courts: "The decisions in this state have clearly established that an abutting lot owner has such an interest in the portion of the street on which he abuts, that the closing of it \* \* \* is a taking of private property for a public use, and cannot be done without compensation." Id. quoting *Kinnear Mfg. Co. v. Beatty* (1901), 65 Ohio St. 264, 282-83, this doctrine being reinforced by this Court in *Eastland Woods v. City of Tallmadge* (1983), 2 Ohio st.3d 185.

Prior to the revision of R.C. 5553.11, damages and compensation hearings for road vacation actions were statutory. But a revision made by the 127th General Assembly, which changed the language from well-established and fully constitutional previous law stating "If the board of county commissioners, at its final hearing on the proposed improvement, orders the improvement established, it shall proceed in accordance with sections 163.01 to 163.22, inclusive, of the Revised Code." ; to the new wording of R.C. 5553.11 "If the proceeding is for an improvement **other than the vacation of a road** and the board of county commissioners, at its final hearing on the proposed improvement, orders the improvement established, it shall proceed in accordance with sections 163.01 to 163.22, inclusive, of the Revised Code. " In a pen stroke, the act allowed for a regulatory taking without the necessary guaranteed real property appropriations proceedings. Such an act is blatantly inconsistent with real property rights guaranteed the public by the U.S. Constitution, the Ohio Constitution and both prior decisions of common law and more recent decisions in the Ohio Supreme Court.

According to the Ohio Township Association website, in Ohio, townships encompass the unincorporated area of the state, with Ohio's 1,308 townships serving approximately 35 percent of Ohio's population. The Association boasts that townships maintain more road miles than any other branch of government with 41,000 miles. The recent revision to R.C. 5553.11 strips the value that roads and bridges provide to the citizens of 1/3 of the population (millions of citizens) without due process OR damages and compensation, although citizens who do not live on county or township roads still enjoy that protection of this substantial right as mandated by both Federal and State doctrine.

**This court should consider this appeal a Collateral Attack of a VOID judgment**

The interlocutory decisions of both the Probate and General Division of the Common Pleas Court, whether addressed singly or in combination, rise to the stringent level of review outlined in *Polikoff v. Adam* Ohio St.3d 100 (1993) "Where the law confers a right, and authorizes a special application to a court to enforce it, the proceeding is special, within the ordinary meaning of the term "special proceedings."

The combined interlocutory decisions of the Probate Court to deny standing to a legal resident, while, at the same time, bestowing standing to the Knox and Richland County Engineering Departments – entities who have no pecuniary interest in or authority over a township road – combined with that Court's lack of Summary Judgment on a simple black and white legal question of **"Is this a township road and a county bridge?"**(emphasis added) denies Appellants the opportunity for a fair trial on the issue.

Appellants would have to go so far as to bar Appellees from ever making any mention of the bridge in any pleadings or testimony in the road vacation proceedings, because if the issue is addressed piece meal the Appellees can use claim preclusion - res judicata/collateral estoppel,

and rightfully so. In fact, Appellants would have to file for a mistrial if that subject was even broached to preserve their substantial right for a fair trial and ensuring a new trial for the road vacation and a separate trial on the sole issue of the county bridge.

Are the specific time conditions for an action, as ordered by a statute of the Ohio Revised Code, meaningless and ignorable by the Courts and can a Court review it's own actions? When the public has to go to the length of seeking justice through the Court system, it has the expectation that the Courts will follow any laws that direct it's action(s). This is not a novel idea. The citizens must follow the laws, and they expect the Courts to do so also. Even a bad, or unconstitutional law must be followed until it is declared unconstitutional.

#### **STATEMENT OF THE CASE AND FACTS**

Leedy Lane (TH 24) is an improved township road and flanks a county bridge. It currently navigates a segment of the county line between Knox and Richland Counties. It was dedicated in 1845 and appears on current tax maps and previous tax maps dating back to the early 1900's. The township road and county bridge extends 679.34 feet in length, another section of the road to the west being legally vacated in 1934 and a section to the east being legally vacated in 1959. The road and county bridge has served as the sole and exclusive ingress and egress to one residence on the south side for more than 100+ years. The river the county bridge crosses dissects the entire length of the front of that property, restricting any other means of access from any other road. There is no other curb cut or driveway, nor has there ever been any other curb cut or driveway for that property on any other road. Leedy Lane and the county bridge abuts vacant land to the north. The township road and county bridge is passable by four-wheeled vehicles and

open year around and used daily. It has never been put on non-maintained status with the Department of Transportation.

