Supreme Court of Ohio Clerk of Court - Filed March 11, 2019 - Case No. 2019-0352

In the Supreme Court of Ohio

CASE NO.

APPEAL FROM THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO
CASE NO. CA-18-106806

GPI DISTRIBUTORS, INC.,

Appellant,

v.

NORTHEAST OHIO REGIONAL SEWER DISTRICT,

Appellee.

NOTICE OF APPEAL OF APPELLANT GPI DISTRIBUTORS, INC.

Andrew S. Pollis (0046392)
(Counsel of Record)
MILTON A. KRAMER LAW CLINIC
CASE WESTERN RESERVE
UNIVERSITY SCHOOL OF LAW
11075 East Boulevard
Cleveland, Ohio 44106
Tel.: (216) 368-2766
Fax: (216) 368-5137
Email: andrew.pollis@case.edu

Deborah A. Coleman (0017908)
COLEMAN LAW LLC
16781 Chagrin Blvd. #289
Cleveland, OH 44120
Telephone: (216) 991-4510
Email: dac@dacolemanlaw.com

Attorneys for Appellant GPI Distributors, Inc.

NOTICE OF APPEAL

Appellant GPI Distributors, Inc. hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, journalized in Court of Appeals Case No. CA-17-106806 on December 6, 2018 (Journal Entry and Opinion attached as Appendix A). This case raises a substantial constitutional question and is one of public and great general interest.

An application for reconsideration was timely filed in the Court of Appeals on December 17, 2018, which the Eighth District denied on January 24, 2019 (Journal Entry attached as Appendix B).

Respectfully submitted,

/s/Andrew S. Pollis
ANDREW S. POLLIS (0046392)
(Counsel of Record)
THE MILTON A. KRAMER LAW CLINIC CENTER
CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW
11075 East Boulevard
Cleveland, Ohio 44106
Telephone: (216) 368-2766
Facsimile: (216) 368-5137
Email: andrew.pollis@case.edu

/s/ Deborah A. Coleman
DEBORAH A. COLEMAN (0017908)
COLEMAN LAW LLC
16781 Chagrin Blvd. #289
Cleveland, OH 44120
Telephone: (216) 991-4510
Facsimile: (877) 298-8449
Email: dac@dacolemanlaw.com

Attorneys for Appellant GPI Distributors, Inc.

DATED: March 11, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal of Appellant GPI Distributors, Inc. was sent by email, this 11th day of March, 2019, to Eric Luckage and Amanda Holzhauer, Attorney for Appellee Northeast Ohio Regional Sewer District, at luckagee@neorsd.org and holzhauera@neorsd.org.

/s/ Andrew S. Pollis
Andrew S. Pollis (0046392)

APPENDIX A

DEC 06 2018

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. **106806**

GPI DISTRIBUTORS, INC.

PLAINTIFF-APPELLANT

vs.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CV-17-883825 and CV-17-887300

BEFORE: Celebrezze, J., Kilbane, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: December 6, 2018

CV17883825 106595052

ATTORNEYS FOR APPELLANT

Deborah A. Coleman
Coleman Law, L.L.C.
16781 Chagrin Boulevard, #289
Cleveland, Ohio 44120

Andrew S. Pollis
Avidan Y. Cover
Milton A. Kramer Law Clinic - CWRU
11075 East Boulevard
Cleveland, Ohio 44106

Cory Novak
Legal Intern
Milton A. Kramer Law Clinic - CWRU
11075 East Boulevard
Cleveland, Ohio 44106

ATTORNEYS FOR APPELLEE

Eric Luckage
Chief Legal Officer
Amanda Lee Holzhauer
Assistant General Counsel
Northeast Ohio Regional Sewer District
3900 Euclid Avenue
Cleveland, Ohio 44115

FRANK D. CELEBREZZE, JR., J.:

{¶1} Plaintiff-appellant, GPI Distributors, Inc. (hereinafter "GPI"), appeals the trial court's judgment granting defendant-appellee, Northeast Ohio Regional Sewer District's (hereinafter "NEORSD") motion to dismiss GPI's administrative appeal for failure to comply with R.C. 2505.06. GPI argues that the trial court erred by granting NEORSD's motion to dismiss because it was not required to file a supersedeas bond in order to perfect the administrative appeal and that even if a bond was required, the appeal could proceed on questions of law. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶2} The instant appeal arose from a dispute over sewer bills charged to a residential property owned by GPI between December 2014 and June 2015. GPI initiated two separate but related civil actions in the Cuyahoga County Court of Common Pleas.

