[Cite as *Bowling Green v. Schabel*, 2005-Ohio-6522.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

City of Bowling Green

Appellee

v.

Craig J. Schabel
Stephen Fogg
David Harrington
Seth Walburn
Justin Greeder
Kevin Pratt
Matthew Beam
Kent Skibicki
Matthew Fry
Timothy Brean
Daniel DeGoricia
Clayton Booth
Timothy Harris
Alex Naish

Appellants

Court of Appeals No. WD-05-013

Trial Court Nos. 04-CRB-02775
04-CRB-02169
04-CRB-02175
04-CRB-02207
04-CRB-02238
04-CRB-02346
04-CRB-02547
04-CRB-02654
04-CRB-02571
04-CRB-02817
04-CRB-02820
04-CRB-02847
04-CRB-02856
04-CRB-02860

DECISION AND JUDGMENT ENTRY

Decided: December 9, 2005

* * * * *

Matthew L. Reger, Bowling Green Prosecuting Attorney, for appellee.

Rodney A. Fleming, Michael S. Skulina, and Angelita Cruz Bridges, for appellants.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This appeal is before the court from the Bowling Green Municipal Court, wherein, appellants were each convicted of violating a nuisance party ordinance.

Because we find that the ordinance is neither unconstitutionally vague, overbroad, nor an unconstitutional exercise of legislative power, we affirm the convictions.

{¶ 2} In the fall of 2004, each appellant was separately citied under Bowling Green Ordinance §132.18 for hosting a nuisance party. On November 18, 2004, appellant Craig J. Schabel's case was heard. At that time, the trial court received oral arguments on motions to dismiss filed by all the appellants. These motions all asserted that the ordinance was unconstitutional. The trial court took that matter under advisement and proceeded immediately to trial on the charge against appellant Schabel.

{¶ 3} At appellant Schabels' trial, the state presented the testimony of Bowling Green Police Officer Robin Short, the officer who responded to an anonymous loud party complaint in the early morning hours of September 11, 2004. Upon approaching appellant Schabel's residence, Officer Short heard loud noises coming from the area and loud music coming from inside the residence. Officer Short also observed at least 20 people standing in the front yard. Several people dropped beer cans and vacated as she approached. A few individuals went inside the residence and shut the door. Officer Short knocked on the door several times but no one opened it. Eventually, appellant Schabel approached Officer Short by her police vehicle and produced identification that indicated that he was 19 years old. Officer Short testified that there were indications that appellant Schabel had recently consumed alcohol. He had bloodshot eyes and smelled of alcohol. Appellant Schabel represented to Officer Short that he resided at the property and that he was responsible for the party. Appellant also acknowledged the presence of litter in the yard. Officer Short issued a nuisance party citation to appellant Schabel.

{¶ 4} In a December 16, 2004 decision and judgment entry, the trial court rejected appellants' constitutional challenge to the ordinance and denied appellants' motion to dismiss. In another December 16, 2004 decision and judgment entry, the trial court found appellant Schabel guilty of violating the nuisance party ordinance, specifically citing the littering and unlawfully loud noise conditions that occurred on the property. Similarly, on January 26, 2005, the remainder of appellants who each entered a no contest plea to the charge of violating the nuisance party ordinance were found guilty of the charge.

{¶ 5} Appellants raise the following assignments of error:

{¶ 6} "I. The trial court erred by failing to find Bowling Green Ordinance §132.18 unconstitutionally vague in violation of the due process clause.

{¶ 7} "II. The trial court erred by failing to find Bowling Green Ordinance §132.18 unconstitutionally broad in violation of the fundamental rights of free assembly and association.

{¶ 8} "III. The trial court erred by failing to find Bowling Green Ordinance §132.18 an unconstitutional exercise of legislative power.

{¶ 9} "IV. The trial court erred in finding defendant-appellants guilty of violating Bowling Green Ordinance §132.18 without evidence that defendant-appellants had the requisite mens rea."

