

ORIGINAL

IN THE SUPREME COURT OF OHIO

SAM JODKA,)	Case No. 2014-0636
)	
Plaintiff-Appellee)	
vs.)	On appeal from the Eighth District
)	Court of Appeals of Ohio
CITY OF CLEVELAND, et al.)	
)	
Defendants-Appellants.)	Eighth District Case No. 099951

APPELLANT CITY OF CLEVELAND'S MEMORANDUM IN RESPONSE TO
 APPELLEE/CROSS-APPELLANT SAM JODKA'S MEMORANDUM IN
 SUPPORT OF JURISDICTION OF HIS CROSS-APPEAL

Barbara A. Langhenry (0038838)
Director of Law

Gary S. Singletary (0037329)
Chief Counsel
Counsel of Record
City of Cleveland
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
(216) 664-2737
(216) 664-2663 (Fax)
gsingletary@city.cleveland.oh.us
Counsel for Defendant-Appellant
City of Cleveland

Gregory V. Mersol (0030838)
Chris Bator (0038550)
Counsel of Record
Baker & Hostettler LLP
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114
(216) 621-0200, (216) 696-0740 (Fax)
gmersol@bakerlaw.com
cbator@bakerlaw.com
Counsel for Defendants-Appellants
Affiliated Computer Services, Inc., Boulder
Acquisition Corp., and Xerox Corporation

Andrew R. Mayle (0075622)
Jeremiah S. Ray (0074655)
Ronald J. Mayle (0030820)
Mayle, Ray & Mayle LLC
210 South Front Street
Fremont, Ohio 43420
(419) 334-8377
(419) 355-9698 (Fax)
amayle@mayleraymayle.com
jray@mayleraymayle.com
rmayle@mayleraymayle.com

John T. Murray (0008793)
Patrick G. O'Connor (0086712)
Murray & Murray Co., LPA
111 E. Shoreline Drive
Sandusky, Ohio 44870
jotm@murrayandmurray.com
Patrick.oconnor@murrayandmurray.com
Counsel for Plaintiff-Appellee
Sam Jodka

FILED
 JUN 02 2014
 CLERK OF COURT
 SUPREME COURT OF OHIO

TABLE OF CONTENTS

	<u>Page</u>	
I. CROSS-APPELLANT JODKA’S CROSS APPEAL DOES NOT RAISE A MATTER OF PUBLIC OR GREAT GENERAL INTEREST.....	1	
II. ARGUMENT IN RESPONSE TO CROSS-APPELLANT JODKA’S PROPOSITION OF LAW.....	5	
 <u>Cross-Appellant Jodka’s Proposition of Law:</u>		
A plaintiff that alleges (1) that a municipality has held or collected monies under an ordinance that impairs or restricts a court’s jurisdiction in violation of Article IV, Section 1 of the Ohio Constitution has standing to assert a common law unjust-enrichment claim seeking restitution if the plaintiff also alleges (2) that the defendants have held or collected plaintiff’s money under the disputed ordinance. The plaintiff’s standing does <i>not</i> depend upon whether or not the plaintiff previously submitted to an allegedly unconstitutional procedure that displaces a court’s jurisdiction.		5
 <u>The City of Cleveland’s Response to Cross-Appellant Jodka’s Proposition of Law:</u>		
Cross-Appellant Jodka was correctly found to lack standing to seek restitution of a 2007 civil fine that he had voluntarily paid after receiving a notice of liability that had been issued to him under the authority of CCO 413.031 as the owner of a motor vehicle that had been documented by the City’s automated traffic camera system being operated in violation of Ohio’s traffic laws. With his payment Jodka admitted liability for the violation of and waived the adequate remedy in the ordinary course of law to challenge the civil citation by way of the administrative appeal process established by CCO 413.031. Additionally, Jodka did not facially challenge the constitutionality of CCO 413.031 by way of a declaratory judgment action at the time a real justiciable controversy existed between himself and the City concerning the 2007 citation.		5
III. CONCLUSION.....	12	
 CERTIFICATE OF SERVICE		

