

IN THE SUPREME COURT OF OHIO

A.J. BORKOWSKI, JR., : On Appeal from the Lucas County
Appellant, : Court of Appeals, Sixth Appellate
District
v. : Court of Appeals Case No. L-05-1425
CHARLES D. ABOOD, JUDGE, : Supreme Court Case No.: 06-1913
Appellee. :
:

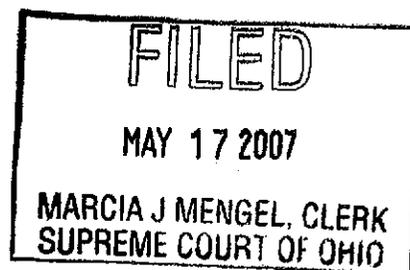
APPELLANT THE HONORABLE JUDGE CHARLES D. ABOOD'S MEMORANDUM IN
OPPOSITION TO MOTION TO CONSOLIDATE SUPREME COURT CASE 2006-1913
WITH SUPREME COURT CASE 2007-0564

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Judge Charles D. Abood*



Memorandum

Introduction

On May 7, 2007, Appellee A.J. Borkowski filed a motion to consolidate this case with Ohio Supreme Court Case No. 2007-0564, *Borkowski v. Markus, et al.* Because the two cases do not involve common parties, questions of law, or questions of fact, the cases should not be consolidated and this motion should be denied.

Analysis

Rule 42(A) of the Ohio Rules of Civil Procedure provides that a court may consolidate actions before it that share common questions of law or fact. However, before the actions may be properly consolidated, the court must determine if there is sufficient commonality of issues to warrant consolidation and if the parties are substantially the same. *Waterman v. Kitrick* (1990), 60 Ohio App. 3d 7, 572 N.E.2d 250, 1990 Ohio App. LEXIS 467. Borkowski seeks to consolidate two cases before this Court that do not involve any similar issues, nor are the parties substantially the same. Therefore, consolidation is inappropriate.

Borkowski v. Markus, et al.

In *Borkowski v. Markus, et al.* (Ohio Supreme Court Case No. 2007-0564), Borkowski brings an original action seeking a writ of *mandamus* or *procedendo*. It appears Borkowski originally asked this Court to compel Judge Richard Markus of the Fulton County Court of Common Pleas, the Sixth District Court of Appeals, and others to enforce Judge Markus' March 14, 2007, orders in Fulton County Court of Common Pleas case nos. 01CV000274, 03CV000330, 04CV000018, and 07M15C00006. (*Complaint in Mandamus and/or In Procedendo with Affidavit and Praeceptum*, ¶ 2; see also, *Respondent Markus, et al.'s Motion to Dismiss*, p. 2).

Borkowski originally named multiple respondents in this action; however, he recently dismissed all respondents except attorney John Shaffer, from whom he is attempting to collect \$228 in court costs. (*Id.*; *Notice of Dismissal of Respondents Markus, et al.*). Thus, the only remaining question in that case appears to be whether Shaffer may be compelled by extraordinary writ to pay these costs.

Borkowski v. Abood

The facts and issues in this case are drastically different than those in *Markus*. In *Abood*, Borkowski alleges Judge Abood improperly ruled in another underlying Fulton County Court of Common Pleas case, thereby depriving the judge of absolute immunity. (*Borkowski*, 2006 Ohio 4913, ¶ 7; Complaint ¶ 5.) The issue presented to this Court is whether Judge Abood is protected by absolute immunity, notwithstanding any alleged procedural defects in his ruling. (*See generally* Merit Brief of Appellant the Honorable Judge Charles D. Abood.) This is a strictly legal question, wholly separate from any issues presented in *Markus*.

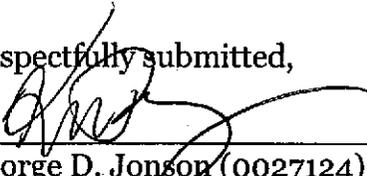
Judicial immunity is presumably not at issue in *Markus*, as the only remaining Respondent is attorney John Shaffer. Furthermore, the two cases do not involve the same parties, allegations, or facts. The only similarity between the cases is that they share one party (Borkowski) and, at one time, different Ohio judges were named as parties. Consolidating the cases would only work to confuse the issues and waste valuable judicial resources.

Moreover, both of these cases are already substantially briefed—Shaffer has filed a motion to dismiss in *Markus*, and Judge Abood’s Reply Brief is due on May 29. Consolidating the cases at this juncture would delay the proceedings, which defeats the very purpose of consolidation.

Conclusion

For the foregoing reasons, Appellant Judge Abood respectfully requests this Court deny Appellee's Motion.

Respectfully submitted,



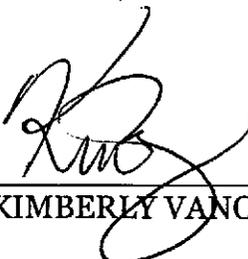
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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2007, a copy of the Memorandum in Opposition was served, via regular U.S. Mail, upon the following:

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