{¶ 10} We first set forth the language of Bowling Green Ordinance §132.18:

{¶ 11} "(A) *Nuisance party defined*. A social gathering or party which is conducted on premises within the city and which, by reason of the conduct of the persons

in attendance, results in any one or more of the following conditions or events occurring at the site of the said party or social gathering, or on neighboring public or private property: disorderly conduct; illegal open container; outdoor urination or defection in a public place; unlawful sale, furnishing, dispensing or consumption of beer or intoxicating liquor; sale or furnishing of beer or intoxicating liquor to an underage person; possession or consumption of beer or intoxicating liquor by an underage person; illegal use of a controlled substance; public indecency; unlawful deposit of litter or refuse; the damage or destruction of property without the consent of the property owner; unlawful pedestrian or vehicular traffic; standing or parking of vehicles that obstructs the free flow of traffic on the public streets and sidewalks or that impedes the ability to render emergency services; unlawfully loud noise; or any other conduct or condition that threatens injury, inconvenience, or alarm to persons or damage to property which is hereby declared to be an unlawful public nuisance.

{¶ 12} "(B) *Duty to control premises*. Any person who is an owner, occupant, tenant, or otherwise has rightful possession or possessory control, individually or jointly with others, of any premises, who either sponsors, conducts, hosts, invites, or permits a social gathering or party on said premises which is or becomes a nuisance party, as defined in division (A), and which nuisance is either the intentional result of, or within the reasonable expectations of, the person or persons having such possessory control is deemed to be in violation of this section.

{¶ 13} "(C) *Order to cease and disperse*. A party or social gathering that is or becomes a nuisance party, as defined in division (A), shall cease upon the order of the

Police Chief, or the Police Chief's designee; and all persons not residing therein at the site of such social gathering or party shall leave the premises immediately. Any person who fails or refuses to obey and abide by such an order shall be guilty of a violation of this section.

{¶ 14} "(D) *Penalty*. Whoever violates this section is guilty of a minor misdemeanor; for a second offense committed within six months after the commission of the first offense, the person shall be guilty of a fourth degree misdemeanor."

{¶ 15} In appellants' first assignment of error relative to due process, they contend that since "social gathering," "party," and "neighboring" property are not defined by the ordinance, it is vague and, thus, a defendant would not have proper notice that his conduct could result in criminal sanctions. Appellants also assert that the mens rea requirement of the host's "intentional" or "reasonable expectation" with regards to the nuisance conditions or events that occur at the gathering fail to give fair warning to the ordinary person. Finally, appellants contend that the ordinance fails to define its scope and thus impermissibly delegates policy matters to police, judges and juries on a subjective basis.

{¶ 16} "'The due process clause of the Constitution provides the foundation for the void for vagueness doctrine.'" *Buckley v. Wilkins*, 105 Ohio St.3d 350, 2005-Ohio-2166, at ¶ 17 quoting *Columbia Natural Resources, Inc. v. Tatum* (C.A.6, 1995), 58 F.3d 1101, 1104. "Vagueness may invalidate a criminal law for either of two independent reasons. First, it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage

arbitrary and discriminatory enforcement." *City of Chicago v. Morales* (1999), 527 U.S. 41, 56. "Laws must 'give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly,' and laws must also 'provide explicit standards' for the police officers, judges, and jurors who enforce and apply them." *Buckley* at ¶ 17 citing *Grayned v. Rockford* (1972), 408 U.S. 104, 108-109.

{¶ 17} In weighing a constitutional challenge to a law, a court must " * * * adhere to the oft-stated rule that a court's power to invalidate a statute 'is a power to be exercised only with great caution and in the clearest of cases.'" *Buckley* at ¶ 18 quoting *Yajnik v. Akron Dept. of Health, Hous. Div.*, 101 Ohio St.3d 106, 2004-Ohio-357, ¶ 16. "Laws are entitled to a 'strong presumption of constitutionality,' and any party challenging the constitutionality of a law 'bears the burden of proving that the law is unconstitutional beyond a reasonable doubt.'" Id.