The road and county bridge have a tortured history in the past few years and have been the brink of contention between abutting property owners and township trustees, who no longer want to be legally obligated to maintain the road and the county engineers who no longer want to be legally obligated to maintain the county bridge.

In 2009, residents approached the Jefferson Township Trustees (Richland County) for help with removing a large tree that had washed up against the county bridge and was putting them, their property and their livelihood in peril. The Trustees first stated they had no responsibility, as it was a county bridge. Their next move was to draft a petition to the Joint Boards of County Commissioners of Knox & Richland County (JBOCC) to vacate this portion of the township highway. After viewing and hearings, delays and reconsiderations, the JBOCC voted to NOT VACATE the road. The township continued to ignore the road and the county continued to ignore the bridge.

In 2010, the Jefferson Township Trustees (Richland County) and the Berlin Township Trustees (Knox County) again petitioned the JBOCC to vacate a portion of the road. This effort resulted in the JBOCC passing a resolution to consider the petition that subsequently resulted in a vote to vacate the township road. The JBOCC has never drafted it's own resolution to vacate the county bridge, as required by law, and the County Bridge has never been legally addressed to this day.

Appellants appealed to the Probate Court of Richland County, vesting that Court with jurisdiction and preventing the decision of the JBOCC from being final pending the outcome of all appeals.

The Probate Court found in Appellants favor based upon the doctrines of res judicata and/or collateral estoppel. This decision was overturned by the Fifth District Court of Appeals who ruled that the JBOCC is a legislative body, not a quasi-judicial body (!) and a county road vacation is the creation of a law, rather than the enactment of the statutes created for and defining the procedures of a road vacation (!), thus res judicata did not apply.

Appellants appealed this decision to the Supreme Court, who denied jurisdiction and the matter returned to the lower court.

Further motions and hearings ensued through the Probate Court with a ruling on September 14, 2012, finding that “the Appeal has been properly perfected according to law” and on same day the Probate Court then transferred the case to the General Division for further disposition. No court date was set.

October 9, 2012, Appellants filed an Appeal with the Fifth District Court and filed Motions for Stay with both the Probate Court and the General Division, but Appellants were forced to withdraw their appeal on October 31, 2012 from the Fifth Appellate Court when neither the Probate Court or the General Division of the Common Pleas Court would grant them A Motion For Stay, **both courts saying they did not have jurisdiction**, Appellants could not simultaneously handle the same case in two different courts at the same time.

Appellants then proceeded in the General Division of Common Pleas with a Motion to Vacate a Void Judgment on October 31, 2012 (the same day they withdrew their appeal from the Fifth District Court).

In the ruling filed December 3, 2013, the Common Pleas Court overruled the Motion to Vacate Void Judgment, but, again, did not set a jury date within the required 20 days.

Appellants filed an Appeal with the Fifth District Court of Appeals, however, the Fifth District Court did not recognize any substantial rights had been violated and refused jurisdiction, prompting this appeal.

### LAW AND ARGUMENT

***Appellant's Proposition of Law No. 1: An interlocutory order of a Probate Judge denying a person standing – unsupported by case law, unsupported by state statute - is flatly contrary to and in violation of a person's substantial right to due process as guaranteed by the 5th and 14th Amendments of the U. S. Constitution and Article 1, Sections 1 and 16, of the Ohio Constitution.***

The protections of due process afforded by the 5th and 14th Amendments of the U.S. Constitution and Article 1, Sections 1 and 16 of the Ohio Constitution **are not reserved solely for criminals!**

There are a number of special statutes in R.C. Chapter 5553 that deal with who can initiate a road vacation and by what means, however, the operative statute for who may appeal a road vacation action is all inclusive:

R.C 5553.30 - Any petitioner may appeal from the order of the board of county commissioners, or joint board of county commissioners, dismissing or refusing to grant the prayer of the petition for an improvement. Any person interested may appeal from an order granting such improvement. Such appeal may be perfected in the manner provided in sections 5563.01 to 5563.17 , inclusive, of the Revised Code, and if the order appealed from is that of a joint board, an appeal may be taken to the probate court of any county in which said improvement or any part thereof is situated.

