[Cite as *State v. Cummings*, 2011-Ohio-3119.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2010-G-2991**
- vs -	:	
GARY L. CUMMINGS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Chardon Municipal Court, Case No. 2010 TRD 04375.

Judgment: Appeal dismissed.

Dennis M. Coyne, City of Chardon Prosecutor, 111 Water Street, Chardon, OH 44024 (For Plaintiff-Appellee).

Gary L. Cummings, pro se, P.O. Box 1, Conneautville, PA 16406 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} Gary L. Cummings appeals from a judgment of the Chardon Municipal Court which found him guilty of operating his vehicle in violation of two traffic statutes. Mr. Cummings claims the acting judge did not have authority to hear his case; the trial court did not properly arraign him, and the trial court lacked subject matter jurisdiction because the traffic statutes at issue are only regulatory in nature. For the following reasons, we dismiss the appeal as moot.

{¶2} **Substantive Facts and Procedural History**

{¶3} On June 23, 2010, Deputy Jamie Romph investigated a four-vehicle traffic accident involving Mr. Cummings's tractor-trailer and three other vehicles. Deputy Romph issued two citations to Mr. Cummings for (1) following too closely the vehicle in front of him, in violation of R.C. 4511.34, and (2) passing another vehicle on the right side outside of the traffic lane, in violation of R.C. 4511.28.

{¶4} On June 28, 2010, Mr. Cummings filed a "Motion to Dismiss for Lack of Subject Matter Jurisdiction," claiming R.C. 4511.34 and 4511.28 are not "enacted law, but rather administrative regulations emanating from ODPS [Ohio Department of Public Safety], a rule making agency of the executive branch." On July 1, 2010, the court sent a notice for hearing on the motion for July 13, 2010.

{¶5} On July 2, 2010, Judge Mark J. Hassett of the Chardon Municipal Court appointed Attorney Daniel E. Bond as an acting judge for the court from July 12, 2010 to July 16, 2010 "to conduct all affairs before the Court, and to conclude, if necessary, any proceedings in which [Bond] participated that are pending," while he attended a juridical conference and took vacation time.

{¶6} On July 13, 2010, Mr. Cummings, pro se, appeared before Acting Judge Bond for the hearing on his motion to dismiss. The transcript of the hearing reflects that at the beginning of the hearing Mr. Cummings questioned whether the acting judge was a "fully qualified judge in the state of Ohio" and asked if he had an oath on file. The acting judge affirmed that he was a fully qualified judge in the state of Ohio but was not sure if he had an oath on file. Mr. Cummings raised objections for the record to the acting judge's authority to preside over the matter before the hearing took place.

{¶7} On July 15, 2010, Acting Judge Bond, on behalf of the court, issued a decision denying the motion to dismiss. The court found that R.C. 4511.28 and 4511.34 are duly enacted laws of the state of Ohio (Ohio 2002 Session Law – 12th General Assembly, SB. No. 123, effective January 1, 2004). The court also found it has jurisdiction over the defendant pursuant to R.C. 1901.20(A)(1), the statute governing the jurisdiction of municipal courts. Finding subject matter jurisdiction, the trial court dismissed Mr. Cummings' motion to dismiss and scheduled the traffic matter for an initial appearance and arraignment for July 19, 2010. A notice of arraignment was sent to Mr. Cummings.

{¶8} On July 19, 2010, Mr. Cummings appeared briefly before Judge Hassett, back from the judicial conference. The docket reflects that on that day, the court sent Mr. Cummings a notice informing him he was to appear for trial by "magistrate" in the traffic matter.

{¶9} On July 20, 2010, Mr. Cummings filed a "Request for Findings of Fact and Conclusions of Law," and also an "Objection to Trial by Magistrate." On July 21, 2010, the trial took place before Acting Judge Bond.

{¶10} On July 23, 2010, Mr. Cummings filed an "Objection to All Findings of Daniel E. Bond and Motion to Void Same" and "Objection to Trial Held July 21, 2010 for Lack of Due Process and Motion to Void Same." On July 26, 2010, he refiled the documents he had already filed on July 23, 2010, and filed another "Motion to Dismiss for Lack of Subject Matter Jurisdiction."

{¶11} On July 29, 2010, Mr. Cummings filed a "Notice to the Court of Defendant's Recognition of Daniel E. Bond as a Magistrate and Not a Judge Bound by Constitutional Oath, and Reservation of Due Process Right to Not Consent to Same."

{¶12} On August 20, 2010, Acting Judge Bond overruled all the motions and requests by Mr. Cummings. On the same day, he issued a judgment finding Mr. Cummings guilty of the traffic violations as alleged in the citation.

