

[Cite as *Rapacz v. Cleveland*, 2009-Ohio-2038.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91820

WALTER S. RAPACZ

PLAINTIFF-APPELLANT

vs.

CITY OF CLEVELAND, ET AL.

DEFENDANTS-APPELLEES

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-645580

BEFORE: Cooney, A.J., Rocco, J., and Jones, J.

RELEASED: April 30, 2009

JOURNALIZED:

ATTORNEY FOR APPELLANT

James G. Dawson
4881 Foxlair Trail
Richmond Hts., Ohio 44143

ATTORNEYS FOR APPELLEES

Robert J. Triozzi
Director of Law

BY: Mark R. Musson
Assistant Director of Law
City of Cleveland
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114

Parking Violations Bureau
City of Cleveland, Photo Safety Division
Justice Center, 2nd Floor
1200 Ontario Street
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} Plaintiff-appellant, Walter S. Rapacz (“Walter”), appeals the trial court’s order affirming defendant-appellee City of Cleveland’s (“City”) imposition of civil liability upon Leslie Rapacz (“Leslie”) for a speeding offense. Because Walter lacks standing to bring this appeal, we dismiss for lack of jurisdiction.

{¶ 2} This case arose when one of the City’s automated traffic enforcement cameras photographed Leslie’s vehicle speeding. Walter claims he was driving the vehicle at the time, but because Leslie was the registered owner, the City issued the Notice of Liability (“ticket”) in her name. Upon receiving the ticket, Leslie and Walter signed an affidavit stating that Walter was the driver. Walter appealed the ticket and appeared before the City’s hearing officer. The hearing officer found Leslie liable for the offense, and Walter appealed the matter to the court of common pleas, which affirmed.

{¶ 3} Walter now appeals, raising three assignments of error for our review.¹

Standing

{¶ 4} We may not review the instant appeal because Walter lacks standing. We review the issue of standing *de novo* as it poses a question of law. *Dinks II Co. v. Chagrin Falls Village Council*, Cuyahoga App. No. 84939, 2005-Ohio-2317, ¶16,

¹The assignments of error are set forth in the Appendix.

citing *Shelton v. LTC Mgt. Servs.*, Highland County App. No. 03CA10, 2004-Ohio-507. We do not have jurisdiction to adjudicate a case in which a party lacks standing. See *Buckeye Foods v. Cuyahoga Cty. Bd. of Revision*, 78 Ohio St.3d 459, 460, 1997-Ohio-199, 678 N.E.2d 917. “[T]he issue of standing *** may be raised at any time during the pendency of the proceedings.” *Id.*, quoting *New Boston Coke Corp. v. Tyler* (1987), 32 Ohio St.3d 216, 218, 513 N.E.2d 302, 305.

{¶ 5} Walter brings this appeal under R.C. 2506.01 challenging the ticket, which was issued pursuant to Cleveland Codified Ordinance (“C.C.O.”) 413.031. A party has standing to file an administrative appeal under R.C. 2506, et seq., when that party “has a present interest in the subject matter of the litigation” and “has been ‘directly affected’ by the administrative order in question.” *Id.*, quoting *Willoughby Hills v. C.C. Bar’s Sahara, Inc.*, 64 Ohio St.3d 24, 26-27, 1992-Ohio-111, 591 N.E.2d 1203.

{¶ 6} In the instant case, Walter lacks standing because the administrative order has not directly affected him. Leslie, the vehicle owner, has been found civilly liable. C.C.O. 413.031(k) states, in relevant part,

{¶ 7} “The Director of Public Safety, in coordination with the Parking Violations Bureau, shall establish a process by which a vehicle owner who was not the driver at the time of the alleged offense may, by affidavit, name the person who the owner believes was driving the vehicle at the time. Upon receipt of such an affidavit timely submitted to the Parking Violations Bureau, the Bureau shall suspend

further action against the owner of the vehicle and instead direct notices and collection efforts to the person identified in the affidavit. *If the person named in the affidavit, when notified, denies being the driver or denies liability, then the Parking Violations Bureau shall resume the notice and collection process against the vehicle owner, the same as if no affidavit had been submitted, and if the violation is found to have been committed by a preponderance of evidence, the owner shall be liable for any penalties imposed for the offense.*” (Emphasis added.)

{¶ 8} Under the language of the statute, Leslie is liable. Walter denied liability, and the hearing officer determined by a preponderance of the evidence that a violation had been committed. Therefore, Leslie, the vehicle owner, is the only party directly affected by the administrative order in the instant case. Walter lacks standing, so we do not have jurisdiction to consider the appeal.

{¶ 9} Accordingly, this appeal is dismissed.

It is ordered that appellee recover of appellant costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

KENNETH A. ROCCO, J., and
LARRY A. JONES, J., CONCUR

APPENDIX

- I. THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT BY UPHOLDING THE DECISION OF THE CITY OF CLEVELAND PARKING VIOLATIONS BUREAU, PHOTO SAFETY DIVISION WITHOUT FIRST HEARING ADDITIONAL EVIDENCE AS REQUIRED BY R.C. §2506.03(A)(3).
- II. THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT BY UPHOLDING THE DECISION OF THE CITY OF CLEVELAND PARKING VIOLATIONS BUREAU, PHOTO SAFETY DIVISION WHERE SAID BODY FAILED TO FILE WITH THE TRANSCRIPT CONCLUSIONS OF FACT SUPPORTING ITS DECISION AS REQUIRED BY R.C. §2506.03(A)(5).
- III. THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT BY UPHOLDING THE DECISION OF THE CITY OF CLEVELAND PARKING VIOLATIONS BUREAU, PHOTO SAFETY DIVISION WHERE SAID DECISION IS UNCONSTITUTIONAL, ILLEGAL, ARBITRARY, CAPRICIOUS, UNREASONABLE, OR UNSUPPORTED BY THE PREPONDERANCE OF SUBSTANTIAL RELIABLE, AND PROBATIVE EVIDENCE ON THE WHOLE RECORD.