This all inclusive language is reinforced in R.C. Chapter 5563 – the sole and exclusive chapter the courts have determined deals with county road appeals:

R.C. 5563.01 No order of the board of county commissioners for locating, establishing, altering, straightening, widening, or changing the direction of a public road, **shall be executed until ten**

**days have elapsed after the board has made its final order in the matter of compensation and damages, on account of such improvement.** If, at the end of ten days, any person, firm, or corporation interested, has affected an appeal, then the order shall not be executed until the matters appealed from have been disposed of in the probate court or the common pleas court.

**Any person, firm, or corporation** desiring to appeal to the probate court or the common pleas court, when the improvement is located in two or more counties, may appeal to the probate or common pleas court of either county.

R.C.5563.02 “**Any person, firm, or corporation** interested therein, may appeal from the final order or judgment of the board of county commissioners, made in any road improvement proceeding and entered upon their journal, \*\*\*

**Any person, firm, or corporation** desiring to appeal from the final order or judgment of the board upon any such questions, shall, **at the final hearing upon matters of compensation or damages**, give notice in writing of an intention to appeal, specifying therein the matters to be appealed from.

An interested party, by definition, is a party who has a recognizable stake, and therefore standing, in a matter (Blacks Law Dictionary, 8<sup>th</sup> Edition). This issue is not a simple matter of inconvenience. Surely, Mr. Nagy has, as a legal resident of the property has an inherent right to protect his rights and property and has a recognizable standing in the proceedings. First and foremost, the taking of this road and bridge truly land locks Mr. Nagy’s home and strips him of legal ingress or egress to his residence. Appellees erroneous affirmations that Appellants have access by another means because they have property abutting a different road, ignores the fact there has never been any access from that other road and it would entail building a new bridge (up to state codes for emergency vehicles) and new roadway. Moreover, it compromises his ability to make a living, and restricts his guaranteed basic right of freedom of movement and the pursuit of happiness. To strip his standing in this matter would constitute a true abuse of discretion., *Jeffers v. Athens Cty. Commrs.*, Athens App. Nos. 10CA3 & 10CA15, 2011-Ohio-675 ¶14} “An abuse of discretion connotes more than a mere error of judgment; it implies that the court’s attitude is arbitrary, unreasonable or unconscionable.” *Pryor v. Pryor*, Ross App. No.

09CA3096, 2009-Ohio-6670, at ¶22, citing *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. In order to demonstrate an abuse of discretion, “the result must be so palpably and grossly violative of fact or logic that it evidences not the exercise of will but the perversity of will, not the exercise of judgment but the defiance of judgment, not the exercise of reason but instead passion or bias.” *Nakoff v. Fairview Gen. Hosp.*, 75 Ohio St.3d 254, 256, 1996-Ohio-159.

**Proposition of Law #2: *A township does not have authority to vacate a county structure, thus a county bridge flanked by a township road cannot be vacated by petition of Township Trustees but rather must be vacated by separate resolution of the Boards(s) of County Commissioners in accordance with Chapter 5591. An order made without any authority at law is a void order.***

The Probate Court did not have original jurisdiction over the case because there was never a Final Appealable Order from the JBOCC. The Township Trustees overstepped their authority in their attempt to vacate a county bridge. (It is of interest to note that Appellees have also argued that there has never been a Final Appealable Order from the JBOCC, albeit for different reasons.)

R.C. 2505.02, Final Orders

(A) As used in this section : (1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect. (2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following: (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment; (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

Irrespective of whether a party moves to vacate a judgment, Ohio courts have inherent authority to vacate a void judgment. *Patton v. Diemer* (1988), 35 Ohio St.3d 68. A void

judgment is one that is rendered by a court that is "wholly without jurisdiction or power to proceed in that manner."