{¶3} First, in Cuyahoga C.P. No. CV-17-883825 (hereinafter "declaratory judgment action"), GPI filed a complaint on August 1, 2017, against the city of Cleveland, the director of the city's department of public utilities, NEORSD, NEORSD's chief executive officer, Cuyahoga County's fiscal officer, and Cuyahoga County's treasurer. In its complaint, GPI sought a declaratory judgment and preliminary and permanent injunctive relief. Specifically, GPI alleged that (1) various policies and practices of the city of Cleveland and

NEORSD were unconstitutional, violating GPI's constitutional rights to due process, protection from takings for public purposes without just compensation, and various civil rights, and (2) the city violated various sections of the Cleveland Codified Ordinances[1] in the manner in which it installed and maintained water meters and assessed water and sewer bills to customers.

{¶4} Second, in Cuyahoga C.P. No. CV-17-887300 (hereinafter "administrative appeal"), GPI filed an administrative appeal on October 12, 2017, challenging NEORSD's September 21, 2017 decision that approved and adopted a hearing officer's determination that GPI's sewer bills were accurate. On October 12, 2017, GPI filed a motion to consolidate the declaratory judgment action with the administrative appeal. The trial court granted GPI's motion, and the two cases were consolidated on October 13, 2017.

{¶5} Along with its motion to consolidate, GPI filed a motion to "determin[e] the necessity of a supersedeas bond to perfect notice of appeal" in which it requested an expedited ruling. On the same day, GPI filed an amended motion to "determin[e] that no supersedeas bond is necessary to perfect notice of appeal." In the amended motion, GPI argued that it was not required to post the supersedeas bond required by R.C. 2505.06 in order to perfect its administrative appeal because (1) NEORSD did not issue an order for the payment of money, making the bond exemption set forth in R.C. 2505.12(B)

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[1] Cleveland Codified Ordinances 533.01(a)(1) and (c), 535.29, and 535.31.

applicable, and (2) NEORSD already obtained a lien on GPI's property for the outstanding sewer charges, and thus, the interests that NEORSD had at stake in the administrative appeal were already secured. Alternatively, GPI requested that the trial court set a nominal cash bond of $50.

{¶6} On October 18, 2017, NEORSD filed a brief in opposition to GPI's motion regarding the supersedeas bond. Therein, NEORSD argued that GPI was required to comply with R.C. 2505.06's bond requirement in order to perfect its notice of appeal.

{¶7} On October 19, 2017, the trial court denied GPI's motion for a determination that no supersedeas bond was required. The trial court's judgment entry provides, in relevant part,

> R.C. 2505.06 requires that an administrative appeal upon questions of law and fact be superseded by a bond. Because this case involves an administrative appeal of a final order on a sewer bill charge in the amount of $12,047.76, R.C. 2505.12(B), which exempts the supersedeas bond requirement, in inapplicable. [GPI's] additional argument that [NEORSD's] interest in the sewer bill charge has already been secured with a lien is without merit because the tax balance on the property at issue exceeds the value of the property. * * * R.C. 2505.09 requires that a supersedeas bond is executed by the appellant to the appellee, with sufficient sureties and in a sum that is not less than the cumulative total for all claims covered by [t]he final order. Therefore, [GPI] is required to post a supersedeas bond in the amount of $12,047.76.

{¶8} On November 1, 2017, NEORSD filed a motion to dismiss the administrative appeal based on GPI's failure to comply with R.C. 2505.06's bond requirement. On November 28, 2017, GPI filed a brief in opposition to the

motion to dismiss. In opposing the motion to dismiss, GPI argued, for the first time, that (1) it was indigent and could not afford to post the bond set by the trial court, and (2) R.C. 2505.06's bond requirement was unconstitutional because it violated GPI's constitutional rights to due process and equal protection. NEORSD filed a reply brief in support of its motion to dismiss on December 6, 2017.