I. **EXPLANATION CONCERNING WHY JODKA'S CROSS-APPEAL ARGUMENT ADDRESSING STANDING DOES NOT PRESENT A CASE OF PUBLIC OR GREAT GENERAL INTEREST.**

It has been conclusively established that “[a]n Ohio municipality does not exceed its home rule authority when it creates an automated system for enforcement of traffic laws that impose civil liability upon violators, provided that that the municipality does not alter statewide traffic regulations. *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255. In 2007 Jodka, as owner, received a notice of liability issued pursuant to Cleveland Codified Ordinance 413.031 (“CCO 413.031”) for a traffic violation documented for his vehicle by the City automated traffic enforcement system. Jodka waived the available appeal afforded by the ordinance and admitted to the traffic violation through voluntary payment of the established civil penalty. That Jodka chose to forego his available remedy at law by choosing to pay the 2007 fine does not now lead to any issue of public or great general interest concerning his lack of standing to seek restitution.

In 2012, five years after his payment and admission of liability, Jodka brought a complaint against the City seeking restitution on the basis of two claims, (1) that the administrative appeal process he knowingly waived violated Article IV, section 1 of the Ohio Constitution and (2) that CCO 413.031 prior to its amendment in March 2009 violated equal protection under Article I, Section 2 of the Ohio Constitution. The trial court granted the City’s motion to dismiss the claims for failure to state a claim upon which relief may be granted. The Eighth District in considering Jodka’s subsequent appeal found he had no standing to seek restitution based on alleged unconstitutionality of the City’s ordinance:

“In *Carroll v. Cleveland*, 522 Fed.Appx. 299, 2013 U.S.App. LEXIS 7178 (6th

Cir.2013), the court made the following pertinent observation:

* * * The citations that Appellants received clearly indicated that paying the fine, rather than contesting the citation, was an admission of liability. Thus, by paying, each Appellant admitted that he or she committed the alleged traffic violation, *without asserting any defenses*. * * *

Jodka admitted in his complaint that he simply paid the citation the city issued to him. Thus, Jodka neither placed himself under the purported authority of the quasi-judicial process the city instituted in CCO 413.031 nor contested the ordinance's constitutionality during such process. *Carroll*. This fact made Jodka an inappropriate person to assert a claim that provisions of CCO 413.031 unconstitutionally stripped the municipal court of jurisdiction over his offense.”

Jodka v. Cleveland, 8th Dist. No. 99951, 2014 -Ohio- 208, ¶¶ 36-37 (emphasis in original). The appellate court recognized that Jodka had effectively admitted liability, had waived the available quasi-judicial appeal process available to him under the City’s ordinance, and he had failed to contest the ordinance’s constitutionality before paying the citation.

“The proposition that where a right of appeal exists there is an adequate remedy at law is too well established to require citation of authorities.” *State ex rel. Kendrick v. Masheter* (1964), 176 Ohio St. 232, 233, 199 N.E.2d 13. Jodka by way of his cross-appeal rather curiously argues that by paying the 2007 civil traffic fine he had “not capitulate[d] to a non-judicial officer’s purported ‘jurisdiction’...” (Cross-Appellant Jodka’s Memorandum at p. 2). Such characterization can only be viewed within this Court’s 2006 recognition that those receiving a notice of a civil violation under CCO 413.031 were provided “an adequate remedy in the ordinary course of law by way of the administrative proceedings set forth in Section 413.031 and by appeal of the city’s decision to the common pleas court.” *State ex rel. Scott v. Cleveland* 112 Ohio St.3d 324, 2006 -Ohio- 6573, 859 N.E.2d 923, ¶ 24. Jodka’s “non-capitulation” payment was

in reality a knowing and voluntarily surrender of the “adequate remedy in the ordinary course of law.” Moreover, the appeal process authorized in CCO 413.031 and waived by Jodka was not unreasonable, onerous, or coercive and Jodka’s voluntary payment, notwithstanding any characterization otherwise, was not compelled by the City:

The City [does] not garnish, attach, seize or otherwise “take” the fine monies from accounts or funds belonging to plaintiffs. As the citation provided an alternative to payment—an alternative not unreasonable, onerous or coercive. Plaintiffs’ payments of the fines were voluntary, not compelled.”