{¶ 18} "The void-for-vagueness doctrine 'does not require statutes to be drafted with scientific precision.'" *Buckley* at ¶ 19 quoting *Perez v. Cleveland* (1997), 78 Ohio St.3d 376, 378. "Rather, 'it permits a statute's certainty to be ascertained by application of commonly accepted tools of judicial construction, with courts indulging every reasonable interpretation in favor of finding the statute constitutional.'" *Buckley* at ¶ 19 quoting *Perez*, 78 Ohio St.3d at 378-379. "The fact that the fertile legal imagination can conjure up hypothetical cases in which the meaning of disputed terms could be questioned does not render the provision unconstitutionally vague." (citations omitted) *Buckley*, 105 Ohio St.3d 350, 2005-Ohio-2166, at ¶ 19.

{¶ 19} Regarding the terms "social gathering" and "party" we note that because they are undefined by the ordinance, they must be construed according to the rules of grammar and common usage. *State v. Coburn* (1992), 84 Ohio App.3d 170, 173; R.C. 1.42. Among the definitions for "party" provided in Webster's Ninth New Collegiate Dictionary, is "a social gathering; also: the entertainment provided for it." Webster's Ninth New Collegiate Dictionary (1990) 859. "Social" is defined as "marked by or passed in pleasant companionship with one's friends or associates," and a "gathering" is an "assembly, meeting." Id. at 1118 and 508. Finally, in *State v. Dorso* (1983), 4 Ohio St.3d 60, citing Webster's Third New International Dictionary, the Supreme Court of Ohio found the term "neighborhood" in a loud musical noises ordinance was not unconstitutionally vague. Similarly, "neighboring" property means that which is "immediately adjoining or relatively near." Webster's Ninth New Collegiate Dictionary (1990) 792. Mindful of the strong presumption of constitutionality, in our opinion, the terms "social gathering", "party", and "neighboring" are not unconstitutionally vague.

{¶ 20} Regarding the required mens rea of the host, appellants assert that it fails to give fair warning to the ordinary person. For example, appellants claim that by taking precautionary measures such as placing garbage receptacles out on the property, the host is subjecting himself to liability as he apparently is "reasonably expecting" a littering nuisance at the gathering. However, as the city counters, by taking such a measure, the host demonstrates that he reasonably expects his guests to use those receptacles, thus avoiding liability under the ordinance. We do not find that the mens rea element is void for vagueness.

{¶ 21} Finally, in support of their argument that the ordinance impermissibly delegates policy matters to police, judges and juries for resolution on a subjective basis, appellants cite *Coates v. Cincinnati* (1971), 402 U.S. 611. In *Coates*, the court examined an ordinance that made it a criminal offense for "'three or more persons to assemble * * * on any of the sidewalks * * * and there conduct themselves in a manner annoying to persons passing by * * *.'" Id. at FN1. The court found that the ordinance was unconstitutionally vague because it subjected the exercise of the right of assembly to an unascertainable standard. Clearly, the court's focus was on the amorphous term "annoying." In contrast to the ordinance in *Coates*, the nuisance party ordinance at issue in the present case lists twelve specific "conditions or events" that constitute a nuisance.

{¶ 22} We recognize that the ordinance also contains a "catch-all" nuisance provision of "any other conduct or condition that threatens injury, inconvenience, or alarm to persons or damage to property." However, as the Supreme Court of Ohio found when examining the allegedly vague phrase "to disturb the peace and quiet" in *Dorso*, by the court adopting the "reasonable person" standard, the claimed vagueness of the ordinance is vitiated. Id. at 64; See also *State v. Cole*, 7th Dist. No. 01 CA 73, 2002-Ohio-5191; *State v. Cornwell*, 149 Ohio App.3d 212, 2002-Ohio-5178. Likewise, we construe the "catch-all" provision in the nuisance party ordinance to prohibit conduct that threatens injury, inconvenience, or alarm to a reasonable person. Finally, we find appellants' assertion that the ordinance leaves too much discretion to the police officer to ascertain the primary purpose of the gathering as "social" or for mere pleasure or entertainment is unfounded.

{¶ 23} Accordingly, we find that appellants had the requisite notice that they could be charged with violating the nuisance party ordinance and the nuisance party ordinance is not void for vagueness. Appellant's first assignment of error is not well-taken.

