

**JOSEPH, APPELLANT, v. CSX TRANSPORTATION COMPANY ET AL.; GERMAN  
MUTUAL INSURANCE COMPANY, APPELLEE.**

**[Cite as *Joseph v. CSX Transp. Co.*, 2000-Ohio-439.]**

*Civil procedure—Party challenging constitutionality of statute must assert claim in complaint (or other initial pleading) or an amendment thereto, and must serve Attorney General pursuant to Civ.R. 4.1 in order to vest jurisdiction under R.C. 2721.12—Judgment of court of appeals vacated and judgment of trial court reinstated to the extent that it decided issues other than constitutional questions—Cicco v. Stockmaster.*

(No. 99-826—January 26, 2000—Decided June 7, 2000.)

APPEAL from the Court of Appeals for Seneca County, No. 13-98-68.

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*Murray & Murray Co., L.P.A., Michael T. Murray and Steven C. Bechtel,*  
for appellant.

*Manahan, Pietrykowski, Bamman & DeLaney and William F. Pietrykowski,*  
for appellee.

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{¶ 1} The judgment of the court of appeals is vacated for lack of jurisdiction, *Cicco v. Stockmaster* (2000), 89 Ohio St.3d 95, 728 N.E.2d 1066, and the judgment of the trial court is reinstated to the extent that it decided issues other than constitutional questions.

MOYER, C.J., RESNICK, F.E. SWEENEY, COOK and LUNDBERG STRATTON,  
JJ., concur.

DOUGLAS, J., concurs in judgment only.

PFEIFER, J., dissents.

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SUPREME COURT OF OHIO

**DOUGLAS, J., concurring in judgment only.**

{¶ 2} While I agree with the ultimate resolution, I do not subscribe to the majority's reliance on *Cicco v. Stockmaster* (2000), 89 Ohio St.3d 95, 728 N.E.2d 1066, in disposing of this matter. I believe that *Cicco* was not properly decided and, accordingly, I continue to adhere to my dissent therein.

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