McCarthy v. City of Cleveland, 626 F.3d 280, 288 (6th Cir. 2010) (McKeague, J. concurring).

Jodka’s “pickpocket” characterization in discussing the Eighth District’s decision (Jodka Memorandum at p. 1) is somewhat ironic given he does not argue that he was not in violation the State’s traffic laws when the City’s automated traffic enforcement camera documented a violation of the traffic laws. Rather, Jodka simply admitted the violation of law with his payment. Additionally, Jodka chose not to contest the constitutionality of the City’s ordinance by way of a separate declaratory judgment action. His further characterization concerning the City that “[s]ettled constitutional law will not be obeyed if it can be broken for profit...” (Jodka Memorandum at p. 1) has no foundation in what is before this Court. Jodka has filed a “Notice of Certified Conflict” with this Court (Case Number 2014-0480) wherein the Eighth District with its Journal Entry of February 27, 2014 questioned after finding Jodka had no standing whether its determinations concerning constitutionality of the ordinance “are purely ‘advisory’ so as to permit the city to continue the quasi-judicial process established by the ordinance.”

Jodka argues in claiming public and great general interest that the City subsequently sought reconsideration in the Eighth District of its separate opinion in *Dawson v. City of Cleveland*, 8th Dist. No. 99964, 2014-Ohio-1636 which addressed an

administrative appeal that had been brought under CCO 413.031. Jodka references the reconsideration within the context of his cross-appeal concerning standing in arguing that the City has sought to ensure “[t]he courthouse doors are closed not once but twice.” (Jodka memorandum, see discussion at pp. 3-4). This is not the case. The Eighth District’s reconsideration upon request in *Dawson* corrected an error of law concerning administrative appeals contained in its earlier decision. Upon reconsideration the court properly recognized that “the proper vehicle for challenging the constitutionality of an ordinance on its face is a declaratory judgment action.” *Dawson* at ¶ 24, citations omitted. The requested reconsideration hardly equates to the City seeking to close the courthouse doors as argued, but rather points to the reality that Jodka not only knowingly and voluntarily chose not to enter the courthouse through an administrative appeal that would have allowed further appeal by way of R.C. Chapter 2506, but he also shunned the door presented to him through a declaratory judgment action. Jodka’s own decisions have effectively denied him standing in the present matter. He admitted his liability and paid the civil fine associated with the citation. Jodka knowingly waived access to the “quasi-judicial” administrative hearing process authorized by CCO 413.031, thereby waiving his access to the Court of Common Pleas¹ by way of the further appeal authorized by Chapter 2506 if he disagreed with the administrative result. Appeal to the Court of Common Pleas would have allowed him to address whether the ordinance had been applied in an unconstitutional manner. Second, Jodka chose not to challenge the

¹ At page 3 of Jodka’s Memorandum he also quotes in part from the Eighth District’s *Jodka* opinion at paragraph 22. It must be noted that the appellate court’s reference at part (7) of this paragraph is incorrect in stating “(7) the decision about liability proceeds to the municipal court as an administrative decision.” The Court was incorrect. As noted in *Scott, supra*, following the administrative hearing one may “appeal ... the city’s decision to the *common pleas court*.” *Scott* at ¶ 24 (emphasis added).

facial constitutionality of CCO 413.031 by way of a declaratory judgment action after receiving the 2007 citation.

Jodka surrendered his ability to now argue for restitution five years later as no justiciable controversy exists between him and the City concerning the 2007 citation. Jodka's mischaracterizations concerning the operation of CCO 413.031 and the motives of the Appellants/Cross-Appellees do not create any issues of public or great general interest concerning his lack of standing, and the Eighth District correctly applied the law. Simply put, Jodka had no standing five years after admitting his liability to bring claims seeking restitution based on the alleged unconstitutionality of CCO 413.031.