The authority to vacate a void judgment, therefore, is not derived from Civ. R. 60(B), "but rather constitutes an inherent power possessed by Ohio courts." *Patton*, supra, paragraph four of the syllabus. A party seeking to vacate a void judgment must, however, file a motion to vacate or set aside the same. *CompuServe*, supra, at 161. Yet to be entitled to relief from a void judgment, a movant need not present a meritorious defense or show that the motion was timely filed under Civ. R. 60(B). ("A void judgment is one entered either without jurisdiction of the person or of the subject matter." *Eisenberg v. Peyton* (1978), 56 Ohio App.2d 144, 148. A motion to vacate a void judgment, therefore, need not comply with the requirements of Civ.R. 60(B) which the petitioner ordinarily would assert to seek relief from a jurisdictionally valid judgment. *Demianczuk v. Demianczuk* (1984), 20 Ohio App.3d 244, 485 N.E.2d 785.

"A judgment is characterized as void and may be collaterally attacked at any time where the record itself furnished the facts which establish that the court acted without jurisdiction."

*People v Byrnes*, 34 Ill.App.3d 983, 341 N.E.2d 729 (2nd Dist. 1975).

**Proposition of Law #3: This is a facial challenge to the unconstitutional revisions of R.C. 5553.11, which allows for a regulatory taking without due process and compensation - revisions in direct conflict with substantial rights guaranteed by the 5th and 14th Amendments of the United States Constitution and Article 1, Section 19 of the Ohio Constitution.**

The Supreme Court in *Lingle v. Chevron U.S. A. Inc.* (04-163) 544 U.S. 528 (2005) 363 F.3d 846 found "Regulatory actions generally will be deemed per se takings for Fifth Amendment purposes (1) where government requires an owner to suffer a permanent physical invasion of her property, see *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, or (2) where regulations completely deprive an owner of "all economically beneficial us[e]" of her

property, *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019. Outside these two categories (and the special context of land-use exactions discussed below), regulatory takings challenges are governed by *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124.

In *State ex rel. Blank v. Beasley* 121 Ohio St.3d 301, 2009-Ohio-835, 903 N.E.2d 1196, the Ohio Supreme Court explained: “We have acknowledged that Section 19, Article I of the Ohio Constitution limits compensation to those situations where private property is taken for public use, in contrast to the constitutions of some states, which guarantee compensation for private property that is taken for or damaged by public use. *State ex rel. Fejes v. Akron* (1966), 5 Ohio St.2d 47, 50, 34 O.O.2d 58, 213 N.E.2d 353, citing *McKee v. Akron* (1964), 176 Ohio St. 282, 284, 27 O.O.2d 197, 199 N.E.2d 592, overruled on other grounds by *Haverlack v. Portage Homes, Inc.* (1982), 2 Ohio St.3d 26, 2 OBR 572, 442 N.E.2d 749. Accordingly, we have construed this constitutional provision to require a property owner to prove something more than damage to his property in order to demonstrate a compensable taking. *State ex rel. Fejes v. Akron*, at 52, 213 N.E.2d 353, 34 O.O.2d 58, 213 N.E.2d 353.” Id at paragraph 17

In a more recent case, the Ohio Supreme Court, citing Federal and Ohio Case Law, set forth the following two-part test for inverse-condemnation claims: “The line distinguishing potential physical takings from possible torts is drawn by a two-part inquiry. First, a property loss compensable as a taking only results when the government intends to invade a protected property interest or the asserted invasion is the direct, natural, or probable result of an authorized activity and not the incidental or consequential injury inflicted by the action.’ *Columbia Basin Orchard v. United States* (Ct.Cl.1955), 132 F.Supp. 707, 709 \* \* \* \* \* Second, the nature and magnitude of the government action must be considered. Even where the effects of the

government action are predictable, to constitute a taking, an invasion must appropriate a benefit to the government at the expense of the property owner, or at least preempt the owner's right to enjoy his property for an extended period of time, rather than merely inflict an injury that reduces its value." *State ex rel. Doner v. Zody* 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d 1235, citing *Ridge Line, Inc. v. United States*, 346 F.3d 1346 (Fed. Cir. 2003).

With the Lingle case as a guideline, the taking of the county bridge and township road will require the property owners to suffer a permanent physical loss AND completely deprive an owner of all economically beneficial uses of her property. Additionally, both of the tests put forth by the Ohio Supreme Court are clearly satisfied as an inverse condemnation claim with the taking of TH24 and the attached county bridge. The taking of the road and county bridge goes far beyond "merely inflicting an injury that reduces (property) value", it interferes with the safety, livelihood, and freedom to move about of the public and not only limits, but completely negates the Appellants ability to enjoy their property for an extended period of time by denying them legal means of ingress and egress to their residence, property, animals and buildings, and compromising their ability to make a living. In fact, Appellants demonstrated in the public hearing on August 5, 2010 that 98% of the roadbed and 100% of the county bridge would revert to the adjoining property owner on the north side if a taking occurred, effectively land locking Appellants residence at the point of the taking.

