

IN THE SUPREME COURT OF OHIO

STATE ex rel. Gary Otten : Case No. 2008-0054

Relator :

v. :

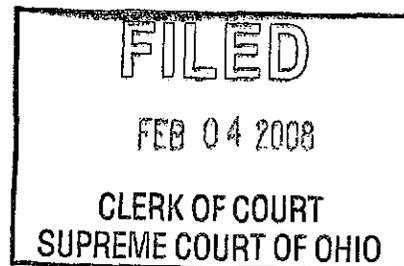
THE HONORABLE :
STEPHANIE A. WYLER :

Respondent :

MEMORANDUM IN OPPOSITION TO RESPONDENT'S
MOTION TO DISMISS

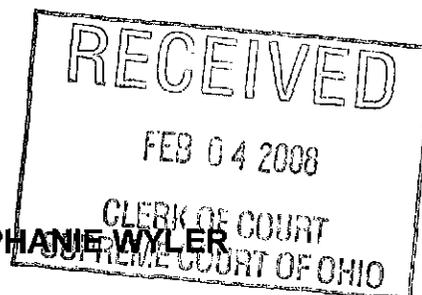
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MEMORANDUM IN OPPOSITION

Respondent, The Honorable Stephanie A. Wyler of the Clermont County Juvenile Court by and through Assistant Prosecutor, David Hoffman, has moves this Court to dismiss the procedendo action for the reason that the Relator has failed to state a claim upon which relief can be granted. However, as is evident from the transcript attached to Respondent's Motion, on the record Judge Wyler has acknowledged her mistake in not issuing a full decision on all issues regarding parenting and support and in essence concedes that further action is required.

The judge's contention that the pending appeal before the First District Court of Appeals somehow handcuffs her from moving forward with final resolution on all issues is incorrect as this matter deals only with Judge Cissell's refusal to lift his stay regarding the adoption proceedings pursuant to the mandates of *In re Pushcar*.

It is clear that his refusal to lift the stay is not a final appealable order to begin with, because an order granting or upholding the stay does not affect a substantial right in the matter; it does not prevent a judgment in the action nor does it prevent plaintiff from being afforded a meaningful or effective remedy. By his upholding the stay, Judge Cissell merely put the case on hold pending the outcome of the Juvenile matter. Therefore his decision was not a final appealable order and the First District Court of Appeals does not have jurisdiction to consider the merits of the plaintiff's argument to begin with. (See *Christina Bruntz, et al, Appellants v. Alltell Corporation, Appellee*, 9th District C.A. No. 04CA008591; 2005 Ohio 3350). Since it is clear that there was no basis for such appeal, it does not affect the Judge Wyler's ability to proceed on the parenting and support issues pending in the Clermont County Juvenile Court. The only

potential impediment to her proceeding to a full and final judgment on all parenting and support issues which was the Twelfth District Appeal filed and subsequently dismissed by Relator Gary Otten which leaves Judge Wyler with the clear ability and acknowledged duty to proceed to judgment.

WHEREFORE, it is respectfully requested that this Court issue a Writ of Procedendo mandating that the Clermont County Juvenile Court proceed on resolution of all issues without delay.

Respectfully submitted,

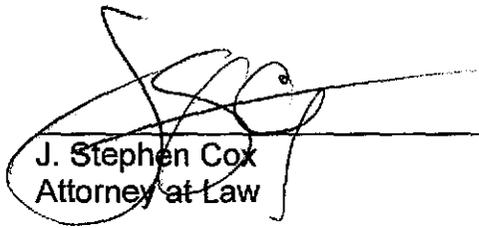


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon David H. Hoffmann, Assistant Prosecutor, attorney for respondent, 123 North third Street, Batavia, Ohio 45103, and Michael R. Voorhees, Voorhees & Levy, LLC, Attorneys for Defendants Susan Tuttle, nka Susan Crooks, 11159 Kenwood Road, Cincinnati, Ohio 45242, this 26 day of January, 2008.



J. Stephen Cox
Attorney at Law