II. ARGUMENT IN RESPONSE TO CROSS-APPELLANT JODKA'S PROPOSITION OF LAW

Cross-Appellant Jodka's Proposition of Law:

A plaintiff that alleges (1) that a municipality has held or collected monies under an ordinance that impairs or restricts a court's jurisdiction in violation of Article IV, Section 1 of the Ohio Constitution has standing to assert a common law unjust-enrichment claim seeking restitution if the plaintiff also alleges (2) that the defendants have held or collected plaintiff's money under the disputed ordinance. The plaintiff's standing does *not* depend upon whether or not the plaintiff previously submitted to an allegedly unconstitutional procedure that displaces a court's jurisdiction.

The City of Cleveland's Response to Cross-Appellant Jodka's Proposition of Law:

Cross-Appellant Jodka was correctly found to lack standing to seek restitution of a 2007 civil fine that he had voluntarily paid after receiving a notice of liability that had been issued to him under the authority of CCO 413.031 as the owner of a motor vehicle that had been documented by the City's automated traffic camera system being operated in violation of Ohio's traffic laws. With his payment Jodka admitted liability for the violation of and waived the adequate remedy in the ordinary course of law to challenge the civil citation by way of the administrative appeal process established by CCO 413.031. Additionally, Jodka did not facially challenge the constitutionality of CCO 413.031 by way of a declaratory judgment action at the time a real justiciable controversy existed between himself and the City concerning the 2007 citation

A. Jodka Waived All Available Challenges to the 2007 Violation.

The Eighth District Court of Appeals noted that in 2007 Jodka had received a ticket for a violation of the City's "civil enforcement system for red light and speeding offenders' pursuant to CCO 413.031." *Jodka v. Cleveland*, 8th Dist. No. 99951, 2014 - Ohio- 208, ¶ 7. Thereafter, Jodka "paid the associated monetary penalty." *Id.* Moreover, with his payment, Jodka admitted that he had committed the alleged traffic violation without asserting any defenses. *Id.* at ¶¶ 36-37.

"Whether established facts confer standing to assert a claim is a matter of law." *Cuyahoga Cty. Bd. of Commrs. v. State of Ohio*, 112 Ohio St.3d 59, 858 N.E.2d 330, 2006 -Ohio- 6499, ¶ 23, citing *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, 846 N.E.2d 478, at ¶ 90. Determination of whether a party has standing is a question of law." *Anderson v. Mitchell*, 8th Dist. No. 99876, 2014 -Ohio- 1058, ¶ 19, citing *Cuyahoga Cty. Bd. of Commrs.* The Eighth District reviewed the facts and concluded as a matter of law that Jodka had no standing to make his claims for unjust enrichment:

It is well settled that standing does not depend on the merits of the plaintiff's contention that particular conduct is illegal or unconstitutional. Rather, standing turns on the nature and source of the claim he asserts. *Moore v. Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 34, citing *Warth v. Seldin*, 422 U.S. 490, 501, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Jodka never availed himself of the unconstitutional quasi-judicial process created by CCO 413.031(k) and (l); consequently, he lacks standing to present his claim of unjust enrichment.

Jodka, at ¶ 34. The Eighth District concurrently recognized that Jodka was "an inappropriate person to assert a claim that provisions of CCO 413.031 unconstitutionally stripped the municipal court of jurisdiction over his offense." *Id.* at ¶ 37.

The question of standing depends on whether a party has alleged a personal stake in the outcome of the controversy and suffered some concrete injury that is capable of resolution by the court. *Middletown v. Ferguson* (1986), 25 Ohio St.3d 71, 75, 495 N.E.2d 380, citing *Sierra Club v. Morton* (1972), 405 U.S. 727, 731-732, 92 S.Ct. 1361, 1364-65, 31 L.Ed.2d 636. Standing “is a practical concept designed to insure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests”. *Moore v. Middletown*, 133 Ohio St.3d 55, 975 N.E.2d 977, 2012 -Ohio- 3897, ¶ 47. Jodka misreads “hot controversy” as referenced in *Moore* (¶ 47) in arguing that his lawsuit seeking restitution some five years after he had paid a civil fine provides him with standing. (Jodka Memorandum at p. 12). Notwithstanding the vigorousness of Jodka’s representation, his claims for restitution after admitting liability are nonjusticiable.