{¶13} On August 31, Mr. Cummings filed a "Dispute of Magistrate's Judgment, Motion to Void Same and Motion to Dismiss." Acting Judge Bond denied the motion, and, after a sentencing hearing on September 8, 2010, imposed a $75 fine, plus costs and fees, for Mr. Cummings' conviction of violating R.C. 4511.34; and a $50 fine, plus court costs and fees, for his conviction of violating R.C. 4511.28. On that same day, Mr. Cummings paid all his fines and court costs.

{¶14} **Appeal**

{¶15} On appeal, Mr. Cummings, pro se, raises the following assignments of error for our review:

{¶16} "[1.] The trial court committed prejudicial error in allowing a Magistrate or Acting Judge to preside in this matter over Appellant's verbal and written objections and demands for an actual duty [sic] oathed Judge.

{¶17} "[2.] The trial court committed prejudicial error in its failure to arraign Appellant in any capacity and entering a plea of not guilty on Appellant's behalf in his absence and without his knowledge or consent, thus sending him to trial in violation of his right to due process.

{¶18} "[3.] The trial court erred in overruling Appellant's Motion to Dismiss for Lack of Subject Matter Jurisdiction and assuming jurisdiction."

{¶19} The law is well-established that once the fine is paid or the sentence is completed for a conviction, the appeal from the conviction is moot, unless evidence is offered to show that the defendant will "suffer some collateral disability or loss of civil rights" from the conviction. *State v. Berndt* (1987), 29 Ohio St.3d 3, 4.

{¶20} In *Berndt*, the defendant was convicted of operating a motor vehicle while under the influence of alcohol, pursuant to a guilty plea. He was sentenced to six months' incarceration and imposed a $1,000 fine, of which all but three days and $150 were suspended. He voluntarily completed his sentence and paid his fine. Thereafter he then filed a motion to vacate his guilty plea, which was overruled by the trial court. He then filed a notice of appeal from the judgment of conviction.

{¶21} Upon appeal, the court of appeals reversed and remanded, holding that the trial court failed to advise the defendant of his right to bail and other rights, in violation of Traf.R. 8(D). The state appealed to the Supreme Court of Ohio. The Supreme Court of Ohio reversed the court of appeals, stating the following:

{¶22} "[W]here a defendant, convicted of a criminal offense, has voluntarily paid the fine or completed the sentence for that offense, an appeal is moot when no evidence is offered from which an inference can be drawn that the defendant will suffer some collateral disability or loss of civil rights from such judgment or conviction." Id. at 4, quoting *State v. Wilson* (1975), 41 Ohio St.2d 236, syllabus. "The burden of presenting evidence that he has such a 'substantial stake in the judgment of conviction' is upon the defendant." Id., citing *Wilson* at 237. "Thus, this appeal is moot unless

appellee has at some point in this proceeding offered evidence from which an inference can be drawn that appellee will suffer some collateral legal disability or loss of civil rights." Id. Upon its review of the record, the Supreme Court of Ohio found that the defendant had offered no such evidence. Noting that the record contained no reference to a claim of collateral disability or loss of civil rights resulting from his conviction, the Supreme Court of Ohio held that the court of appeals should have dismissed the defendant's appeal because the appeal was moot.

{¶23} The mootness doctrine is consistently applied by the appellate courts in Ohio when entertaining an appeal where the appellant has completed the sentence or paid the fine. See, e.g. *State v. Krohn* (Oct. 18, 1996), 11th Dist. No. 96-G-1970, 1996 Ohio App. LEXIS 4608; *State v. Finch*, 2nd Dist. No. 23441, 2010-Ohio-4393, ¶10; *City of Garfield Heights v. McElroy*, 8th Dist. No. 82706, 2003-Ohio-6621, ¶5.

{¶24} In this case, Mr. Cummings voluntarily paid the fines in full on the day the court imposed the fines after a sentencing hearing. Our review of the record does not indicate he presented any evidence to show he may suffer some collateral legal disability or loss of civil rights as a result of the misdemeanor conviction. Under these circumstances, we must dismiss his appeal as moot.

{¶25} Mr. Cummings could have avoided a finding of mootness by seeking a stay in either the trial court or the appellate court. *City of Dayton v. Huber*, 2nd Dist. No. 20425, 2004-Ohio-7249, ¶7 (citations omitted). Instead of availing himself of the available procedure, however, Mr. Cummings voluntarily paid the fines.

{¶26} We are aware that Mr. Cummings is a pro se litigant in this matter. However, the fact that he is proceeding pro se does not entitle him to ignore the

requirements. *Zukowski v. Brunner*, 125 Ohio St.3d 53, 2010-Ohio-1652, ¶8. "It is well established that pro se litigants are presumed to have knowledge of the law and legal procedures and that they are held to the same standard as litigants who are represented by counsel." *State ex rel. Fuller v. Mengel*, 100 Ohio St.3d 352, 2003-Ohio-6448, ¶10 (citation omitted).

{¶27} The appeal is dismissed.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.

concur.