{¶9} On January 12, 2018, the trial court granted NEORSD's motion to dismiss and dismissed GPI's administrative appeal. The trial court's judgment entry provides, in relevant part,

> This court previously determined that a supersedeas bond was required to invoke jurisdiction to review the outcome of an administrative appeal regarding NEORSD placement of a lien against GPI property for unpaid sewer charges. GPI filed the administrative appeal citing issues of fact and law. * * * [GPI] failed to file the bond in a timely manner or to substitute for bond pursuant to R.C. 2505.11. NEORSD moved for dismissal for GPI's failure to perfect the administrative appeal in compliance with R.C. 2505.06.
>
> GPI opposes dismissal asserting that it could not afford the posting of the bond, thereby depriving it of a meaningful opportunity to be heard in violation of its rights to due process and equal protection under Federal and State Constitutions. Simply stated, GPI asserts that the bond requirement of R.C. [2505.06] is unconstitutional as an impediment to access court review of the administrative appeal. Legislative enactments are to be afforded a strong presumption of constitutionality. *Rocky River v. State Empl. Relations Bd.*, 43 Ohio St.3d 1[, 539 N.E.2d 103] (1989).
>
> The administrative appeal was conducted for a determination of an amount due for the sewer charges, thereby requiring the posting of the supersedeas bond. As no bond was timely posted, case is hereby

dismissed.

{¶10} It is from this judgment that GPI filed the instant appeal on February 7, 2018. GPI assigns one error for review:

> I. The trial court erred in granting [NEORSD's] motion to dismiss [GPI's] administrative appeal for failure to post a supersedeas bond under R.C. 2505.06.

II. Law and Analysis

A. Final Appealable Order

{¶11} As an initial matter, we must determine whether the trial court's January 12, 2018 judgment granting NEORSD's motion to dismiss GPI's administrative appeal is a final, appealable order.

{¶12} As noted above, GPI filed (1) a declaratory judgment action in CV-17-883825, and (2) an administrative appeal in CV-17-887300. The trial court's January 12, 2018 judgment entry granting NEORSD's motion to dismiss was dispositive of GPI's administrative appeal. There was no disposition, however, of GPI's declaratory judgment action or the causes of action GPI asserted in its August 1, 2017 complaint.

> An order of a court is a final appealable order only if the requirements of both Civ.R. 54(B), if applicable, and R.C. 2505.02 are met. *Chef Italiano Corp. v. Kent State Univ.*, [44 Ohio St.3d 86, 541 N.E.2d 64 (1989)], syllabus. Moreover, an order which adjudicates one or more but fewer than all the claims or the rights and liabilities of fewer than all the parties must meet the requirements of R.C. 2505.02 and Civ.R. 54(B) in order to be final and appealable. *Noble v. Colwell*, [44 Ohio St.3d 92, 540 N.E.2d 1381 (1989)], syllabus. An order fully adjudicating a claim and

> accompanied by a Civ.R. 54(B) determination and direction is final and appealable despite the fact that a counterclaim remains pending. *Id.* at 94.
>
> R.C. 2505.02 in relevant part defines a final order as "an order affecting a substantial right in an action which in effect determines the action and prevents a judgment." *Id.* at 88.

Philpott v. Ernst & Whinney, 8th Dist. Cuyahoga No. 61203, 1992 Ohio App. LEXIS 5930, 3-4 (Nov. 25, 1992).

> **{¶13}** Furthermore,
>
> [t]he Ohio Supreme Court has held that where multiple claims and/or parties exist, an order adjudicating one or more but fewer than all the claims or the rights and liabilities of fewer than all of the parties must meet the requirements of both R.C. 2505.02 and Civ.R. 54(B) in order to constitute a final appealable order. *Noble* at 96. The court explained that Civ.R. 54(B) "makes mandatory the use of the language, 'there is no just reason for delay.' Unless those words appear where multiple claims and/or multiple parties exist, the order is subject to modification and it cannot be either final or appealable." *Id.*, quoting *Jarrett v. Dayton Osteopathic Hosp., Inc.*, 20 Ohio St.3d 77, 486 N.E.2d 99 (1985), and *Whitaker-Merrell Co. v. Geupel Constr. Co.*, 29 Ohio St.2d 184, 280 N.E.2d 922 (1972), syllabus. The court emphasized, however, that a trial court cannot turn an otherwise nonfinal order into a final appealable order by merely reciting the language required under Civ.R. 54(B). *Noble* at *id.*; *Cirino v. Ohio Bur. of Workers' Comp.*, 2016-Ohio-8323, 75 N.E.3d 965, ¶ 124 (8th Dist.).

Foster v. Foster, 8th Dist. Cuyahoga No. 106173, 2018-Ohio-1961, ¶ 18.

