

IN THE SUPREME COURT OF OHIO

NATHAN GAULT, etc., et al.,	:	
	:	Case Nos. 2024-0757 & 2024-0999
Plaintiffs-Appellees,	:	
	:	On Appeal from the Medina
v.	:	County Court of Appeals
	:	Ninth Appellate District
CLERK, MEDINA COUNTY COURT OF	:	
COMMON PLEAS, et al.,	:	
	:	Court of Appeals
Defendants-Appellants.	:	Case No. 9-22-13

**MERIT BRIEF OF AMICUS CURIAE OFFICE OF THE OHIO PUBLIC DEFENDER IN
SUPPORT OF APPELLEE NATHAN GAULT**

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STATEMENT OF THE CASE AND FACTS

For purposes of this brief, amicus curiae does not oppose the statements of the case and facts set forth by the parties in their respective briefs.

STATEMENT OF INTEREST OF AMICUS CURIAE, OFFICE OF THE OHIO PUBLIC DEFENDER

The Office of the Ohio Public Defender (OPD) is a state agency that represents indigent criminal defendants and coordinates criminal-defense efforts throughout Ohio. The primary mission of the OPD is to protect and defend the rights of indigent persons in the criminal and juvenile justice systems.

As amicus curiae, the OPD offers this court the perspective of experienced practitioners who routinely handle criminal cases in Ohio courts, at both the trial and appellate levels. The OPD has an interest in the present case because it involves a significant issue of first impression in this court, one that will foreseeably affect great numbers of indigent defendant-appellants. As amicus curiae, OPD urges this court to apply as written the statute in question here, and affirm the Ninth District Court of Appeals.

ARGUMENT

PROPOSITIONS OF LAW

Proposition of Law I: The plain language of R.C. 2303.20(H) authorizes a county clerk of courts to impose a technology fee for “each page” when a record/index is created. (R.C. 2303.20(H) and R.C. 2303.201(B)(1) applied.).

Proposition of Law II: The “service” referred to in R.C. 2303.201(B)(1) is expressly defined by R.C. 2303.20(H) and authorizes a per-page fee for making a complete record – not a one-dollar limitation – to fund technological advances and computerization of the office of the clerk of the court of common pleas. (R.C. 2303.20(H) and R.C. 2303.201(B)(1) applied.).

ACCEPTED CONFLICT QUESTION

Does R.C. 2303.20(H) authorize the county clerk to impose a computerization/technology fee under R.C. 2303.201(B)(1)¹ of “one dollar for each page of making complete record, including indexing” or one dollar total?

This court frequently has occasion to resolve conflicts involving statutory construction.

Recently, the following basic principles were recognized by the court:

To resolve the issue before this court, we return to a familiar place: statutory interpretation. As we have explained, “[w]hen the statutory language is plain and unambiguous, and conveys a clear and definite meaning, we must rely on what the General Assembly has said,” *Jones v. Action Coupling & Equip., Inc.*, 98 Ohio St.3d 330, 2003-Ohio-1099, 784 N.E.2d 1172, ¶ 12, and apply it as written, *Summerville v. Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, 943 N.E.2d 522, ¶ 18. “In determining whether a statute is ambiguous, we objectively and thoroughly examine the statute, consider each provision in context, and apply ordinary rules of grammar.” *Ohio Neighborhood Fin., Inc. v. Scott*, 139 Ohio St.3d 536, 2014-Ohio-2440, 13 N.E.3d 1115, ¶ 25.

Look Ahead Am. v. Stark Cty. Bd. of Elections, 2024-Ohio-3953, ¶ 18.

¹ The Notice of Certified Question herein, filed on July 11, 2024, mistakenly cites to R.C. 2303.20(B)(1), not R.C. 2303.201(B)(1). There is no subsection 2303.20(B)(1) in the Revised Code, and the appellant’s briefing addresses R.C. 2303.201(B)(1) in all relevant places.