Jodka did not take the available legal actions to challenge the 2007 citation that had been issued to him pursuant to CCO 413.031. Jodka did not file the administrative appeal provided by CCO 413.031, did not challenge the constitutionality of the ordinance as it was applied to him through the available administrative appeal authorized by the ordinance, and did not separately challenge the constitutionality of the ordinance on its face by way of a declaratory judgment action. See *Grossman v. Cleveland Hts.*, 120 Ohio App.3d 435, 441, 698 N.E.2d 76 (8th Dist. 1997).

The Eighth District has previously recognized the availability of challenges to the constitutionality of an ordinance within the context of CCO 413.031 as follows:

“[T]he proper vehicle for challenging the constitutionality of an ordinance on its face is a declaratory judgment action.” [citation omitted] But it is well established that in an administrative appeal, appellants can challenge the constitutionality of an ordinance as applied to their case. *Wilt v. Turner*, 8th Dist. No. 92707, 2009-Ohio-3904, 2009 WL 2403567, citing *Grossman v. Cleveland Hts.* (1997), 120 Ohio App.3d 435, 441, 698 N.E.2d 76.

Cleveland v. Posner, 188 Ohio App.3d 421, 935 N.E.2d 882, 886, 2010 -Ohio- 3091, ¶ 17. “[A] facial constitutional challenge requires proof beyond a reasonable doubt, whereas an as-applied challenge requires clear and convincing evidence.” *Wymysylo v. Bartec, Inc.*, 132 Ohio St.3d 167, 2012 -Ohio- 2187, 970 N.E.2d 898, ¶ 20. An as-applied constitutional challenge, involves allegations that:

“the ‘application of the statute in the particular context in which [a party] has acted, or in which [the party] proposes to act, would be unconstitutional. The practical effect of holding a statute unconstitutional ‘as applied’ is to prevent its future application in a similar context, but not to render it utterly inoperative.”

Wymysylo at ¶ 22. “[P]arties advancing an as-applied challenge must raise that challenge at the first available opportunity, and *failure to do so results in waiver.*” *Id.*, at ¶ 22 (emphasis added). An as-applied challenge “must be raised before the administrative agency to develop the necessary factual record.” *Id.* Jodka chose not to exercise his right to an administrative appeal and he thereby waived any challenge to CCO 413.031 concerning the constitutionality of the ordinance as it was applied to him.

The “proper vehicle for challenging the constitutionality of an ordinance on its face is a declaratory judgment action.” *Posner* at ¶ 17, *Dawson, supra*. “A facial challenge alleges that a statute, ordinance, or administrative rule, on its face and under all circumstances, has no rational relationship to a legitimate governmental purpose.”

Wymysylo at ¶ 21, citing *Jaylin Invests., Inc. v. Moreland Hills*, 107 Ohio St.3d 339, 2006-Ohio-4, 839 N.E.2d 903, ¶ 11. Declaratory relief is only available to a plaintiff “who can show that (1) a real controversy exists between the parties, (2) the controversy is justiciable, and (3) speedy relief is necessary to preserve the rights of the parties.”

Moore, ¶ 49, citing *Haig v. Ohio State Bd. of Edn.*, 62 Ohio St.3d 507, 511, 584 N.E.2d

704 (1992); *Burger Brewing Co. v. Ohio Liquor Control Comm.*, 34 Ohio St.2d 93, 97, 296 N.E.2d 261 (1973). In addition to waiving the adequate remedy at law provided by the administrative appeal and his right to Court of Common Pleas review of the “quasi-judicial” administrative action, Jodka brought no declaratory judgment challenging the constitutionality of the ordinance on its face. Jodka did not challenge the CCO 413.031 violation by way of declaratory judgment (1) when there was a real controversy in 2007, (2) when the merits of the citation issued to Jodka was then justiciable, and (3) when any issue of speedy relief was presented and necessary to preserve his rights concerning the 2007 CCO 413.031 citation.