{¶14} In the instant matter, as noted above, GPI filed (1) a declaratory judgment action in CV-17-883825, and (2) an administrative appeal in CV-17-887300. GPI filed the instant appeal challenging the trial court's January 12, 2018 judgment entry granting NEORSD's motion to dismiss and dismissing

GPI's administrative appeal.

{¶15} The trial court's January 12, 2018 judgment entry is dispositive of and fully adjudicates GPI's administrative appeal. Furthermore, the trial court's judgment entry included an express determination of "no just cause for delay," satisfying the requirements set forth in Civ.R. 54(B). Accordingly, we find that the trial court's order granting NEORSD's motion to dismiss constitutes a final, appealable order because it fully adjudicates GPI's administrative appeal and is accompanied by a Civ.R. 54(B) determination and direction.

{¶16} The trial court's January 12, 2018 judgment entry does not, however, dispose of or adjudicate GPI's declaratory judgment action or the causes of action GPI asserted in its August 1, 2017 complaint. Because GPI's constitutional claims were not fully adjudicated, and remain pending, they are outside the scope of the instant appeal.

{¶17} Based on the foregoing analysis, we will only address the merits of the trial court's judgment dismissing GPI's administrative appeal because GPI's constitutional claims are not properly before this court.

B. Supersedeas Bond Requirement

{¶18} In its sole assignment of error, GPI argues that the trial court erred by granting NEORSD's motion to dismiss based on GPI's failure to post a supersedeas bond as required by R.C. 2505.06.

{¶19} R.C. 2505.06 provides that for administrative appeals involving

questions of law *and* fact,

> no administrative-related appeal shall be effective as an appeal upon questions of law and fact until *the final order appealed is superseded by a bond* in the amount and with the conditions provided in sections 2505.09 and 2505.14 of the Revised Code, and unless such bond is filed at the time the notice of appeal is required to be filed.

(Emphasis added.) Where an administrative appeal is brought *solely on questions of law*, however, the appellant is not required to file a bond. *Ballado v. Cleveland Hts.*, 76 Ohio App.3d 497, 498, 602 N.E.2d 394 (8th Dist.1991), citing *Adrian, Inc. v. Parrott*, 5th Dist. Delaware No. 90-CA-31, 1990 Ohio App. LEXIS 5521, 3 (Nov. 30, 1990); *see Am. Aggregates Corp. v. Concord Twp.*, 5th Dist. Delaware Nos. 90-CA-32 and 90-CA-33, 1991 Ohio App. LEXIS 1655, 5 (Apr. 11, 1991) ("the filing of a supersedeas bond is not a jurisdictional prerequisite to perfect [an] appeal under R.C. [Chapter] 2505 involving questions of law only."). "Pursuant to R.C. 2505.06, it is the duty of appellants to designate the nature of the administrative appeal[.]" *Bell v. Richmond Hts. Equalization Bd.*, 8th Dist. Cuyahoga No. 66404, 1994 Ohio App. LEXIS 5159, 7 (Nov. 17, 1994).

{¶20} This court has recognized that "[i]t is well established that when an administrative appeal concerns questions of law and fact, a supersedeas bond *must* be filed." (Emphasis added.) *Bell* at 6, citing *Ballado*, *Nutter v. Concord Twp. Bd. of Zoning Appeals*, 11th Dist. Lake No. 92-L-118, 1993 Ohio App.

LEXIS 3337 (June 30, 1993), and *Landsittel v. Delaware*, 5th Dist. Delaware No. 89-CA-2, 1989 Ohio App. LEXIS 2736 (June 29, 1989). Furthermore,

> when an administrative appeal concerns questions of law and fact, a supersedeas bond, unless otherwise provided by law, must be filed within thirty days of the final administrative order to perfect the notice of appeal. The requirement of timely filing a supersedeas bond with a notice of appeal is therefore *a jurisdictional requirement rather than one procedural and/or technical in nature. See Ballado, supra*; *Stevely v. Stoll*, 57 Ohio App. 401, 14 N.E.2d 419 [3d Dist.1937]; *Moore v. Cleveland Civil Serv. Comm.*, 11 Ohio App.3d 273, 465 N.E.2d 482 [8th Dist.1983].

(Emphasis added.) *Bell* at 7.

