

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
:
:

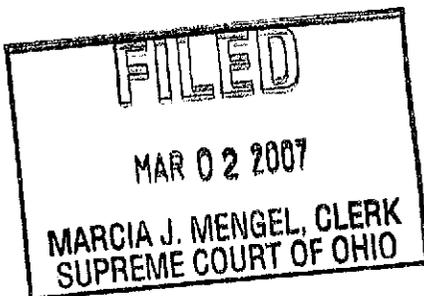
APPELLEE ESTATE OF JOSEPHINE SHIVELY'S
MEMORANDUM CONTRA MOTION OF APPELLANT PHILIP L. PROCTOR
TO REMAND

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



The latest filing of Appellant Philip L. Proctor (“Proctor”), a Motion to Remand, provides this Court with yet another example of the course of conduct which leads the trial court to conclude Appellant Proctor and his client, Julie Peterman, had engaged in frivolous conduct. Over the course of several years, Appellant Proctor has bombarded the court system and the Appellees in this action with a plethora of pleadings, all without merit. With each filing, Appellee Estate of Josephine Shively (“Appellee Estate”) is forced to incur unnecessary attorney’s fees to defend against Appellant Proctor’s frivolous claims, a course of conduct in which there does not appear to be an end in sight.¹

On January 24, 2007, this Court declined to accept jurisdiction over the issues brought before this Court by Appellant Proctor. While Appellant Proctor’s Motion for Reconsideration remains pending with this Court, he is now requesting an order that the case be remanded to the Fifth District Court of Appeals with directions to the Fifth District Court of Appeals to obtain a complete record of the underlying trial court action and conduct a second review of the issues brought before it. Oddly, Appellant Proctor also requests that the trial court be directed to conduct an additional review of the trial court proceedings. Not surprisingly, Appellant Proctor has provided no legal authority supporting his requests for relief, and he is ignoring the extreme burden he is asking this Court to impose upon both the Fifth District Court of Appeals and the Delaware County Court of Common Pleas, each of which have previously conducted thorough reviews of the relevant issues.

¹Appellee Estate questions whether this course of conduct is the exact conduct for which S. Ct. Prac. R. XIV, Section 5 is designed to prevent.

In the appeal before the Fifth District Court of Appeals, Appellant Proctor failed to provide the court with transcripts of the hearings held before the trial court which discussed and analyzed the claim of frivolous conduct. In a Joint Motion filed on February 17, 2006 by the Appellees in the appeal before the Fifth District Court of Appeals, the Appellees' sought an order requiring Appellant Proctor to supplement the record with these transcripts. In response to the Joint Motion, Appellant Proctor argued that these transcripts were not necessary. These "unnecessary" transcripts represent the portion of the record that Appellant Proctor is now asking this Court to order the Fifth District Court of Appeals to complete and review.

Appellant Proctor's Motion to Remand is simply an attempt to have this Court order others to fix the mistakes made by Appellant Proctor. In the appeal before the Fifth District Court of Appeals, Appellant Proctor attempted to shift the burden of providing the reviewing court with the record necessary for a complete a review of the claimed assigned errors to the Appellees. After an unsatisfactory outcome of that attempt (represented by the decision of the Fifth District Court of Appeals brought before this Court, as well as the decision of the Fifth District Court of Appeals before this Court in Case No. 06-2227 which denied Appellant Proctor's Motion for Reconsideration and request to supplement the record), Appellant Proctor is now attempting to shift his burden to the Fifth District Court of Appeals. The duty to provide the appellate court with the necessary transcripts fell upon Appellant Proctor, and after failing to do so, he cannot now shift his burden to the Fifth District Court of Appeals. See *Knapp v. Edwards Laboratories, et al.*, (1980) 61 Ohio St.2d

197, 199 (the “duty to provide a transcript for appellate review falls upon the appellant. This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record”).

Appellant Proctor further requests that this Court issue a stay of a continuous wage garnishment against Appellant Proctor until a decision is rendered on his Motion to Remand. Appellant Proctor has previously requested a stay which this court denied on November 29, 2006. Furthermore, Appellant Proctor’s request for a stay does not comply with S. Ct. Prac. R. XIV, Section 4(A), and must be denied.

Appellee Estate anxiously awaits a conclusion to the constant stream of filings made by Appellant Proctor. Both the Fifth District Court of Appeals and the Delaware County Court of Common Pleas completed the necessary review to render a decision on the issues presented by Appellant Proctor. Appellee Estate of Josephine Shively respectfully requests that this Court deny Appellant Proctor’s Motion to Remand, and that it consider imposing sanctions against Appellant Proctor for his repeated meritless filings in this case.

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@mbbblaw.com
lthomas@mbbblaw.com
COUNSEL FOR APPELLEE, ESTATE
OF JOSEPHINE SHIVELY

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Appellee Estate of Josephine Shively's Memorandum Contra Motion of Appellant Philip L. Proctor to Remand was served upon the following by mailing the same, postage prepaid, on the 2nd day of March, 2007:

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)
Lisa A. Thomas, Esq. (0079209)