

IN THE SUPREME COURT OF OHIO

DARLA J. HOLTKAMP,  
FRANK M. NAGY

Appellants,

v.

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

Appellees

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

14-0665

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**MOTION FOR RECONSIDERATION OF APPELLANTS  
DARLA J. HOLTKAMP, FRANK M. NAGY**

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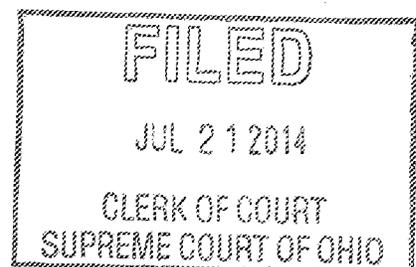
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Counsel for Appellees



Appellants Darla J. Holtkamp and Frank M. Nagy respectfully move this Court to reconsider its July 9, 2014 decision in which the Court declined jurisdiction to hear the appeal of the Fifth Appellate District decision in this case.

Appellants, in their Memorandum In Support of Jurisdiction asked this court to accept jurisdiction on three separate propositions of law, or in the alternative to accept jurisdiction as a collateral attack on a void judgment - a nullity.

At this time, Appellants narrow their request to a motion for void judgment citing lack of subject matter jurisdiction and under the doctrines of plain error and structural error under Civ. R. 60(B).

### **MEMORANDUM IN SUPPORT OF APPELLANT'S**

### **MOTION FOR RECONSIDERATION**

Appellants touched lightly on *Lingo v State*, 138 Ohio St.3d 427, 2014-Ohio-1052 in their memorandum of jurisdiction. In that decision, the justices wrote: "A void judgment is a nullity and open to collateral attack at any time. *State v. Fischer*, 128 Ohio St.3d 92, 010-Ohio-6238, 942 N.E.2d 332, ¶ 40; *Tari v. State*, 117 Ohio St. 481, 494, 159 N.E. 594 (1927). Any court in any jurisdiction certainly has the right to decline to recognize the validity of a void judgment of any other court. But whether a void judgment has come before a court through a proper vehicle and whether a court has the authority to provide the relief requested against the void judgment are different matters.

To be subject to collateral attack, the judgment must be relevant to the relief sought or to the enforcement of some right in a controversy properly before the court. See *Kingsborough v. Tousley*, 56 Ohio St. 450, 458, 47 N.E. 541 (1897).

This Appeal has been brought to this Court to correct an erroneous ruling by the Fifth Appellate: "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.* (1983), 67 Ohio St 3d 60, 63, 616 N.E. 2d 181, 183-184, modified by *Moskovitz v. Mt. Sinai Med. Ctr.* (1984), 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 future 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."

Clearly, the substantial right of Mr. Nagy to due process guaranteed by the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution cannot be restored after a trial, and the immediate relief sought is just and appropriate.

Just as in *Lingo v. State*, wherein the Supreme Court corrected the Eighth Appellate opinion that: "The statement that void judgments are not open to collateral attack and that attacks on void judgments can be defeated by the doctrine of res judicata is mistaken," illustrates that just because an appellate decision is made, doesn't mean the decision is proper. (emphasis added).

The United States Supreme Court has recognized a narrow set of rights, that, if denied, are structural errors, including, but not limited to, 1) the right to self-representation and 2) the right to an impartial judge *Tumey v. Ohio*, 273 U.S. 510, 534 (1927) (- holding that a hearing before a biased judge "necessarily involves a lack of due process").

Structural Error #1: Mr. Nagy, as an interested party with a recognizable stake in the appeal, has a Constitutional Right to self-representation.

Structural Error #2: Judge Mayer, during open court session, after making favorable decisions for the opposing side (Joint Boards of County Commissioners), actually turned to and addressed the Counsel for the Commissioners, who hold the purse strings for the county, to relay to the Commissioners "...he (the judge) would like a larger court room so he could seat a jury..." (essence of the statement – not a direct quote, but it is on tape!).

Ohio Code of Judicial Conduct, Rule 2.2: A judge shall uphold and apply the *law*, and shall perform all duties of judicial office fairly and *impartially*

"This court has stated that judges are held to the highest possible standard of ethical conduct. *Mahoning Cty. Bar Assn. v. Franko*, 168 Ohio St. 17, 23, 151 N.E.2d 17 (1958); Hoskins at ¶ 42. Canon 1 of the Ohio Code of Judicial Conduct states that a judge "shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." As the board correctly observed, a judge's violation of these duties can undermine public confidence in the judiciary," *Ohio State Bar Assn. v. McCafferty*, Slip Opinion No. 2014-Ohio-3075.

The list of plain errors have been brought up time and again in the Probate Court, The Common Pleas Court and The Appellate Court and are embodied in the record. Violations of directives in statues, improper use of statues, picking and choosing which parts of a statue to follow while ignoring the entire body of the statues, and on, and on, and on...have all been documented.