{¶ 24} Regarding appellants' second assignment of error, they argue that the ordinance is unconstitutionally broad because it impermissibly burdens the right to intimate and expressive association and creates guilt by association. Indeed, there are two different sorts of "freedom of association" that are protected by the United States Constitution: (1) certain intimate human relationships-- those that attend the creation and sustenance of a family—marriage, childbirth, the raising and education of children, and cohabitation with one's relatives, and; (2) the right to associate for the purpose of engaging in those activities protected by the First Amendment--speech, assembly, petition for the redress of grievances, and the exercise of religion. *Dallas v. Stranglin* (1989), 490 U.S. 19, 24; *Roberts v. United States Jaycees* (1984), 468 U.S. 609, 619.

{¶ 25} With regard to the first kind of association – intimate association - there is "* * * a spectrum from the most intimate to the most attenuated of personal attachments," the more intimate of which may make greater claims to constitutional protections. *Roberts* at 620. Appellants contrast the "chance encounters" among juveniles in a dance hall in *Stranglin* with the social gatherings targeted in the ordinance at issue here. In *Stranglin*, the court held that an ordinance restricting admission to dance halls to persons between the ages of 14 and 18 did not violate the First Amendment right of association. The court stated "* * * we do not think the Constitution recognizes a generalized right of 'social association' that includes chance encounters in dance halls." Id. at 25. We do note

that, according to some federal case law, personal friendship has been held to be protected as an intimate association. *Akers v. McGinnis* (C.A.6 2003), 352 F.3d 1030, 1039-1040 citing *Corrigan v. City of Newaygo* (C.A.6 1995), 55 F.3d 1211, 1214-15. However, the level of scrutiny applied upon review depends on whether the interference with these alleged intimate associations is considered "direct and substantial." "Direct and substantial interference" with intimate association is subject to strict scrutiny, while lesser interferences merely merit rational-basis review. *Akers* at 1040 citing *Montgomery v. Carr* (C.A.6 1996), 101 F.3d 1117, 1124 and *Zablocki v. Redhail* (1978), 434 U.S. 374, 383-84.

{¶ 26} The Ohio Supreme Court has examined alleged freedom of intimate and expressive association rights in *Cleveland v. Trzebuckowski*, 85 Ohio St.3d 524, 1999-Ohio-285. We find that the social gatherings that are targeted in the nuisance party ordinance compare most closely with the meeting of friends at a billiard hall that was at issue in *Trzebuckowski*. The court held that "meeting one's friends at a billiard hall 'qualifies neither as a form of intimate association nor as a form of expressive association * * *.'" Id. at 529 quoting *Stanglin* at 25. Further, regarding expressive association, we find that the ordinance's requirement that the event be a "social gathering" or "party," rather than a gathering of "'members of any organized association'" or a gathering to "'take positions on public questions,'" takes it out of the activities that receive protection as a fundamental right. *Trzebuckowski* at 529. Further, even if the associations targeted by the ordinance at issue could be considered "intimate," we do not consider the interference imposed by the ordinance - which seeks to hold hosts accountable for only

"out of control" gatherings - to be "direct and substantial." Thus, we find that the social gatherings targeted by the ordinance do not involve the type of intimate or expressive associations for which the highest level of constitutional protection is reserved.

{¶ 27} Relative to appellants' guilt by association argument, the nuisance party ordinance requires that a person intend or reasonably expect that specific unlawful acts or conditions will occur before that person may be prosecuted. Thus, the statute requires more than the mere voluntary association asserted by appellants. As such, the statute does not unconstitutionally establish guilt by association alone. See *State v. Rushton*, 151 Ohio App.3d 654, 2003-Ohio-692, at ¶ 35. Appellants' second assignment of error is not well-taken.

{¶ 28} Regarding appellants' third assignment of error related to the ordinance as an unconstitutional exercise of legislative power, we note that Section 3 of Article XVIII of the Ohio Constitution confers upon municipalities, such as Bowling Green, the "authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." See *Downing v. Cook* (1982), 69 Ohio St.2d 149, 150. Further, "[a] legislative body may enact legislation declaring that previously lawful activity will thereafter be deemed a nuisance. Such legislation will be upheld against constitutional challenge if it comes within the police power, i.e., if it has a real and substantial relation to the public health, safety, morals or general welfare of the public and is neither unreasonable nor arbitrary." Id.