{¶21} Appellate courts in the state of Ohio have disagreed on the consequences of an appellant's failure to file the required bond upon an appeal of questions of law and fact. This court held that an appellant's failure to post the supersedeas bond in a timely manner when required to do so under R.C. 2505.06 mandates the immediate dismissal of all aspects — both questions of law and questions of fact — of an administrative appeal. *Ballado* at 498. In *Ballado*, the appellant's notice of appeal, like the notice of appeal filed by GPI, "dealt with questions of both law and fact, rendering R.C. 2505.06 applicable[.]" *Id.* The Fifth and Tenth Districts have also viewed an appellant's failure to file the required bond as being fatal to the entire appeal. *See Dawes v. Murphy*, 119 Ohio App. 201, 197 N.E.2d 818 (10th Dist.1963); *Landsittel*.

{¶22} Other appellate districts, however, have held that when an appellant fails to post the requisite supersedeas bond, the appeals may proceed,

but only on questions of law. *Pickrel v. Hrobon*, 106 Ohio App. 313, 151 N.E.2d 32 (10th Dist.1958); *Nutter* at 10-11 (the failure to post a supersedeas bond under R.C. 2505.06 is only fatal to the "fact" portion of the appeal); *see also Liberty Savs. Bank v. Kettering*, 101 Ohio App.3d 446, 449-450, 655 N.E.2d 1322 (2d Dist.1995) (when an appellant files an administrative appeal based on questions of law and fact, but fails to file a supersedeas bond, the common pleas court should first determine whether the appeal may continue solely on questions of law; if the appeal can proceed on only questions of law, the trial court should not dismiss the case, but rather proceed with the appeal and limit its review to the questions of law); *Salida Invest. Group v. Lake Cty. Util. Dept.*, 2015-Ohio-5066, 53 N.E.3d 857, ¶ 26 (11th Dist.) (remanding the matter to the trial court based on the court's failure to engage in the analysis set forth in *Nutter* and failure to consider appellant's argument that the appeal was solely on a question of law).

{¶23} In the instant matter, a review of the notice of appeal GPI filed in the trial court indicates that the administrative appeal was based on questions of law and fact. GPI's notice of appeal states, in relevant part, "GPI appeals on *issues of both law and fact.* NEORSD's decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, and/or unsupported by a preponderance of substantial, reliable, and probative evidence." (Emphasis added.)

{¶24} A review of GPI's motion to consolidate CV-17-883825 and CV-17-887300 supports the conclusion that the administrative appeal was not based solely on questions of law, but rather on questions of law and fact. In its motion to consolidate, GPI asserted, in relevant part,

> [t]he two cases arise from the same facts — the clearly erroneous measurement of water consumption by the Cleveland Division of Water at a property owned by GPI, and the resulting bills for water and sewer services issued for approximately six months ending June 8, 2015.
>
> * * *
>
> In [CV-17-887300], GPI is the Appellant in an administrative appeal from an NEORSD order rejecting GPI's dispute over the excessive sewer bills.
>
> The two cases have common *questions of law and fact*, including whether NEORSD sewer service charges that were billed to GPI for the period December 5, 2014, through June 18, 2015, are illegal, arbitrary, capricious, and unreasonable, and have no relationship to sewer services actually provided to GPI during that time or to the record of water consumption upon which the sewer charges were based.

(Emphasis added.)

{¶25} It is evident that GPI's administrative appeal was brought on questions of law and fact, and that GPI's primary concern was a question of fact — NEORSD's determination that the sewer bills were accurate — rather than a question of law. The supersedeas bond requirement was clearly an issue of concern for GPI, prompting GPI to file a motion and an amended motion to

determine the necessity of such bond. *See Bell*, 8th Dist. Cuyahoga No. 66404, 1994 Ohio App. LEXIS 5159, at 10.

{¶26} In ruling on GPI's motions to determine the necessity of a supersedeas bond, the trial court, unlike the lower court in *Salida*, made a determination that the administrative appeal was brought on questions of law and fact, and that the appeal could not proceed on questions of law alone. The trial court further ordered GPI to file a $12,047.76 bond, concluding that the bond exemption set forth in R.C. 2505.12(B) was inapplicable because the appeal was from a final order on a sewer bill.

