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### APPENDIX A

Journal Entry of the COURT OF APPEALS NINTH JUDICIAL DISTRICT of Summit  
County, Ohio

**EXPLANATION OF WHY THIS CASE IS A CASE OF  
PUBLIC OR GREAT GENERAL INTEREST AND  
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

This case raises a constitutional issue as it greatly effects the public at large in that a civil court can issue a second punitive judgment in a case that was already tried once in a criminal court, and thus violating the 5th amendment of the US Constitution.

The U.S. Supreme Court has also held that the right against double jeopardy precludes only subsequent criminal proceedings. Courts have drawn the distinction between criminal proceedings on the one hand, and civil or administrative proceedings on the other, based on the different purposes served by each. Criminal proceedings are punitive in nature and serve two primary purposes: deterrence and retribution. Civil proceedings are more remedial; their fundamental purpose is to compensate injured persons for any losses incurred. Because civil and criminal remedies fulfill different objectives, a government may provide both for the same offense.

The distinctions between criminal and civil proceedings and between punitive and remedial remedies is not semantic, and have raised this legal issue. Courts have recognized that civil remedies may advance punitive goals. When they do, double jeopardy questions surface. For example, a civil Forfeiture or civil fine, although characterized by the legislature as remedial, becomes punitive when the value of the

property seized or the amount of the fine imposed is "overwhelmingly disproportionate" to society's loss (United States v. Halper). This principle was exemplified when the U.S. Supreme Court prohibited seeking a \$130,000 civil penalty against a man who previously had been sentenced to prison for the same offense of filing \$585 worth of false Medicare claims (United States v. Halper).

The question in United States v. Halper was:

Does imposition of the penalty amount to a "punishment" governed by the Double Jeopardy Clause of the 5th Amendment?

Conclusion:

Yes. Justice Harry Blackmun, on behalf of a unanimous Supreme Court, wrote that while previous cases had held penalties under the Act to be civil in nature, that did not foreclose the possibility of the penalty being so extreme and so unrelated to the actual damages as to constitute "punishment."

The Appellee, in this case, Ms. Kazoun, has filed twice the same charge against Appellant Mr. Kazoun causing him to be tried twice for the same offence and same accusation. The first charge, in a criminal court, was filed before the same charge was later made in the civil court. Appellant Mr. Kazoun was found not guilty in the criminal court, and the protection order granted by the criminal court to Ms. Kazoun while the criminal trial was ongoing was revoked since she was found not entitled to have such protection. Ms. Kazoun had made those same charges later in the civil court. Her aim in

the civil court and the civil court judgment order were punitive and punishing. The results were punitive because Appellant Mr. Kazoun was prevented his rights to live with, see, and contact his children, and to be in the same space they are, and his rights for peace of mind from anxiety were also taken away by having to worry about being in the same space as Ms. Kazoun.

Thus Mr. Kazoun was tried for the same offense, in the criminal case being not found guilty, and in the second time in the civil case, only to be given punitive orders (as opposed to remedial), where such judgments are in conflict with the US Supreme Court decisions, and in conflict with the right to not be tried under Double Jeopardy rule of the 5<sup>th</sup> Amendment of the US constitution.

Further more, this issue is of public interest as it relates to parental rights where a Magistrate issued a Civil Protection Order, by abuse of discretion, due to the weight and sufficiency of the evidence of the case, by including the children as protected persons. In effect, a mother, in this case, can simply file for a CPO order in a court, in which a magistrate can be too anxious to err on the safe side, and thus grants the CPO, and as a result, deprives the father of his children. The CPO can serve as a quick run-around the law to take away the children from one of the parents, who is now left to fight a legal battle from a very disadvantaged point. In this case for example, It was 4 months before the father was able to see his children after the ex-wife filed the CPO, and by then, much indoctrination of the children has been done, where the record shows that the father was never a harm to the children, and no evidence was presented in court of harm, except for

the person making the allegation, in the hope of turning an existing joined custody, into single custody, and thus for the accuser to be able to have financial support as well as a result (thru child support).

That a person can file for a Civil Protection Order and be granted it immediately can be a major harm to all parents who if their spouse or ex-spouse was aware of this CPO option in the law, can use such procedures as an immediate and short-cut, to take full and sole custody of the children, is a major threat to the right of most Ohioans who are parents, and is also a grave infringement to the rights of the Ohio children who are being deprived of one of their other parent under such circumstance.

