

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

AL GAMMARINO ,	:	APPEAL NO. C-110758
Plaintiff-Appellant,	:	TRIAL NO. A-1104035
vs.	:	<i>JUDGMENT ENTRY.</i>
SYCAMORE TOWNSHIP,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1.(E); 1st Dist. Loc.R. 11.1.1.

According to a letter signed by Harry L. Holbert, Jr., “Sycamore Township Zoning Official,” the Sycamore Township Property Maintenance Board voted to dismiss an appeal by plaintiff-appellant Al Gammarino on March 17, 2011. Holbert’s letter was dated the next day. Sixty-seven days later, on May 24, 2011, Gammarino appealed from the dismissal to the Hamilton County Court of Common Pleas pursuant to R.C. Chapter 2506. The court dismissed his appeal, however, citing his failure to perfect it within 30 days of the board’s decision. *See* R.C. 2505.07. Gammarino now appeals to this court, raising two assignments of error.

In both assignments of error, Gammarino challenges the court’s implicit holding that Holbert’s letter was a final order of the Sycamore Township Property Maintenance Board, thus triggering the time period for Gammarino to perfect his appeal. R.C. 2506.01 defines a final order of “any officer, tribunal, authority, board,

bureau, commission, department, or other division of any political subdivision of the state” as any order that “determines rights, duties, privileges, benefits, or legal relationships of a person * * * .” R.C. 2506.01(A) and (C).

As Gammarino observes, the Second Appellate District has held that such orders must contain:

- (1) the case number, the applicant, and a brief description of the matter before the administrative board;
- (2) a designation as a final decision;
- (3) a clear pronouncement of the board’s decision;
- (4) the signatures of the entire board, the voting majority of the board, or the signature of the clerk for the board expressly certifying that the decision constitutes the action taken by the board; [and]
- (5) a date indicating when the decision was mailed to the applicant.

Am. Aggregates Corp. v. Clay Twp., 2d Dist. Nos. 16310 and 16311, 1997 Ohio App. LEXIS 2293, *16 (May 30, 1997).

These rigid requirements have no basis in R.C. 2506.01, however, and were recently rejected in *A.M.R. v. Zane Trace Local Bd. of Ed.*, 4th Dist. No. 11CA3261, 2012-Ohio-2419, ¶ 23. In that case, following an expulsion hearing by a board of education, a superintendent mailed to the affected student’s attorney a letter that (1) was dated, (2) appeared on school district letterhead, (3) explicitly noted that the superintendent was writing in her capacity “[a]s executive officer for the Zane Trace Board of Education,”; and (4) unequivocally stated that “on December 16, 2009, the

Board unanimously voted to uphold [the student's] seventy-five (75) day expulsion.” *Id.* at ¶ 24. The Fourth Appellate District concluded that this letter constituted a final order under R.C. 2506.01. *Id.*

Similarly, in this case, Holbert's letter (1) was dated, (2) appeared on Sycamore Township letterhead, and (3) unequivocally stated that “on Thursday, March 17, 2011 (per your filed appeal), the Sycamore Township Property Maintenance Board voted to dismiss your appeal.” Although Holbert did not explicitly state his relationship to the board in his letter, based on the totality of the circumstances in this case, we cannot say that this fact precludes us from holding that the letter was a final order under R.C. 2506.01. Indeed it was. We, therefore, overrule the first and second assignments of error, and affirm the judgment of the court of common pleas.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., DINKELACKER and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on September 28, 2012

per order of the court _____.

Presiding Judge