{¶27} As noted above, in its brief in opposition to NEORSD's motion to dismiss the administrative appeal for failing to post the requisite bond under R.C. 2505.06, GPI argued that it was indigent and, as a result, could not post the $12,047.76 bond set by the trial court. R.C. 2505.11 provides a mechanism for substituting the supersedeas bond requirement in connection with an appeal. GPI could have pursued this course of action in order to perfect its administrative appeal and invoke the trial court's jurisdiction. However, GPI failed to do so.

{¶28} Finally, we find no merit to GPI's argument that the failure to comply with R.C. 2505.06 is only fatal to the questions of fact in the administrative appeal, such that the appeal can proceed on questions of law. GPI acknowledges this court's holding in *Ballado*, but argues that *Ballado* is "an

older case that engaged in only a cursory analysis of the issue." GPI contends that we should instead follow the "better-reasoned decisions" in *Salida* and *Liberty Savs. Bank*.

{¶29} After reviewing the record, we find no basis upon which to depart from this court's precedent. Although GPI advanced this argument in both the trial court proceedings and the instant appeal, GPI fails to identify any question of law it was challenging in the administrative appeal upon which the appeal can proceed, much less a question of law that can be decided without a factual appeal. *See Salida*, 2015-Ohio-5066, 53 N.E.3d 857, at ¶ 25 (in the absence of supersedeas bond, an administrative appeal can proceed on questions of law, "so long as a factual appeal is not necessary to decide the questions of law.").

{¶30} For all of the foregoing reasons, we find that the trial court properly granted NEORSD's motion to dismiss. Based on GPI's failure to comply with R.C. 2505.06's bond requirement, the trial court lacked subject matter jurisdiction over the administrative appeal. GPI's sole assignment of error is overruled.

C. Due Process and Equal Protection

{¶31} As noted above, in opposing NEORSD's motion to dismiss the administrative appeal based on GPI's failure to comply with R.C. 2505.06, GPI argued — for the first time — that R.C. 2505.06's bond requirement violated its constitutional rights to due process and equal protection.

{¶32} The trial court's January 12, 2018 judgment entry, from which GPI filed the instant appeal, references GPI's assertion that R.C. 2505.06's bond requirement violates the constitutional rights to due process and equal protection. Furthermore, the judgment entry acknowledges the general rule that all legislative enactments enjoy a presumption of constitutionality. The trial court did not, however, address the merits of GPI's constitutional challenge or make a determination regarding the constitutionality of R.C. 2505.06 or the statute's bond requirement. Rather, the court's judgment entry reflects that it granted NEORSD's motion and dismissed the administrative appeal on jurisdictional grounds based on GPI's failure to post the requisite bond.

{¶33} As an initial matter, we note that this court generally does not address constitutional issues unless it is absolutely necessary to do so. "'Ohio law abounds with precedent to the effect that constitutional issues should not be decided unless absolutely necessary.'" *Ohioans for Fair Representation, Inc. v. Taft*, 67 Ohio St.3d 180, 183, 616 N.E.2d 905 (1993), quoting *Hall China Co. v. Pub. Util. Comm.*, 50 Ohio St.2d 206, 210, 364 N.E.2d 852 (1977).

{¶34} "Constitutional questions will not be decided until the necessity for a decision arises on the record before the court." *State ex rel. Herbert v. Ferguson*, 142 Ohio St. 496, 52 N.E.2d 980 (1944), paragraph two of the syllabus; *see Interstate Motor Freight Sys. v. Bowers*, 164 Ohio St. 122, 128 N.E.2d 97 (1955), paragraph two of the syllabus ("[w]here a case can be determined upon

any other theory than that of the constitutionality of a challenged statute, no consideration will be given to the constitutional question."). *Accord Fulton v. Bd. of Zoning Appeals*, 8th Dist. Cuyahoga No. 104561, 2017-Ohio-971, ¶ 10.

> Although the doctrine of constitutional avoidance tends to apply most often in the context of appeals, the doctrine applies equally to the trial courts. *See, e.g., Risner v. Ohio Dept. of Natural Resources*, 144 Ohio St.3d 278, 2015-Ohio-3731, 42 N.E.3d 718, ¶ 29 (noting that trial court properly avoided reaching constitutional issue when it decided [the] matter based on statutory-interpretation principles).