The last issue of why this case is of wide public interest is that, while it may be easy to say that when a person files for a CPO (Civil Protection Order), you can use the legal system to defend yourself and fight back. The reality is, as in this case, after a criminal trial in which the father, the Appellant was found not guilty, and the cost and time of such a trial, and after then the same charges were again fought in a civil court, and the costs and time involved in that, the father was practically financially drained and bankrupt and unable to pay for his civil court lawyers, having to change them several times, and having to file the appeals himself as a result, and having been deprived of his children, as he is now, while the legal system works its way on this case. This is a very heavy cost, in which time lost to be with the children has been lost, as it has been two years on this case, time which neither money nor other court remedies may ever be able to compensate this father for such a loss.

## STATEMENT OF THE CASE AND FACTS

The parties were married in 1988. They have two children, to-wit: Alexander, d.o.b. 9/21/98 and Nicholas, d.o.b. 10/29/00. The parties were divorced in 2003 (Case No. 2002 04 1258). The parties again began living together and on August 13, 2006 Petitioner alleged an incident at their residence and Defendant was arrested for domestic violence, Cuyahoga Falls Municipal Court Case No. 2007 CRB 00200. He was subsequently acquitted at jury trial. On January 1, 2007, Petitioner filed and acquired an ex-parte CPO. This matter was heard at a full civil protection hearing, which was held over a period of two days.

The Court on June 6, 2007 issued a Civil Protection Order on behalf of the Petitioner, Christine A. Reed Kazoun. The Court also included as protective persons the two children, Alexander and Nicholas. It is from this Civil Protection Order (CPO) that the Respondent objects. Appellee testified as to an incident occurring on or about November 14, 2006 alleging that she has been assaulted by the Appellant. Appellee acknowledged at this time that the children were at school and not at home. Appellee also attempted to portray the Appellant as being extremely controlling. The Petitioner called three lay witnesses to support her position. Witnesses included Debra Adams, a close friend of Petitioners and former babysitter; Michelle Copley, a former co-worker and close friend whom she's known for approximately 20 years; and her sister, Bea-Bet A. Tafini.

The court erred in its decision to grant the CPO.

## ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Regarding the court decision being in conflict with the US Constitution:

Appellant Mr. Kazoun was acquitted in the criminal domestic violence case in Cuyahoga Falls, associated with this alleged incident. Ms. Kazoun was issued a Temporary Protection Order (TPO) at the time, while the case criminal case was ongoing. The TPO was revoked by the jury by finding Appellant Mr. Kazoun “not guilty” of the alleged charges.

The Fifth Amendment to the U.S. Constitution provides, "No person shall ... be subject for the same offence [sic] to be twice put in jeopardy of life or limb." This provision, known as the Double Jeopardy Clause, prohibits trying individuals for the same crime on more than one occasion, or imposing more than one punishment for a single offense.

The U.S. Supreme Court has also held that the right against double jeopardy precludes only subsequent criminal proceedings. Courts have drawn the distinction between criminal proceedings on the one hand, and civil or administrative proceedings on the other, based on the different purposes served by each. Criminal proceedings are punitive in nature and serve two primary purposes: deterrence and retribution. Civil proceedings are more remedial; their fundamental purpose is to compensate injured persons for any losses incurred. Because civil and criminal remedies fulfill different objectives, a government may provide both for the same offense.

The distinctions between criminal and civil proceedings and between punitive and remedial remedies is not semantic, and have raised this legal issue. Courts have recognized that civil remedies may advance punitive goals. When they do, double jeopardy questions surface. For example, a civil Forfeiture or civil fine, although characterized by the legislature as remedial, becomes punitive when the value of the property seized or the amount of the fine imposed is "overwhelmingly disproportionate" to society's loss (United States v. Halper). This principle was exemplified when the U.S. Supreme Court prohibited seeking a \$130,000 civil penalty against a man who previously had been sentenced to prison for the same offense of filing \$585 worth of false Medicare claims (United States v. Halper).

United States v. Halper

Docket: 87-1383

Citation: 490 U.S. 435 (1989)

Appellant: United States

Appellee: Halper

The question in United States v. Halper was:

Does imposition of the penalty amount to a "punishment" governed by the Double Jeopardy Clause of the 5th Amendment?

Conclusion:

Yes. Justice Harry Blackmun, on behalf of a unanimous Supreme Court, wrote that while previous cases had held penalties under the Act to be civil in nature, that did not foreclose the possibility of the penalty being so extreme and so unrelated to the actual damages as to constitute "punishment."