Furthermore, any attempt to now frame or otherwise view Jodka’s 2012 complaint for restitution of his civil fine as a declaratory judgment action fails. Jodka’s 2012 Complaint was entitled “Class Action Complaint for Restitution.” Count I of the complaint sought restitution of his 2007 payment for alleged violation of Article IV, Section 1 of the Ohio Constitution, with Count II seeking restitution of the fine for alleged violation of Article I, section 2 of the Ohio Constitution. Count III of his complaint sought class certification. Jodka made no request for declaratory relief, he sought restitution. Moreover, declaratory judgment would not be available five years later as “it is well settled that declaratory judgment is not a proper vehicle for determining whether rights that were previously adjudicated were properly adjudicated.” *Lingo v. State*, 138 Ohio St.3d 427, 7 N.E.3d 1188, 2014 -Ohio- 1052. A declaratory judgment “may not be used to review administrative proceedings.” *Wymyslo* at ¶ 30, citing and quoting *Driscoll v. Austintown Assoc.*, 42 Ohio St.2d 263, 271, 328 N.E.2d 395 (1975) (“the declaratory judgment action is independent from the administrative

proceedings; it is not a review of the final administrative order”).

Jodka’s rights concerning the civil fine for which he now seeks restitution were fully adjudicated. The administrative appellate process contained in CCO 413.031 gave Jodka “an adequate remedy in the ordinary course of law by way of the administrative proceedings set forth in Section 413.031 and by appeal of the city's decision to the common pleas court.” *State ex rel. Scott* at ¶ 24. Jodka would have then also had recourse to “a judicial review of a final administrative decision.” *Karches v. City of Cincinnati*, 38 Ohio St.3d 12, 16, 526 N.E.2d 1350. Jodka’s payment of the 2007 fine resulted in a final administrative decision and he would have no recourse to now challenging the decision and his payment of a civil fine through a declaratory judgment action.

B. Jodka Has No Standing.

The Eighth District properly found that Jodka lacked standing to proceed. The analysis undertaken by the Court in *Zilba v. City of Port Clinton, Ohio*, 924 F.Supp.2d 867 (N.D. Ohio, 2013) validates the correctness of the Eighth District’s conclusion that Jodka did not have standing to seek restitution. In *Zilba* the Plaintiff had challenged a parking ticket claiming that issuance of the ticket violated his due process rights under the United States and Ohio Constitutions and that City’s parking ordinance violated Ohio law. *Id.* at 871. The City claimed Plaintiff had no standing because he had waived any right to a hearing by paying the fine rather than “attempt(ing) to avail himself of the hearing and review” Defendant contends was available to him.” *Id.* at 873. In reviewing the decisions relied upon by Port Clinton in arguing the plaintiff had no standing, the Court found the following common denominators:

In the cases Defendant cites, the plaintiffs received notice, and a hearing was available. They read the tickets and knew how to pay the fines; the same tickets explicitly specified how to challenge the citations should they choose to do so; they chose to pay ... rather than request hearings.

Id. at 874. The district court agreed that under the circumstances addressed in the City's authorities a plaintiff would have no standing:

When the plaintiffs in those cases paid the fines or otherwise failed to avail themselves of available procedures, *the courts found they lacked standing* or otherwise waived the right to challenge the citations on due process grounds because they had voluntarily waived their rights to hearings. *Herrada*, 275 F.3d at 558 (“Herrada lacks standing to argue that hearings are not held despite requests by vehicle owners, because she elected to pay the fine rather than request a hearing.”); *Walter*, 1992 WL 88457 at *3 (Walter lacked standing because he could not “trace any deprivation or threatened deprivation of property to any of the adjudicative procedures (as outlined in both the ordinance and the enabling statute) that he questions because he never made use of them.”); *Wertz*, 2009 WL 1183155 at *4 (“The Court agrees that Wertz waived any procedural due process claim [by signing a waiver and mailing his fines and costs].”). *And rightly so.*²

Id. at 874, (emphasis added).

The *Zilba* court subsequently distinguished the above referenced decisions wherein it agreed that a plaintiff would have no standing to proceed where a plaintiff had knowingly waived an available hearing and chosen to pay the fine. In ultimately rejecting the City's standing argument under the facts it was faced with, however, the *Zilba* court's analysis only points out the flaw in Jodka's arguments:

The parking ticket Defendant issued to Plaintiff did not explain how to contest the ticket and provided no notice of an opportunity to request a hearing. Indeed, it appears Defendant's parking ordinance enforcement scheme does not contemplate a hearing on the merits of an underlying parking citation.