{¶ 29} Ordinances creating unlawful nuisances with regard to housing a certain number of dogs or housing exotic animals, or failing to comply with a residential garbage collection service have been upheld under this test. See *Downing*; *City of Warren v. Testa* (July 27, 1983), Trumbull C.P. No. 82-CV-988; *City of Portsmouth v. McGraw* (1986), 21 Ohio St.3d 117; *Zageris v. Whitehall* (1991), 72 Ohio App.3d 178. Likewise, the nuisance party ordinance at issue in the present case has a real and substantial relation to the public health, safety, morals or general welfare of the public and - as will be further analyzed with regard to the remainder of the constitutional issues raised – it is neither unreasonable nor arbitrary.

{¶ 30} Regarding appellants' remaining arguments under the third assignment of error, they contend that because the ordinance burdens fundamental rights, it is subject to strict scrutiny. Appellants further contend that since it extends criminal responsibility beyond those persons actually committing the nuisance acts, it does not survive strict scrutiny. In response, the city asserts that since the social gatherings targeted by the ordinance are not within the protected freedoms of the First Amendment, the rational basis test is appropriate. Further, the ordinance survives the rational basis test. We agree with the city's contentions.

{¶ 31} "A statutory classification which involves neither a suspect class nor a fundamental right does not violate the Equal Protection Clause of the Ohio or United States Constitutions if it bears a rational relationship to a legitimate governmental interest." *Menefee v. Queen City Metro* (1990), 49 Ohio St.3d 27, 29. Further, in the course of discussing due process issues, the Sixth Circuit Court of Appeals has held that

"government actions that do not affect fundamental rights or liberty interests and do not involve suspect classifications will be upheld if it [sic] they are rationally related to a legitimate state interest." *Seal v. Morgan* (C.A.6 2000), 229 F.3d 567, 575 citing *Vacco v. Quill* (1997), 521 U.S. 793; See also *State v. Bowman,* 10th Dist. No. 02AP-1025; 2003-Ohio-5341. The ordinance "will be upheld unless it is 'wholly irrelevant to achievement of the state's purpose.'" *Wright v. Leggett & Platt*, 9th Dist. No. 04CA008466, 2004-Ohio-6736, at ¶ 14 and *Arrington v. Daimler Chrysler*, 9th Dist. Nos. 22108, 22270, 22271, 22272, 22273, 22274, 22284, 22285, 22311, 2004-Ohio-7180, at ¶ 24 quoting *Menefee* at 29.

{¶ 32} Appellants' third assignment of error does not directly assert violation of equal protection, or claim a suspect classification. However, their allegation of vagueness which implicates due process rights, and their allegation of a fundamental right of association draws in the strict-scrutiny versus rational-basis question. We have already determined that the social gatherings targeted by the ordinance do not involve the type of intimate or expressive associations for which the highest level of constitutional protection is reserved. Thus, the rational basis test is appropriate. See *Trzebuckowski* at FN 2.

{¶ 33} As indicated by a memorandum by Michael Zickar, the Chair of the Community Improvement Committee for the Bowling Green City Council, the purpose of the ordinance is "to hold people accountable who throw large parties that get out of control" and disrupt neighborhoods with acts such as public urination, criminal damage, littering, and noise. Abating such nuisances is a legitimate state interest. Further, since

the ordinance includes a mens rea element on the part of the host, it is not "wholly irrelevant to achievement" of that purpose. Therefore, the ordinance must be upheld under the rational basis test. Appellants' third assignment of error is not well-taken.

{¶ 34} Finally, regarding appellants' fourth assignment of error relative to evidence of the requisite mens rea, we will consider the facts in appellant Schabel's case separate from the remainder of the appellants' cases. In appellant Schabel's case, the case proceeded to trial. In the remainder of the cases, each appellant entered a no contest plea.

