

No. 2019-0041

IN THE SUPREME COURT OF OHIO

ROBERT MATHEWS,
Plaintiff-Appellant

v.

OHIO DEPARTMENT OF TRANSPORTATION
Defendant-Appellee

APPEAL FROM THE COURT OF APPEALS
TENTH APPELLATE DISTRICT
FRANKLIN COUNTY, OHIO
CASE NO. 18AP-663

MEMORANDUM IN OPPOSITION TO JURISDICTION

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DEFENDANT-APPELLEE'S POSITION AS TO WHETHER JURISDICTION SHOULD BE EXERCISED IN THIS CASE

Pursuant to S.Ct.Prac.R. 7.03(B), Defendant-Appellee responds to the Memorandum in Support of Jurisdiction as follows: Defendant-Appellee submits that this case does not involve a substantial constitutional question nor is it a case of public or great general interest. Furthermore, Plaintiff-Appellant has failed to identify in his Memorandum in Support a single Proposition of Law for the Supreme Court to review. There is therefore no basis for a jurisdictional appeal of this matter.

STATEMENT OF THE CASE

This is an appeal of a unanimous, *sua sponte* dismissal of the case by the Tenth District Court of Appeals on December 3, 2018, for the reason that Plaintiff-Appellee failed to file a proper Appellant Brief.

On February 6, 2017, Plaintiff-Appellant Robert Mathews (hereinafter “Mathews”) filed a civil action against Defendant-Appellee Ohio Department of Transportation (“ODOT”) in the Court of Claims of Ohio, styled *Robert Mathews v. Ohio Department of Transportation*, as Case No. 2017-00128JD. Throughout this case, Mathews has proceeded *pro se*. In his Claim Form (Complaint), Mathews alleged that his real property in Waverly, Ohio was damaged by rainwater that collected “due to bridge & road work on and around” his property.

The case was tried to a Magistrate on April 2, 2018. The Magistrate issued a Decision on July 2, 2018 in favor of ODOT. Mathews filed Objections to the Magistrate’s Decision on July 12, 2018. Judge Patrick McGrath filed a Judgment Entry on August 13, 2018, overruling Mathews’s objections and adopting the Magistrate’s Decision dismissing the case. The Court held specifically that “the magistrate properly determined the factual issues and appropriately applied the law, that plaintiff failed to produce sufficient evidence to support his claim and that

upon the facts and the law plaintiff has shown no right to relief.” The Court also noted several irregularities and omissions in Mathews’s objections, and his failure to file a transcript of the trial, any of which the Court found would require overruling the objections.

Mathews filed a Notice of Appeal to the Tenth District Court of Appeals on August 21, 2018 (Case No. 18-AP-000663). He filed a paper entitled “Appellate Brief” on October 9, 2018. The Court of Appeals rejected the “brief” on October 17, 2018, on the grounds that it failed to comply with the Rules of Appellate Procedure and the Local Rules, but granted Mathews additional time to file a second brief in accordance with the Rules.

Mathews filed an “Amended Appellate Brief” on November 19, 2018. On December 3, 2018, the Court of Appeals ordered the second brief stricken from the file, and dismissed the appeal, in a unanimous decision. The entirety of the Journal Entry of Dismissal was as follows:

“Because appellant’s amended brief filed on November 19, 2018, does not comply with the Ohio and Local Rules of Appellate Procedure, said brief is ordered stricken from the file. Appellant having failed to file a brief that complies with the Ohio Rules of Appellate Procedure and this court’s local rules within the time set forth in this court’s October 17, 2018 journal entry, this appeal is sua sponte dismissed. Any outstanding appellate court costs shall be paid by appellant.”

Mathews then filed a Notice of Appeal to the Supreme Court of Ohio, with a Memorandum in Support of Jurisdiction, on January 11, 2019, followed three days later by the filing of an Amended Memorandum in Support of Jurisdiction.