Additionally, this new wording of the law requires each and every affected property owner of any road or bridge vacation action to initiate a declaratory judgment and mandamus action for the regulatory takings, putting a further burden on the courts.

**Proposition of Law #4: Appellant's rights were violated when Statute R.C. 5563.05 was not applied by the Probate Court – no day for the trial was affixed within the time period specified, in violation of Civ. R. 59 (A)(9).**

On Sept. 14, 2012, the Probate Court filed a Judgment Entry finding the proceedings to perfect an appeal had been regular and transferring this case to the General Division of the Richland County Court of Common Pleas for further disposition – AT THAT TIME, the General Division of the Common Pleas Court replaced the Probate Court as the proper Court for case matter jurisdiction.

The first part of this order, under statute R.C. 5563.05, triggered a 20 day time limit to file a day for the trial of the case by jury. After the 20 days had elapsed without action, Appellants filed a new motion to vacate a void judgment with the General Division of the Court of Common Pleas. That Court ruled it did not have the authority to review Probate Court decisions and furthermore denied any irregularities had occurred by the Court not following R.C. 5563.05, or by the Court's 42 day delay in transferring the record – a span of time during which Appellants were unable to file any Motions other than an ill-fated Intent to Appeal to the Fifth Appellate Court and subsequent Motion To Withdraw Appeal when both the Probate Court and General Division of the Common Pleas denied they had jurisdiction to grant Appellants an Order of Stay Pending Appeal.

Judgment Entry, Dec. 3, 2013, p.2. (attached hereto as Ex. B)

“The General Division does not sit as an appellate court over the Probate Division. Rather, this case has been transferred pursuant to Ohio Rev. Code 2101.25 to the General Division for further disposition. Accordingly, this Court finds that Ms. Holtkamp's arguments regarding the finality of the Joint Board's order have already been addressed by the Probate Court and will not be disturbed here.”

Ms. Holtkamp's argument that the Probate Court's order should be vacated due to the delay in transmitting the case to the General Division is not well taken. Ms. Holtkamp (sic) was able to file her appeal in the Probate Court on October 9, 2012, but then subsequently chose to voluntarily withdraw her appeal in the Fifth District Court on October 31, 2012, which resulted in a dismissal on November 9, 2012. Furthermore, Ms. Holtkamp has not been denied her opportunity for trial, as this Court will be proceeding with the remainder of the case.”

The question of whether the Common Pleas Court was the correct Court to ask for a void judgment has recently been addressed by this Court: 2014-1052 *Lingo v. State of Ohio* this court stated at paragraph (48) “A Court has the inherent authority to vacate it’s own void judgments.” *Patton v. Diemer*, 35 Ohio St. 3d 68, 518 N.E.2d 941 (1988), paragraph 4 of the syllabus  
However, Appellants were right to first ask the Court of Common Pleas for a void judgment.

### CONCLUSION

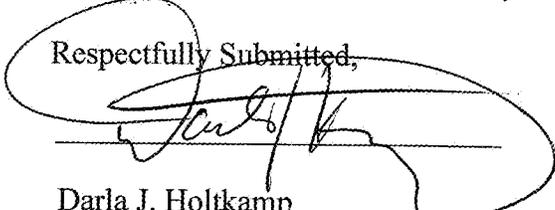
Jurisdiction by this Court is warranted. It is the duty of the Supreme Court to examine the constitutionality questions posed by the revisions to R.C. 5553.11, which allows for a regulatory taking of property, in violation of substantial rights, and without safeguards to the public.

Mr. Nagy’s standing is a solid constitutional issue of substantial right that needs to be examined, and, if need be, for this Court to set a precedent..