Id. at 874. Any review of the Eighth District's Jodka decision and the very arguments

² More complete citations to the referenced decisions are identified in *Zilba* on pages 873-874 as follows: *Herrada v. Detroit*, 275 F.3d 553 (6th Cir.2001); *Walter v. Chicago*, 1992 WL 88457 (N.D.Ill.1992); *Wertz v. West Milgrove*, 2009 WL 1183155 (N.D.Ohio 2009)

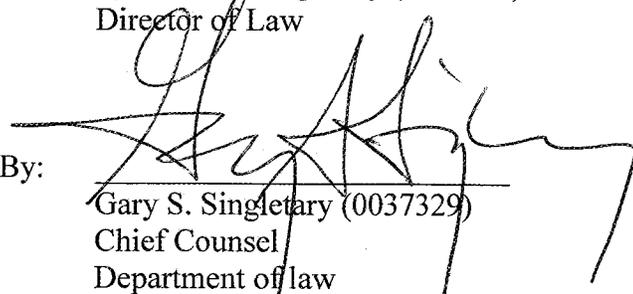
placed before this Court by Jodka in his jurisdictional cross-appeal memorandum well establish that Jodka had notice of the right to an appeal and an administrative hearing. Instead of exercising such rights Jodka voluntarily paid the fine associated with the CCO 413.031 civil citation he had received. The Eighth District correctly concluded that Jodka had no standing to bring his claims.

III. Conclusion

Jodka waived his right to the “quasi-judicial” administrative appeal authorized by CCO 413.031. Jodka cannot circumvent the fact that he knowingly admitted liability for the civil traffic violation, thereby surrendering his right to the adequate remedy at law provided by the City’s ordinance. Under such circumstances Jodka has no standing to seek the restitution he claims in his Complaint. For the reasons addressed above, the City of Cleveland respectfully requests that this Court decline jurisdiction of Jodka’s cross-appeal as the arguments he presents concerning standing do not present matters of public or great general interest.

Respectfully Submitted,
Barbara A. Langhenry (0038838)
Director of Law

By:



Gary S. Singletary (0037329)
Chief Counsel
Department of Law
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
(216) 664-2800, (216) 664-2663 (Fax)
gsingletary@city.cleveland.oh.us

Counsel for Appellant Cross-Appellee
City of Cleveland

CERTIFICATE OF SERVICE

A true copy of the foregoing APPELLANT CITY OF CLEVELAND'S MEMORANDUM IN RESPONSE TO APPELLEE/CROSS-APPELLANT SAM JODKA'S MEMORANDUM IN SUPPORT was duly served by regular U.S. Mail, postage prepaid, this 2nd day of June 2014 on the following:

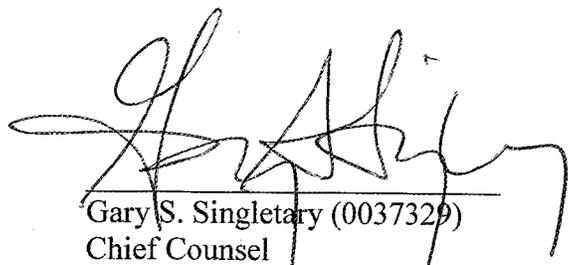
John T. Murray, Esq.
Patrick G. O'Connor, Esq.
Murray & Murray Co., LPA
111 E. Shoreline Drive
Sandusky, OH 44870

Andrew R. Mayle, Esq.
Jeremiah S. Ray, Esq.
Ronald J. Mayle
Mayle, Ray & Mayle, LLC
210 South Front Street
Fremont, OH 43420

Counsel for Plaintiff-Appellee Sam Jodka

Gregory V. Mersol, Esq.
Chris Bator, Esq.
Baker & Hostetler LLP
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485

Counsel for Defendant-Appellant
Affiliated Computer Services, Inc., Boulder
Acquisition Company, and Xerox
Corporation



Gary S. Singletary (0037329)
Chief Counsel
Counsel for Appellant/Cross-Appellee
City of Cleveland