

IN THE SUPREME COURT OF OHIO

IN RE: BRAYDEN JAMES

: On Appeal from the
: Hamilton County Court of
: Appeals, First Appellate
: District of Ohio

:
: Case No.: 05-1994
:

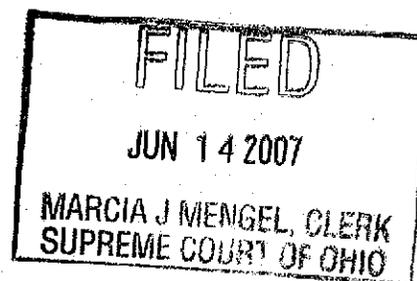
APPELLANTS' MEMORANDUM IN OPPOSITION TO
THE MOTION FOR RECONSIDERATION

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Appellants, Rick and Cynthia, oppose Appellees' motion for reconsideration. Pursuant to S.Ct.Prac.R. XI, reconsideration is appropriate to **correct error** in the decision of the court.¹ This court has held, "A motion for reconsideration shall be confined strictly to the grounds urged for reconsideration [and] shall not constitute a reargument of the case."²

In their motion, Appellees' offered 3 grounds in support of consideration. The second and third listed grounds concerned the necessity for a Rule 52 motion at the trial level and a child's "fundamental right to be raised by his natural parents," respectively. These 2 separate grounds were directly lifted from Appellees' merit brief. Both of these arguments appear under the first issue heading of the first assignment of error in Appellees' merit brief. Furthermore, Appellees again argued these issues before the Court during oral argument in this case.

Appellees' are improperly attempting to reargue a substantial portion of their case through a motion for reconsideration. The pending motion is not designed to "correct error," but instead to urge this Court to reverse itself.

The first claim in the motion for reconsideration claims that paragraph 18 of the decision contains a misstatement of fact and the procedural history of the case. While obviously, this claim was not lifted from a merit brief, the claim nonetheless lacks merit.

In attacking paragraph 18 of the decision, Appellees' are essentially rearguing that a Civil Rule 52 motion for conclusions of law was required for effective appellate review. Specifically, Appellees claim that this Court should not determine that the records fails to

¹ *State ex rel. Huebner v. Village Council* (1996) 75 Ohio St.3d 381, 383. (emphasis added).

² *State ex rel. Shemo v. Mayfield Hts.*, 96 Ohio St.3d 379, 2002-Ohio-4905, ¶9

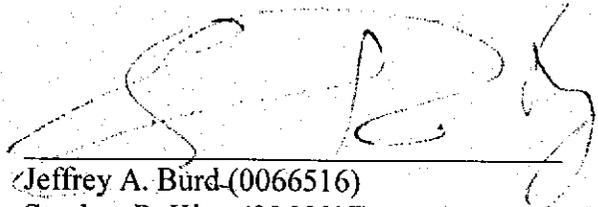
show a change of circumstances without a trial court entry prepared in response to a Civil Rule 52 motion. This argument is indistinguishable from the second issue raised in the motion. Likewise, Appellees' first issue improperly attempts to reargue the merit brief in the same fashion as the second issue.

The decision of this Court reflects the facts of the case and the procedural history with far greater precision than Appellees' brief or motion for reconsideration. A review of the record definitively shows that no change of circumstance hearing was ever conducted on the trial level. The motion for reconsideration, somewhat disingenuously points to portions of the record that demonstrate the changes in the lives of the natural parents-Appellees. Of course, this Court has ruled that the change of circumstances necessary to modify custody must be shown in the child's or custodians' lives.

While it is admirable that the parents attempted to better themselves and to ensure visitation went well, the transcripts do not lie. Pursuant to statute, parents were required to prove a change of circumstances in the lives of the child or grandparents, and they never even tried to do so.

In conclusion, the motion for reconsideration does not demonstrate any errors in this decision of this Court that require correction. Instead, the motion reargues the issues contained in the merit briefs. As a result, the motion should be denied.

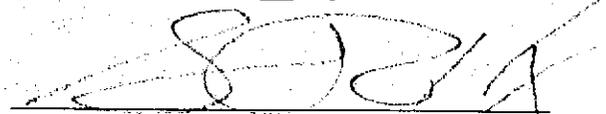
Respectfully submitted,



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PROOF OF SERVICE

I hereby certify that a copy of the foregoing was served on Mr. Ross M. Evans, Ms. Tawanda Edwards, and Mr. Scott Kravetz, counsel of Appellee, 105 E. Fourth Street, Suite 400, Cincinnati, Ohio 45202 by ordinary U.S. mail on this 15th day of June 2007.



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