

The questions for the Court are 1) whether Delepine's reliance on erroneous advice from a government employee invokes the doctrine of equitable estoppel, thereby excusing his failure to file his appeal with the correct court within the deadline, and 2) whether Ohio Revised Code 4141.282 should be interpreted as requiring a standard of strict compliance.

The first question turns on whether equitable estoppel can be applied against the government and its agents. Estoppel is a defense asserted when one's reasonable reliance on a misleading representation causes him to act in a way that is actually detrimental to himself. Equitable estoppel prevents one party from taking unfair advantage of another. There is no doubt that the misleading advice Delepine received from the clerk at Seneca County Clerk of Courts Office caused Delepine to file his appeal at the incorrect court.

However, Ohio court decisions have shown a strong refusal to apply equitable estoppel against the government and its agents under circumstances involving the exercise of governmental functions. *Hannan v. Ohio Bureau of Empl. Servs.*, 1999 Ohio App. LEXIS 4934 (OH Ct. App., Cuyahoga County Oct. 21, 1999); see also, *State ex rel. Scadden v. Willhite*, 96 Ohio St. 3d 1469, 772 N.E.2d 1204 (2002).

Two prominent rationales for this policy are 1) avoiding separation of powers conflicts between the judicial and the legislative branches and 2) protecting public funds. By deciding whether a government agent's act shall be the law rather than what Congress dictated to be lawful government actions, the judiciary usurps the legislative branches functions of making the law. Second, federal government funds need to be protected from improperly made commitments. *Heckler v. Community Health Servs.*, 467 U.S. 51 (1984). It would be fiscally impossible to apply estoppel in every case of erroneous misrepresentation by government agents;

such policy would likely cause government agents to give less advice altogether rather than more reliable advice. *Michigan Exp., Inc.*, 374 F.3d 424 (6th Cir. 2004).

However, in some rare cases, equitable estoppel against the government has been applied when, in addition to establishing the basic elements of estoppel (misrepresentation or misconduct, reasonable reliance, and injury resulting from a change made upon that reliance), the person asserting estoppel has shown that the agent was working outside his or her governmental functions or that there was some “affirmative misconduct.” *Premo v. U.S.*, 599 F.3d 540 (6th Cir. 2010). The Court finds the employee at the Clerk of Courts office was acting within her scope of employment, and the Court should address only the question of whether there was affirmative misconduct.

Affirmative misconduct (an intentional wrongful act or representation) is “more than mere negligence; it is an act by the government [or its agent] that either intentionally or recklessly misleads.” *Elia v. Gonzales*, 431 F.3d 268 (6th Cir. 2005). The standard for intentionally or recklessly misleading is incredibly high, as is apparent from the Franklin County Court of Common Pleas’ holding in *Mateer v. Ohio Dept. of Job & Family Servs.*, No. 07AP-966 (10th Dist. Ohio 2008).

In that case, the plaintiff sought an appeal on her unemployment benefits application and was told by a caseworker employed by the Ohio Department of Job & Family Services that “she should not file an appeal because [the] office would resolve the issue.” After the time for filing expired, the caseworker then informed the employee that the issue could not be resolved through the office and that she should file an appeal. The court affirmed the dismissal of the appeal as untimely, citing that the doctrine of estoppel was inapplicable. *Mateer v. Ohio Dept. of Job & Family Servs.*, No. 07AP-966 (10th Dist. Ohio 2008).

Based on the standard of conduct in *Mateer*, there is insufficient evidence to establish affirmative misconduct on the part of the Clerk of Courts employee. Although the employee's advice was incorrect, the employee's actions did not rise to the "requisite level of malfeasance to qualify as 'affirmative misconduct'...the failure to explain [the proper procedure] is at best a negligent error, not a reckless one." *Michigan Exp., Inc.*, 374 F.3d 424 (6th Cir. 2004) at 427, 428. A person seeking information from a government agent assumes the risk that the agent might be wrong. *Gaston v. Board of Review*, 17 Ohio App. 3d 12, 477 N.E.2d 460 (1983). Equitable estoppel is, therefore, inapplicable.