The Appellee, Ms. Kazoun, has filed twice the same charge against Appellant Mr. Kazoun causing him to be tried twice for the same offence and same accusation. The first charge, under a criminal court (CUYAHOGA FALLS MUNICIPAL COURT , Criminal / Traffic Docket, Case# 2006CRB04037), was filed before the same charge was later made in the civil court. Appellant Mr. Kazoun was found not guilty in the criminal court, and the protection order granted by the criminal court to Ms. Kazoun while the criminal trial was ongoing was revoked since she was found not entitled to have such protection. Ms. Kazoun had made those same charges later in a civil court. Her aim in the civil court and the civil court judgment order were punitive and punishing. The results were punitive because Appellant Mr. Kazoun's rights were taken away to live with, see, and contact his children, and to be in the same space they are, and his rights for peace of mind from anxiety were also taken away by having to worry about being in the same space as Ms. Kazoun, for example, exercising at his sports club, at the same time, without fear of being arrested for a CPO violation. These results are also punitive in limiting Mr. Kazoun's actions and ability to move freely and make contact with Ms. Kazoun, even though he has no interest in such a contact with Ms. Kazoun beyond those related to communicating

with her regarding issues that relate only to the children. Therefore, this civil proceeding constitutes a violation of Mr. Kazoun's 5th amendment of constitutional rights.

Regarding the Magistrate's decision being an abuse of discretion in adding the children to the CPO:

Witness Debra Adams, friend of the Appellee, acknowledged that she's known the Appellee, Ms. Kazoun, for over five years and she was the babysitter almost daily until approximately a year ago when Petitioner quit working. They talked by phone and in person since that time (Tr.p.66). Further, upon questioning by Petitioner's counsel she stated the following:

Q: Did you observe any behaviors of Mr. Kazoun that were controlling?

A: While I was at the house – no.

Q: Okay, did you ever overhear him saying things to her that were mean or manipulative or –

A: No

Court transcripts of all witnesses shows, at NO TIME, and at NO PLACE in the transcript, was there a single witness that claimed the children were ever hit, abused, or even yelled at, during the entire period the two were married and when they lived together.

Testimony page 239, about how the father treats his children, by refusing to ever hit them, spank them, or even yell at them:

Question (to the Appellee Ms. Christine Kazoun): And you talked about him lecturing the kids. That was his way of discipline or correcting behavior that he didn't like?

Answer. He called it logic.

Question. I'm sorry, I don't mean to interrupt but my question was, that was his way of handling -- correcting behavior or problems, is that true?

(Christine Kazoun )Answer: Possibly.

Question. Okay. Now, and you treated it -- you would handle the same problem differently, correct?

(Christine Kazoun) Answer: No.

Question. Okay. Would you agree that you yell at the kids sometimes?

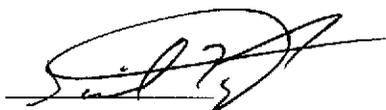
(Christine Kazoun) Answer. Do I? Oh, absolutely.

## CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The appellant requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,

Jamil Kazoun, Appellant

A handwritten signature in black ink, appearing to read 'Jamil Kazoun', written over a horizontal line.

Jamil Kazoun

Appellant

**CERTIFICATE OF SERVICE**

I, Jamil Kazoun, certify that the foregoing motion was sent by ordinary United States mail to Karen Brouse, Attorney for Appellee, at 1013 Portage Trail, Cuyahoga Falls, Ohio, 44221 on Oct 30, 2008.



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Jamil Kazoun

Appellant

## Appendix A

STATE OF OHIO )

)ss:

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

COUNTY OF SUMMIT COURT OF APPEALS  
DANIEL M. HERRON

CHRISTINE KAZOUN SEP 16 11 31 AM '08

C.A. No. 24227

Appellee

SUMMIT COUNTY  
CLERK OF COURTS

v.

JAMIL KAZOUN

Appellant

JOURNAL ENTRY

Upon sua sponte review of the initial filings in this matter, we conclude that we are without jurisdiction to hear the appeal. As this Court has recently held, where a Civil Protection Order is signed by a magistrate and merely approved and adopted by the trial judge, the order is not final and appealable. *Mills v. Mills*, 9th Dist. No. 24063, 2008-Ohio-3774; see also, *Kelly v. Kelly*, 9th Dist. No. 07CA009256, 2008-Ohio-3884. Here, the trial court has only noted its approval and adoption of the magistrate's decision as to the Civil Protection Order and has therefore failed to issue a final, appealable order.

The appeal is dismissed. Costs are taxed to appellant.

The clerk of courts is ordered to mail a notice of entry of this judgment to the parties and make a notation of the mailing in the docket, pursuant to App.R. 30, and to provide a certified copy of the order to the clerk of the trial court. The clerk of the trial court is ordered to provide a copy of this order to the judge who presided over the trial court action.



Judge

Concur:

Whitmore, J.

Dickinson, J.