Amicus Office of the Ohio Public Defender begins by respectfully suggesting that the wording of the conflict question is arguably misleading. That is because R.C. 2303.20(H), originally enacted in 1977, does not address and did not anticipate the add-on fee that was designed to further the computerization of clerks' offices in this state, which fee is provided for by language in R.C. 2303.201(B)(1), passed by the General Assembly in 2012, several decades later. Instead, R.C. 2303.20(H) merely establishes the general per-page fee allowable for generation of the *original* appellate record. Thus, R.C. 2303.20(H) has nothing to say about the amount of the *additional* fee created by R.C. 2303.201(B)(1), let alone about whether that fee is to be imposed on a per-page basis, or on a per-service basis. And the plain language of R.C. 2303.201(B)(1) states that the additional fee for funding clerks-office computerization is one dollar "per service," for each of the various services listed therein.

As the Ninth District Court of Appeals correctly found, the "service" described in R.C. 2303.20(H) is "making complete record, including indexing," which is the only relevant language in R.C. 2303.20(H) for purposes of construing R.C. 2303.201(B)(1). Put differently, although R.C. 2303.20(H) inarguably allows the *standard* fee for performing that particular service to be imposed on a per-page basis, that fee structure does not impact the plain-language construction of R.C. 2303.201(B)(1), which explicitly allows an *extra* fee for computerization purposes "per service," not "per page of service." The plain "per service" language must be given effect, which is precisely what the Ninth District did below. Thus, reversal is neither required nor appropriate.

And to the extent that Appellants suggest, at pages 11-12 of their Merit Brief, that R.C. 1.49 (entitled "Determining legislative intent") would guide this court's analysis in the event a statutory ambiguity is found to exist, OPD would respond that here there is no ambiguity. Accordingly, the statutory-interpretation principles set forth in R.C. 1.49 have no relevance to this

case. “[I]nquiry into legislative intent, legislative history, public policy, the consequences of an interpretation, or any other factors identified in R.C. 1.49 is inappropriate absent an initial finding that the language of the statute is, itself, capable of bearing more than one meaning.” *Dunbar v. State*, 2013-Ohio-2163, ¶ 16.

Further, it should be noted that with respect to the conflict case, *State v. Hare*, 2019-Ohio-3047 (5th Dist.), a review of the briefing in that case shows that the appellant there never argued that the computerization fee subsection should be construed on a per-service basis (as it is written), instead of on a per-page basis (as the State argued and the Fifth District Court of Appeals summarily found to be the appropriate manner of construction). Therefore, the Fifth District was not asked to determine which of two competing views was correct; rather, it was merely presented with one view, that of the State, which it adopted in a conclusory manner.

CONCLUSION

“The idea that a court should read between the lines of statutory text to recognize an implied cause of action is a relic from a different time.” *Maple Heights v. Netflix*, 2022-Ohio-4174, ¶ 36 (Kennedy, J., concurring), citing *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001); *see also Slingluff v. Weaver*, 66 Ohio St. 621 (1902), paragraph two of the syllabus (the question “is not what did the general assembly intend to enact, but what is the meaning of that which it did enact.”). Accordingly, Amicus Curiae Office of the Ohio Public Defender respectfully urges this court to affirm the Ninth District Court of Appeals and hold that the plain “per service” wording of R.C. 2303.201(B)(1) controls. Such a construction is the only one that does not require “reading between the lines.” Thus, it is the correct construction. *See BedRoc Ltd., L.L.C. v. United States*, 541 U.S. 176, 183 (2004). (“[O]ur inquiry begins with the statutory text, and ends there as well if the text is unambiguous.”)

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Merit Brief of Amicus Curiae Office of the Ohio Public Defender in Support of Appellee Nathan Gault was forwarded by email to John T. McLandrich, Counsel of Record for Appellants, jmclandrich@mrrlaw.com, and Patrick Perotti, Counsel for Appellee Nathan Gault, pperotti@dworkenlaw.com, on this 7th day of January, 2025.

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