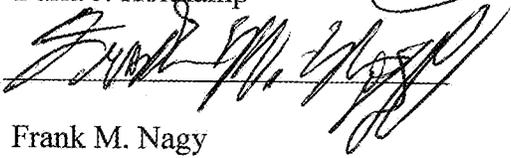
The refusal of a Common Pleas Court to act on a motion for a void judgment, when they were the Court of jurisdiction, violates a substantial right.

For the aforementioned reasons, this Court should accept this appeal for case matter jurisdiction, or in the alternative, this Court should accept jurisdiction on this appeal as a collateral attack on not only a voidable judgment, but a void judgment – a nullity.

Respectfully Submitted,



Darla J. Holtkamp



Frank M. Nagy

Appellants, Pro Se

**CERTIFICATE OF SERVICE**

The undersigned hereby certify that a true copy of the foregoing was served upon

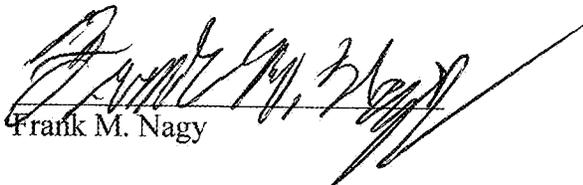
Joseph D. Saks (0088082)  
Knox County Assistant Prosecuting Attorney  
117 East High Street, Suite 234  
Mount Vernon, Ohio 43050  
(740) 393-6720 Telephone  
(740) 397-7792 Facsimile

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Mabee and Mills LLC  
24 W. Third Street, Suite 300  
Mansfield, Ohio 44902  
(419) 524-1403 Telephone  
(419) 522-4315 Facsimile

Diane L. Snell  
Douglas Snell  
7340 Garber Road  
Bellville, OH 44813

By USPS mail on April 28, 2014.

  
Darla J. Holtkamp

  
Frank M. Nagy

A

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

COURT OF APPEALS  
RICHLAND COUNTY OHIO  
FILED  
2014 MAR 13 AM 9:55  
LEIDA H. PERRY  
CLERK OF COURTS

DARLA J. HOLTKAMP

Plaintiff - Appellant

-vs-

JOINT BD. OF COUNTY  
COMMISSIONERS, KNOW AND  
RICHLAND COUNTY, OHIO

Defendant - Appellee

Case No. 13CA117

JUDGMENT ENTRY

This matter came before the Court upon Appellee's Motion to Dismiss for lack of a final, appealable order. Appellant has filed a response in opposition.

The order being appealed in this case is an order denying Appellant's "Motion for Vacation of Void Judgment." The cause below remains pending. The order being appealed does not contain 54(B) language.

Appellant suggests the instant order is an order in a special proceeding and the order affects a substantial right. Appellant argues R.C. 2505.02(B)(2) would make the instant order appealable.

Assuming the cause below is a special proceeding, we find the order does not affect a substantial right. "An order affects a substantial right if, in the absence of an immediate appeal, one of the parties would be foreclosed from appropriate relief in the future. *Bell v. Mt. Sinai Med. Ctr.* (1993), 67 Ohio St.3d 60, 63, 616 N.E.2d 181, 183-184, modified by *Moskovitz v. Mt. Sinai Med. Ctr.*

(1994), 69 Ohio St.3d 638, 635 N.E.2d 331." *Koroshazi v. Koroshazi*, 110 Ohio App. 3d 637, 640, 674 N.E.2d 1266, 1268 (1996).

The Court finds there is nothing to suggest that absent immediate review, Appellants would be denied effect relief by a future appeal.

For these reasons, we find we lack jurisdiction over the instant appeal.

The motion to dismiss for lack of a final, appealable order is granted.

The motion to disqualify Frank M. Nagy is denied as moot.

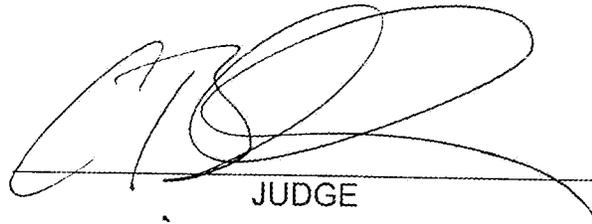
MOTION TO DISMISS GRANTED.

MOTION TO DISQUALIFY DENIED AS MOOT.

CAUSE DISMISSED.

COSTS TO APPELLANTS.

IT IS SO ORDERED.