Fulton at ¶ *id.*

{¶35} In this case, the record reflects that the trial court avoided reaching GPI's constitutional challenge to R.C. 2505.06, and disposed of the administrative appeal based on statutory-interpretation principles — concluding that R.C. 2505.06 applied, requiring GPI to post a supersedeas bond, and that GPI's failure to do so was dispositive of the case. We further find that the administrative appeal was not the appropriate vehicle for determining the constitutionality of R.C. 2505.06, particularly because GPI did not assert its constitutional challenge to the statute in the declaratory judgment action or its motions for determining the necessity of a supersedeas bond. Rather, GPI raised the issue for the first time in opposing NEORSD's motion to dismiss. Based on GPI's belated constitutional challenge to R.C. 2505.06, the constitutional issue is underdeveloped in the record before this court. *See 75 Pub. Square v. Cuyahoga Cty. Bd. of Revision*, 76 Ohio App.3d 340, 346, 601 N.E.2d 628 (8th

Dist.1991) (a reviewing court "needs a record, and the proponent of the constitutionality of the statute needs notice and an opportunity to offer testimony when a statute is challenged on the basis that it is unconstitutional in its application"); *Cleveland v. Williams*, 8th Dist. Cuyahoga No. 106454, 2018-Ohio-2937, ¶ 19.

{¶36} Finally, we cannot say that R.C. 2505.06's bond requirement denied GPI access to the courts or violated GPI's right to a legal remedy. In *Foster v. Wells Fargo Fin. Ohio, Inc.*, 195 Ohio App.3d 497, 2011-Ohio-4632, 960 N.E.2d 1022 (8th Dist.), this court recognized that a person's constitutional right to access the courts is not unlimited. *Id.* at ¶ 19. Furthermore, this court explained,

> a statute of limitations does not deny access to the courts, but limits that right to a reasonable period of time depending on the type of claim as prescribed by statute. Similarly, dismissal of claims pursuant to procedural rules does not violate one's right to a legal remedy. *Wells v. Visual Sec. Concepts, Inc.*, [5th Dist. Richland No. 04-CA-118, 2005-Ohio-4272], ¶ 27 (holding that the trial court did not err to the prejudice of the appellant's right to legal remedy and to access courts by granting summary judgment because the plaintiffs claims were barred by the statute of limitations).
>
> Foster was not denied his constitutional right to a jury trial. He had access to the court until the applicable statutes of limitations expired, but he failed to bring his claims within the required time.

Foster at ¶ 20-21.

{¶37} In this case, GPI had access to the common pleas court by (1) filing an administrative appeal within 30 days of the final administrative order, and

(2) posting the requisite supersedeas bond pursuant to R.C. 2505.06, or substituting the supersedeas bond pursuant to R.C. 2505.11. GPI did not post the requisite bond and did not substitute the bond requirement. Thus, GPI failed to perfect its notice of appeal.

{¶38} R.C. 2505.06's bond requirement did not deny GPI access to the courts or violate GPI's right to a legal remedy. Had GPI complied with R.C. 2505.06's bond requirement, GPI would have had access to the common pleas court to challenge NEORSD's administrative ruling. However, GPI failed to comply with the procedural rules in order to perfect its administrative appeal.

{¶39} For all of the foregoing reasons, we decline to address GPI's constitutional challenge to R.C. 2505.06.

III. Conclusion

{¶40} After thoroughly reviewing the record, we affirm the trial court's judgment. Because GPI filed an administrative appeal on questions of law and fact, GPI was required to post a supersedeas bond pursuant to R.C. 2505.06. GPI failed to post the requisite bond, and as a result, the trial court lacked jurisdiction over the administrative appeal. Accordingly, the trial court properly granted NEORSD's motion to dismiss.

{¶41} Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

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

FRANK D. CELEBREZZE, JR., JUDGE

MARY EILEEN KILBANE, P.J., and
MARY J. BOYLE, J., CONCUR

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

DEC 06 2018

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By _____ Deputy

APPENDIX B

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Nailah K. Byrd, Clerk of Courts

GPI DISTRIBUTORS, INC.

Appellant

COA NO. 106806

LOWER COURT NO. CV-17-883825 CV-17-887300

COMMON PLEAS COURT

-vs-

NORTHEAST OHIO REGIONAL SEWER DISTRICT

Appellee

MOTION NO. 523873

Date 01/24/19

Journal Entry

Motion by appellant for reconsideration or, in the alternative, to certify a conflict is denied.

Adm. Judge, Mary Eileen Kilbane, Concurs

Judge Mary J. Boyle, Concurs

Frank D. Celebrezze, Jr.
Judge

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