This leads to the Court's second inquiry: Whether Ohio Revised Code 4141.282 should be interpreted as requiring strict compliance for perfecting an appeal. R.C. § 4141.282(A)-(C) reads as follows:

- (A) Thirty-day Deadline for Appeal: Any interested party, within thirty days after written notice of the final decision of the unemployment compensation review commission was sent to all interested parties may appeal the decision of the commission to the court of common pleas.
- (B) Where to File the Appeal: An appellant shall file the appeal with the court of common pleas of the county where the appellant, if an employee, is a resident or was last employed or, if an employer, is a resident or has a principal place of business in this state. If an appellant is not a resident of or last employed in a county in this state or does not have a principal place of business in this state, then an appellant shall file the appeal with the court of common pleas of Franklin county.
- (C) Perfecting the Appeal: The timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court. The notice of appeal shall identify the decision appealed from.

Pro se litigants, like Delepine in this case, are held to "the same rules, procedures, and standards as litigants represented by counsel." *Goodrich v. Ohio Unemp. Comp. Rev. Comm.*, No. 11AP-473, slip op. at 25 (10th Dist. Ohio Feb. 9, 2012); See also, *Zukowski v. Brunner*, 125 Ohio St. 3d 53, 925 N.E.2d 987 (2010).

The Ohio Supreme Court has consistently held that when a statute conveys a right to appeal, to enjoy this right one must strictly adhere to the statute's conditions. *Holmes v. Union Gospel Press*, 64 Ohio St.2d 187, 414 N.E.2d 415 (1980). On March 8, 2012, the Ohio Supreme Court reiterated in *Spencer v. Freight Handlers, Inc.*, Slip Opinion No. 2012-Ohio-880, that the general principals of statutory construction are relied on when interpreting a statute (citing *Cline v. Ohio Bur. of Motor Vehicles*, 61 Ohio St. 3d 93, 573 N.E.2d 77 (1991)) and that the starting point is the statute's text.

Ohio Revised Code § 4141.282(B) clearly states that “[a]n appellant shall file the appeal with the *court of common pleas* of the county where the appellant, if an employee, is a resident or was last employed...” (Emphasis added.)

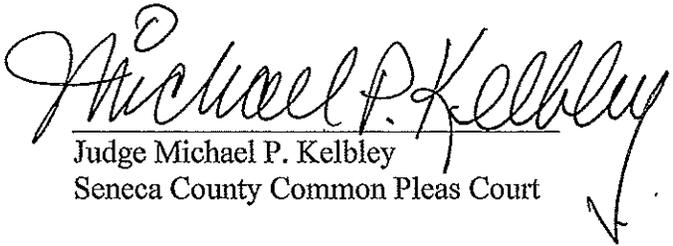
The related sections of the statute must also be construed together to determine the statute's legislative intent and meaning. *Spencer v. Freight Handlers, Inc.*, Slip Opinion No. 2012-Ohio-880 citing *State v. Buehler*, 113 Ohio St. 3d 114, 2007-Ohio-1246, 863 N.E.2d 124. In *Spencer* the Ohio Supreme Court addressed the requirements for vesting jurisdiction pursuant to Ohio Revised Code § 4123.512, holding that including the name of the administrator of the Bureau of Workers' Compensation as a party and serving them with the notice of appeal are not jurisdictional requirements, and the failure of which do not prevent the vesting of subject-matter jurisdiction. The Court came to this conclusion by pointing out that because “[t]he filing of the notice of appeal with the court is *the only act required to perfect the appeal*,” pursuant to Ohio Revised Code § 4123.512(A), “naming and sending notice to the administrator are not requirements to vest the court of common pleas with subject matter jurisdiction.” *Spencer v. Freight Handlers, Inc.*, Slip Opinion No. 2012-Ohio-880.

The Court in *Spencer* found the notice requirements to only require substantial compliance rather than strict compliance. The question is whether such a distinction can be made for the filing requirements in R.C. § 4141.282.

R.C. § 4141.282(C) states that “[t]he timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court...” Given the fact that Section B states where the filing should take place, “timely filing” as construed in Section C strongly implies “timely filing [in the common pleas court]” to perfect the appeal. See *State v. Buehler*, 113 Ohio St. 3d 114, 2007-Ohio-1246, 863 N.E.2d 124. “Filing is accomplished when actual and timely delivery is made to the *correct tribunal*.” *Welsh Dev. Co., Inc. v. Warren Cty. Regional Planning Comm.*, 128 Ohio St. 3d 471 (2011). (Emphasis added.)

Equitable estoppel is not applicable here, and the R.C. 4141.282 should be interpreted as requiring strict compliance in terms of filing with the correct court. For the above reasons, Appellee’s motion to dismiss is granted.

It is so ordered.


Judge Michael P. Kelbley
Seneca County Common Pleas Court

This is a final appealable order, and the Clerk of Courts shall serve copies upon the parties in the manner prescribed by law.