STATEMENT OF FACTS

Plaintiff-Appellant Robert Mathews alleged in his Claim Form filed in the Ohio Court of Claims (complaint) that, starting in July 2016, he sustained rainwater damage to his property at 751 Turkey Run Road in Waverly, Ohio, as a result of ODOT’s “bridge and road work on and around [his] property.” ODOT had hired an independent contractor, Foill Incorporated, of

Waverly, Ohio (hereinafter “Foill”), to perform work on a bridge over a creek near the Mathews property. ODOT has consistently denied that either ODOT or Foill caused any damage to the Mathews property.

At trial, Mathews failed to prove that ODOT did anything to cause any damage to his property. The Magistrate ruled accordingly, in a detailed Decision recommending judgment for ODOT. Judge McGrath, after reviewing the Magistrate’s findings of fact and conclusions of law, and objections filed by Mathews to the Magistrate’s Decision, granted judgment in favor of ODOT.

APPELLANT’S PROPOSITION OF LAW FOR REVIEW

Plaintiff-Appellant Robert Mathews has not identified a proposition of law at issue in this case.

ARGUMENT SUPPORTING APPELLEE’S POSITION

S.Ct.Prac.R. 7.02(C) provides as follows, in pertinent part:

“A memorandum in support of jurisdiction shall contain all of the following:

- (1) A table of contents, which shall include numbered **propositions of law** arranged in order;
- (2) A thorough explanation of why a substantial constitutional question is involved, why the **case is of public or great general interest**, or, in a felony case, why leave to appeal should be granted;
- (3) A statement of the case and facts;
- (4) A brief and concise **argument in support of each proposition of law.**”
(emphasis added)

Mathews has failed to identify a proposition of law at issue in this case, and failed to provide any argument in support of a proposition of law, and otherwise has failed to demonstrate that a substantial constitutional question is involved, or that the case is of public or great general interest.

This Court held in *In re Timken Mercy Med. Ctr.*, 61 Ohio St.3d 81, 572 N.E.2d 673 (1991), that an appellant may not argue a proposition of law that has not been identified in the memorandum in support of jurisdiction, and accepted by the Court, as a basis for the appeal. That rule has been upheld in many subsequent decisions. *Albanese v. Batman*, 148 Ohio St.3d 85, 2016-Ohio-5814, 68 N.E.3d 800 (appellant's proposition of law rejected because it differed from the argument raised in his memorandum in support of jurisdiction), citing *In re Timken Mercy Med. Ctr.*, *supra*; *Stammco, L.L.C. v. United Tel. Co.*, 125 Ohio St.3d 91, 2010-Ohio-1042, 926 N.E.2d 292 (issues not raised in the memorandum seeking jurisdiction were outside the scope of the propositions of law that were accepted for review); *In re Guardianship of Spangler*, 126 Ohio St.3d 339, 2010-Ohio-2471, 933 N.E.2d 106 (issue not raised in appellant's memorandum in support of jurisdiction was not properly before the Court), citing *In re Timken Mercy Med. Ctr.*, *supra*; *Estate of Ridley v. Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities*, 102 Ohio St.3d 230, 2004-Ohio-2629, 809 N.E.2d 2 (declining to address an argument not raised by appellant in its memorandum in support of jurisdiction).

Having failed to submit a proposition of law for this Court's review, Mathews is therefore precluded from arguing one on the merits of his appeal. It is obviously also impossible for ODOT to discuss any basis Mathews might claim for this appeal. This is an appeal of the decision of the Court of Appeals to dismiss the appeal from the Court of Claims. Mathews has failed to raise any basis for challenging that dismissal.

CONCLUSION

Jurisdiction should be declined because the Appellant has failed to state a Proposition of Law for this Court's consideration, and has failed to demonstrate why this case presents a substantial constitutional question or is one of public or great general interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 8th day of February, 2019 a copy of the foregoing Memorandum In Opposition To Jurisdiction, was mailed by regular U. S. Mail, postage prepaid, to the following:

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