

IN THE SUPREME COURT OF OHIO

JULIE PETERMAN

Plaintiff

vs.

DEAN STEWART, et al.,

Defendants/Appellee :

:  
: Case No. 06-1894  
:  
: On Appeal from the  
: Delaware County Court of Appeals,  
: Fifth Appellate District  
: Case No. 05-CAE-12-0082

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MOTION OF APPELLEE ESTATE OF JOSEPHINE SHIVELY TO STRIKE  
NOTICE TO COURT REGARDING AMICUS CURIAE FILED BY  
APPELLANT PHILIP L. PROCTOR

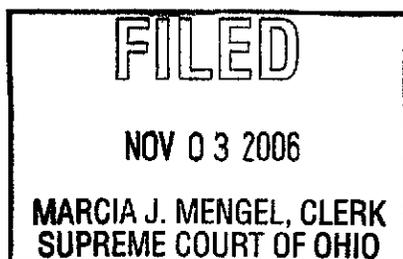
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Philip L. Proctor (0041956)  
(COUNSEL OF RECORD)  
P.O. Box 4803  
Newark, Ohio 43058  
740-349-4716  
APPELLANT - PRO SE

Fred J. Beery (0023286)  
(COUNSEL OF RECORD)  
125 North High Street  
Hillsboro, Ohio 45133  
Tel. (937)393-1907  
Fax (937)393-1908  
fbeery@localnet.com  
COUNSEL FOR APPELLEE, DEAN  
STEWART

Julie Peterman  
P. O. Box 510  
Delaware, Ohio 43015  
APPELLANT - PRO SE

Dennis J. Morrison, Esq. (0000887)  
Lisa A. Thomas, Esq. (0079209)  
(COUNSEL OF RECORD)  
MEANS, BICHIMER, BURKHOLDER  
& BAKER CO., L.P.A.  
2006 Kenny Road  
Columbus, Ohio 43221-3502  
Telephone: (614) 485-2010  
Facsimile: (614) 485-2019  
dmorrison@mabbblaw.com  
lthomas@mabbblaw.com  
COUNSEL FOR APPELLEE, ESTATE  
OF JOSEPHINE SHIVELY



On October 12, 2004, Appellant Philip L. Proctor (“Proctor”) filed a Memorandum in Support of Jurisdiction. On or about October 24, 2006, Appellant Proctor filed a *Notice to Court Regarding Amicus Curiae* (“Notice”). The rules of this Court provide no authority for the filing of the Notice, and while the pleading is captioned a “Notice,” Appellee submits that the Notice is clearly an attempt by Appellant to supplement Appellant Proctor’s Memorandum in Support of Jurisdiction, a practice which is prohibited by the rules of this Court.

Curiously, Appellant Proctor’s Notice notifies the Court that purportedly he has contacted several organizations that “may” be interested in filing an amicus brief in this action. In accordance with the rules of this Court, an amicus curiae may file a jurisdictional memorandum urging the Court to accept or decline to hear a discretionary appeal. S. Ct. Prac. R. III, Section 5. No such action has been taken in this appeal. The rules of Court further provide that, upon acceptance of a discretionary appeal, an amicus curiae may file a brief urging affirmance or reversal of judgment. S. Ct. Prac. R. VI, Section 6. As the Court has not yet made a determination regarding jurisdiction, this appeal is not ripe for the filing of a amicus curiae brief on the merits, and the representations made in Appellant Proctor’s Notice are wholly irrelevant.

As indicated, Appellant Proctor is using the Notice in an attempt to supplement his Memorandum in Support of Jurisdiction. Appellee Estate of Josephine Shively (“Estate”)

sees no other reason for the filing of the Notice. The rules of this Court expressly prohibit an Appellant from supplementing jurisdictional memoranda. S. Ct. Prac. R. III, Section 3. Appellant Proctor is attempting to circumvent the rules of this Court by supplementing his Memorandum in Support of Jurisdiction through a "Notice" pleading, and this act should be prohibited. Finally, Appellee submits that Appellant's Notice adds nothing substantive to Appellant's Memorandum in Support of Jurisdiction and for this reason alone should be stricken.

For the foregoing reasons, Appellee Estate of Josephine Shively respectfully requests that the Court strike the filing of Appellant Proctor's *Notice to Court Regarding Amicus Curiae*.

Respectfully submitted,



Dennis J. Morrison, Esq. (0000887)

Lisa A. Thomas, Esq. (0079209)

**MEANS, BICHIMER, BURKHOLDER  
& BAKER CO., L.P.A.**

2006 Kenny Road

Columbus, Ohio 43221-3502

Telephone: (614) 485-2010

Facsimile: (614) 485-2019

dmorrison@mabbblaw.com

lthomas@mabbblaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing *Motion of Appellee Estate of Josephine Shively to Strike Notice to Court Regarding Amicus Curiae Filed by Appellant Philip L. Proctor* was served upon the following by regular, U.S. Mail, postage paid, on this 30<sup>th</sup> day of October, 2006:

Philip L. Proctor, Esq.  
P. O. Box 4803  
Newark, Ohio 43058

Julie Peterman  
P.O. Box 510  
Delaware, Ohio 43015

Fred J. Beery, Esq.  
125 North High Street  
Hillsboro, Ohio 45133

  
Dennis J. Morrison, Esq. (0000887)