{¶ 35} In appellant Schabel's case, appellants apparently concede that the trial court may have properly concluded that the gathering at appellant Schabel's home constituted a "social gathering" or "party." Further, appellants concede that Officer Short's testimony established that there were two or more of the prohibited events or conditions on the site of the party – littering, underage drinking, and unlawfully loud noise. However, appellants contend that there was no evidence that he "intended" or "reasonably expected" that these prohibited conditions or events would occur on or near the property. We disagree. "It is a fundamental principle that a person is presumed to intend the natural, reasonable and probable consequences of his voluntary acts." *State v. Johnson* (1978), 56 Ohio St.2d 35, 39. Appellant Schabel himself was underage and had been consuming alcohol, according to Officer Short's testimony. Therefore, at least this condition was certainly "within the reasonable expectations" of appellant Schabel. Based on these facts, in appellant Schabel's case, there was evidence that he "intended" or "reasonably expected" that a prohibited condition or event would occur on or near the

property. Therefore, the record demonstrates evidence that appellant Schabel had the requisite mens rea.

{¶ 36} In the cases of the remaining appellants in which they each entered a no contest plea, this court must first consider the effect of such a plea. By entering a no contest plea a defendant does not admit his guilt; rather, he admits to the truth of the facts alleged in the indictment. Crim.R. 11(B)(2). A no contest plea preserves the issue of sufficiency of the indictment on appeal. *State v. Luna* (1996), 96 Ohio App.3d 207, 209. Further, R.C. 2937.07 states in relevant part, "A plea to a misdemeanor offense of 'no contest' or words of similar import shall constitute a stipulation that the judge or magistrate may make a finding of guilty or not guilty *from the explanation of the circumstances of the offense*. * * *" (Emphasis added.) "'A no contest plea may not be the basis for a finding of guilty without an explanation of circumstances.'" *State v. Spinazee*, 6th Dist. No. L-04-1274, 2005-Ohio-1780, at ¶ 7 quoting *Cuyahoga Falls v. Bowers* (1984), 9 Ohio St.3d 148, 150. "The trial court must have enough information to support all the essential elements of the offense in order to enter a guilty verdict upon those circumstances." *Spinazee* at ¶ 7 citing *State v. Parsons* (Mar. 17, 2000), 6th Dist. No. WD-99-022. "Documentary evidence may suffice as an explanation of the circumstances supporting the charge, provided the record demonstrates that the trial court actually considered that evidence in determining an accused's guilt or innocence." *State v. Muhammad*, 6th Dist. No. L-00-1263, 2001-Ohio-2712 citing *Cuyahoga Falls v. Bowers* (1984), 9 Ohio St.3d 148, 150-151 and *Chagrin Falls v. Katelanos* (1988), 54 Ohio App.3d 157, 159.

{¶ 37} In the underlying cases in which appellants entered no contest pleas, the trial court held a January 26, 2005 pretrial conference. According to the Judgment Entry form completed for each of the underlying cases, the trial court noted the no contest plea, and found each appellant guilty of violating the nuisance party ordinance. No transcript was filed of these proceedings. App.R. 9(B) requires an appellant to order the necessary transcripts to facilitate review on appeal.[1] When no transcript is available, a statement may be prepared in accordance with App.R. 9(C). Without such a transcript or statement, we do not know whether the probable clause affidavits were the exclusive "explanation of the circumstances of the offense" upon which the trial judge relied in reaching the guilty determinations. Therefore, this court is unable to review the sufficiency or weight of the evidence, and must presume the regularity and correctness of the proceedings below. *Greenhouse v. Blackwoods Farms Market* (June 9, 2000), 6th Dist. No. L-99-1372 citing *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197; see, also, *State v. Roseling* (July 12, 2000), 9th Dist. No. 99CA0040. Appellants' fourth assignment of error is not well-taken.

{¶ 38} The judgment of the Bowling Green Municipal Court is affirmed. Appellants are ordered to pay the court costs of this appeal pursuant to App.R. 24.

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[1]This court notes from the trial court record that a February 22, 2005 praecipe by defense counsel requested transcripts for the proceedings that occurred on November 18, 2004 (hearing on motion to dismiss and appellant Schabel's trial) and January 21, 2005 (appellant Schabel's sentencing hearing). However, January 26, 2005, the date of the guilt finding on the no contest appellants is not listed on the praecipe.

Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Wood County.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, J. _____
JUDGE

Mark L. Pietrykowski, J. _____
JUDGE

Dennis M. Parish, J. _____
CONCUR.
JUDGE