Until the entire record is brought forward, structural error and plain error is not going to be proved here.

As for the Probate Court ever having proper case jurisdiction, that issue has been addressed numerous times – Boards of Township Trustees lack jurisdiction over county property

and therefore cannot initiate proceedings against a county property. Because the County has never legally addressed the County Bridge, the Court lacks jurisdiction to levy decisions concerning the County Bridge (much less give standing to both County Engineering Departments!).

The decisions of this Court have already answered the question that a state or county property cannot be vacated by osmosis, by gross mismanagement and/or by negligence or time. *New 52 Project, Inc. v. Proctor*, 122 Ohio St.3d 1, 2009-Ohio-1766 (this Court discussed over 100 years of decision on this subject matter in this case - see paragraphs 10-22).

A case with bearing on this issue is currently under review by this court 2013-0984 *City of Independence v. Office of The Cuyahoga County Executive, et al.* wherein the County had vacated a county road, but never legally addressed the county bridge in a Municipal Corporation. Appellants are watching to see if this Court's decision will concur with a century's worth of decisions or if it will agree with the contrary decisions that have been applied against Appellants in the lower courts.

Further, appellants have clearly demonstrated and proven that the revisions to 5553.11 will result in a taking of property without due process - (eminent domain/ inverse condemnation) as guaranteed by the 5th & 14th Amendments of the United States Constitution. Appellants believe it is important that this court acknowledge the revisions of this statute affect not only county roads, but also county bridge structures under 5591.12:

In the establishment or making of any change in the location of any highway as shown on the plan or required by the construction contract, or any relocation or vacation of the whole or any part of such highway by the board of county commissioners, the same proceeding shall be had by it as is provided for the establishment, change of location, relocation, widening, vacation, or establishing or reestablishing a grade for a highway as in the case of county roads within the jurisdiction of such board.

thus, allowing county commissioners to also vacate county bridges without due process of eminent domain / inverse condemnation.

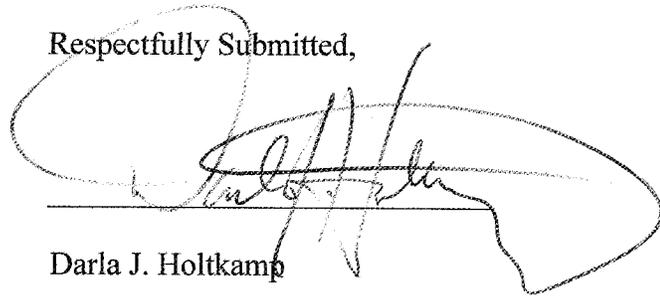
A third of the population of the state of Ohio should not have to seek relief from the Courts through Writs of Mandamus for a taking of property – after the damage has been done, while the other two thirds of the population are protected from this injustice. If a citizen has to sue for their rights, their rights are being violated.

### CONCLUSION

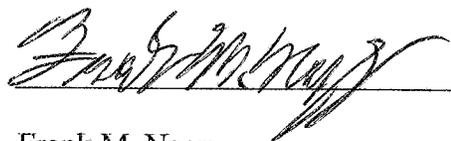
Appellants respectfully ask this court to reconsider accepting jurisdiction for this case. To properly examine the issues of structural error and plain error, Appellants request the entire record be brought forward, and agree to having the Court appoint a Magistrate to oversee an evidentiary hearing on the issues of lack of case matter jurisdiction, structural error and plain error raised herein.

If the court does not want to accept this more narrow consideration, the case will be taken to Federal Review, couched in the same manner.

Respectfully Submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Darla J. Holtkamp', is written over a horizontal line. The signature is enclosed within a large, irregular, hand-drawn oval shape.

Darla J. Holtkamp

A handwritten signature in black ink, appearing to read 'Frank M. Nagy', is written over a horizontal line. The signature is highly stylized and cursive.

Frank M. Nagy

Appellants, Pro Se

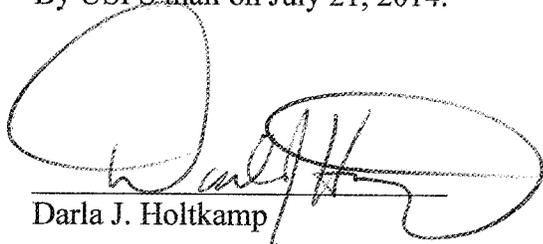
**CERTIFICATE OF SERVICE**

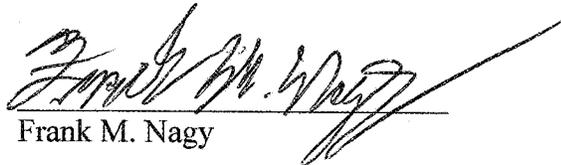
The undersigned hereby certify that a true copy of the foregoing was served upon

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By USPS mail on July 21, 2014.

  
Darla J. Holtkamp

  
Frank M. Nagy