

ORIGINAL

IN THE SUPREME COURT OF OHIO

15-0002

NICK PAPADELIS

Appellant

-vs-

WOODS COVE III, LLC, et al.

Appellee

On Appeal from the Cuyahoga County
Court of Appeals, Eighth Appellate District

Court of Appeals
Case No. CA 14-102180

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT NICK PAPADELIS

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

This case involves the novel question of the constitutionality of the sale of tax certificates, which violate equal protection because they treat two properties differently in the tax foreclosure process. Both the common pleas and appeals courts wrongfully dismissed the case like a hot potato without reason because they don't want to consider the issue.

This case involves the constitutional question of whether an appeals court can dismiss a correctly filed appeal in violation of a party's due process rights to have an appeal. Does an appeals court have the ability to dismiss a correctly filed appeal other than on the merits just because they don't want to consider the constitutional questions involved?

This case allows this Court to consider the constitutional ramifications of an appeals court failing to follow the rules of Appellant Procedure and local rules of procedure.

The case also provides this Court with the opportunity to consider issues involved with the new electronic filing procedures.

STATEMENT OF THE CASE AND FACTS

Appellant filed a Declaratory Judgment action in the Cuyahoga Court of Common Pleas claiming that Tax Certificates sold under Revised Code Sections. 5721.30 to 5721.43, inclusive were unconstitutional. Defendants filed Motions to Dismiss, including affidavits and extraneous evidence. Without giving Appellant an opportunity to provide opposing affidavits or reaching the constitutional issues involved, the Court granted the Motions to Dismiss, dismissing the action without explanation.

Appellant filed the Notice of Appeal with the other required documents electronically through the Common Pleas Court e-filing system on October 17th, 2014, within the 30 days allowed by App. Rule 4. This was the first appeal filed by Appellant's Counsel through the new and now mandatory e-filing system and it was filed incorrectly, as it was not filed as a new case so no filing fee was included. Appellant received a confirmation of the filing and did not receive any notice of any problem. Appellant's Counsel went out of town the following week and upon returning learned there was a problem because of a motion filed by Appellee. He called the e-filing help desk and the Court of Appeals and learned that it was filed incorrectly and how to file it correctly. The Appeal was then electronically re-filed correctly with the payment of the filing fee on November 7th, 2014.

On November 14th, Appellee, Treasurer of State of Ohio, filed a Motion to Dismiss the Appeal claiming a lack of jurisdiction by the Court of Appeals. The Motion to Dismiss gave incorrect facts as to when the appeal was filed (ignoring that the notice of appeal was timely filed) and incorrect law (never mentioning the directly applicable App. Rule 3(A) or Local Rule 13.1 (B)(1). Appellant was notified by e-notice of the Motion at 9:56 p.m. Friday night on November 14th and on November 19th, Appellant filed his response. The Court of Appeals however had already granted the Motion based on a lack of jurisdiction on November 18th, and it was entered on

the docket on November 19th. Appellant filed a Motion to have Full Court Rule on the Dismissal of the Within Appeal or Reconsider, which is pending.

ARGUMENT IN SUPPORT OR PROPOSITIONS OF LAW

Proposition of Law No. I: The Appeals Court denied Appellant of his constitutional right to an appeal by dismissing his appeal in violation of applicable procedural rules.

The constitutional right to due process requires that a party has the right to an appeal to correct mistakes by the trial court. By incorrectly dismissing Appellant's correctly filed Appeal in violation of its own rules, Appellant has been deprived of due process.

The Appeals Court erred by not giving Appellant the ten days opportunity to respond to Appellee's Motion to Dismiss as provided for by Appellate Rule 15, which provides in pertinent part:

(A). . . Except as set forth in Rule 15(B), any party may file a response in opposition to a motion within ten days after service of the motion, and any party may file a reply in further support of a motion within seven days after service of the opposition, but motions authorized by Rule 7, Rule 8, and Rule 27 may be acted upon after reasonable notice, and the court may shorten or extend the time for a response or reply.

The Appeals Court erred by dismissing Appellant's Appeal in violation of Appellate Rule 3(A) which provides:

An appeal as of right shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. **Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal**, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal. Appeals by leave of court shall be taken in the manner prescribed by Rule 5.(emphasis added)

The Appeals Court erred by not following its own Local Rule 13.1 (B)(1), which handles the problem in the present case with the paying the filing fee in the present situation. Rule 13.1 (B)(1) provides:

- (1) Rejection or Acceptance of Electronically Filed Documents. The clerk shall reject any filing that:
 - (a) is not signed by the party;
 - (b) is not in a digitized format approved by the clerk;
 - (c) is not accompanied by a required payment;** or
 - (d) requires a judge's signature.

The clerk will notify the filer when a filing has been accepted or rejected for docketing and filing in the court's case management system. Each document filed will receive an electronic stamp containing the date and time the filer transmitted the document to the court's authorized electronic filing system as well as a unique confirmation number of the filing. If the clerk rejects or otherwise cannot successfully process a filing, it will not receive a file stamp or confirmation number. (2) Corrective Filings. **To retain the original date and time of filing, a corrective filing may be resubmitted to the clerk within one business day after notice of the rejection is sent to the filer.** A corrective filing submitted after the one-day period expires will be considered a new filing. (emphasis added)

Clearly the Court of Appeals did not follow its own rules as to problems with electronic filings, as the clerk did not reject the filing for lack of the required filing fee. Neither did the clerk notify Appellant and give him the required opportunity to resubmit the Notice of Appeal.

CONCLUSION

For the reasons discussed above, this case involves matter of public and great general interest and a substantial constitutional question. The appellant requests that this court grant jurisdiction and allow this case so that the important issues presented in this case will be reviewed on the merits.

Respectfully submitted,



Michael Westerhaus
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary mail to Michael Kenny and Brian R. Gutkoski, Assistant Prosecuting Attorneys, the Justice Center – Courts Tower, 9th Fl., 1200 Ontario St., Cleveland, OH 44113 and Gilbert E. Blomgren, Blomgren & Bobka Co., LPA, 1370 Ontario St., #600, Cleveland, OH 44113, this 31 day of December, 2014.



Michael Westerhaus
Attorney for Appellant

Court of Appeals of Ohio, Eighth District

NOV 18 2014

County of Cuyahoga
Andrea Rocco, Clerk of Courts

NICK PAPADELIS

Appellant

COA NO.
102180

LOWER COURT NO.
CV-14-822725

-vs-

COMMON PLEAS COURT

WOODS COVE III, LLC, ET AL.

Appellee

MOTION NO. 480285

Date 11/18/14

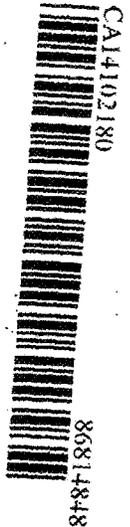
Journal Entry

This appeal is dismissed at appellant's cost for failure to file a timely notice of appeal. See App.R. 4(A).

FILED AND JOURNALIZED
PER APP.R. 22(C)

NOV 18 2014

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By *[Signature]* Deputy



Judge FRANK D. CELEBREZZE, JR., Concur

[Signature]
MARY J. BOYLE
Administrative Judge

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