  
JUDGE

  
JUDGE

  
JUDGE

cc: Darla Holtkamp  
Frank Nagy  
Joseph Saks  
Reese Mills  
Doug Snell  
Diane Snell

3  
A

IN THE COURT OF COMMON PLEAS  
RICHLAND COUNTY, OHIO

RICHLAND COUNTY  
CLERK OF COURTS  
FILED

DARLA J. HOLTKAMP, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 JOINT BOARD OF COUNTY )  
 COMMISSIONERS, KNOX )  
 AND RICHLAND COUNTY, OHIO, )  
 )  
 Appellees. )  
 )

2013 DEC -3 P 12:27

CASE NO. 12 CV 1328 LINDA H. FRARY  
CLERK OF COURTS

Order on Motion for Vacation of  
Void Judgment and Citing  
Substantial Irregularities

This case was brought before the court by the "motion for vacation of void judgment and citing substantial irregularities of Ohio laws and violations of constitutional rights" filed by appellant Ms. Holtkamp on October 31, 2012. In evaluating this motion, the court has considered the pleadings, the arguments of the parties, and the relevant Ohio law.

In her motion, Ms. Holtkamp makes three arguments supporting her request that this Court vacate the ruling of the Probate Court: 1) the order of the Probate Court is void, because there was no final order below that could be appealed; 2) the order of the Probate Court is void because of the delay in the transfer of this case from Probate to the General Division and of the delay in setting a trial date; and 3) the order of the Probate Court is void because the record of the August 5, 2010 hearing has been altered.

Ms. Holtkamp's argument that there was no final order of the Joint Board that could be appealed to the Probate Court relies upon her assertion that a hearing should have been held to determine the amount of compensation and damages resulting from a

vacation of the road and bridge at issue. However, Ms. Holtkamp has repeatedly raised this issue before the Probate Court, including in her August 27, 2010 motion for final judgment and statement of irregularities, her September 7, 2010 second memorandum in support of motion for final judgment and statement of irregularities, and in the hearing conducted in the Probate Court on September 7, 2010. Further, the Probate Court ruled against Ms. Holtkamp on this issue in its order of September 24, 2010, and in its order on remand dated September 14, 2012, stating “the appeal has been perfected according to law.” The General Division does not sit as an appellate court over the Probate Division. Rather, this case has been transferred pursuant to Ohio Rev. Code §2101.25 to the General Division for further disposition. Accordingly, this Court finds that Ms. Holtkamp’s arguments regarding the finality of the Joint Board’s order have already been addressed by the Probate Court and will not be disturbed here.

Ms. Holtkamp’s argument that the Probate Court’s order should be vacated due to the delay in transferring the case to the General Division is not well taken. Ms. Holtkamp was able to file her appeal in the Probate Court on October 9, 2012, but then subsequently chose to voluntarily withdraw her appeal in the Fifth District Court on October 31, 2012, which resulted in a dismissal on November 9, 2012. Furthermore, Ms. Holtkamp has not been denied her opportunity for trial, as this Court will be proceeding with the scheduling of the remainder of the case.

Finally, Ms. Holtkamp’s assertion that the Probate Court’s order should be vacated due to an alleged alteration of the record of the August 5, 2010 hearing is an unsubstantiated allegation that cannot serve as the basis for vacating a valid court order.

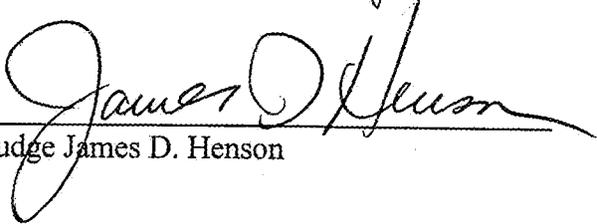
Accordingly, the appellant’s motion is not well taken.

Judgment Entry

It is therefore ordered that:

1. Appellant's motion for vacation of void judgment and citing substantial irregularities is hereby overruled;

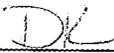
2. The case will be set for a scheduling conference on January 14, 2014 3 pm

  
\_\_\_\_\_  
Judge James D. Henson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was sent by regular U.S. mail this 3rd day of November, 2013, to the following:

Darla J. Holtkamp      Reese F. Mills      Charles T. McConville

  
\_\_\_\_\_  
Deputy Clerk