

IN THE SUPREME COURT OF OHIO

IN RE: MEREDITH POLING,
a minor child

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:
: Case No. 2008-1562
:
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: On Appeal from the Harden
: County Court of Appeals
: Third Appellate District
:
:

: C.A. Case No. 60809
:

MOTION TO STRIKE APPELLANT'S NOTICE OF APPEAL

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OFFICE OF THE
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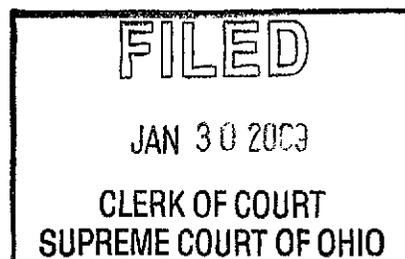
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COUNSEL FOR THE STATE OF OHIO

COUNSEL FOR MEREDITH POLING



MEMORANDUM IN SUPPORT

Minor-Appellee, Meredith Poling, by and through counsel, respectfully requests this Court to strike Appellant's notice of appeal because the State failed to serve the Ohio Public Defender as is required by S.Ct.Prac.R. XIV(2)(A).¹ S.Ct.Prac.R. XIV(2)(D)(1). Alternatively, undersigned counsel asks this Court to order the State to serve its notice of appeal on the Public Defender and to provide undersigned counsel with thirty days to file a motion in opposition to jurisdiction, because Meredith was adversely affected when she did not have counsel to file a motion in opposition to jurisdiction on her behalf. S.Ct.Prac.R. XIV(2)(D)(2).

This Court has recognized the Public Defender's unique role when it adopted a rule requiring prosecutors to serve the Public Defender with appeals and certified conflicts. S.Ct.Prac.R. XIV(2)(A)(3). S.Ct.Prac.R. XIV(2)(A) requires the State to serve the Ohio Public Defender when it files a notice of appeal. The rule also requires the State to note service to the Public Defender on the certificate of service. Here, as the State's certificate of service demonstrates, the State only served trial counsel, and not the Public Defender in this case. (Exhibit 1.)

The rule mandating service on the Ohio Public Defender serves at least one important purpose: it allows the Public Defender to timely determine whether a defendant—who is the subject of a State's appeal—has competent counsel to represent him in this Court. When the Public Defender receives service, a supervising attorney contacts defense counsel to determine whether the child needs representation and whether the child's counsel can adequately represent the child in this Court.

¹ "In a case involving a felony, when a county prosecutor files a notice of appeal under S.Ct.Prac.R. II or an order certifying a conflict under S.Ct.Prac.R. IV, the county prosecutor shall also serve a copy of the notice or order on the Ohio Public Defender."

Here, the State's failure to serve its notice of appeal and motion in support of jurisdiction kept this case outside of the Public Defender's supervisory review. Further, it adversely affected the child-Appellee in this matter because she did not have counsel because trial counsel was not representing her before this Court. Because Appellee did not have counsel, a motion in opposition to jurisdiction was not filed on her behalf.²

The Ohio Public Defender only became aware of Meredith's case after this Court accepted jurisdiction. But, had the Public Defender received notice of the appeal, a memorandum in opposition to jurisdiction would have been filed. Undersigned counsel would have filed a memorandum in opposition to jurisdiction because the Third District Court of Appeals did not reach the merits of the State's appeal and therefore, those issues are not properly before this Court now. Moreover, the seven propositions of law advanced by the State and accepted by this Court are matters of error correction. Because this Court is not a court of error correction, those matters are not properly before this Court.

² Undersigned counsel filed a Notice of Substitution of Counsel on January 15, 2009.

CONCLUSION

The rule requiring service upon the Ohio Public Defender has no function if it is not enforced; therefore, undersigned counsel request this Court to Strike Appellant's Notice of Appeal. Alternatively, the Public Defender requests this Court to provide undersigned counsel thirty days to file a memorandum in opposition to jurisdiction because it will neither impose an undue burden on the State nor set a precedent that will affect Appellee or future litigants.

Respectfully submitted,

The Office of the Ohio Public Defender



By: ELIZABETH R. MILLER #0077362
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COUNSEL FOR MEREDITH POLING

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **MOTION TO STRIKE APPELLANT'S NOTICE OF APPEAL** was forwarded by regular U.S. Mail to Colleen Limerick; Assistant Hardin County Prosecutor, Hardin County Courthouse, One Courthouse Square, Room 50, Kenton, Ohio 43326, this 30th day of January, 2009.



ELIZABETH R. MILLER #0077362
Assistant State Public Defender
Counsel of Record

COUNSEL FOR MEREDITH POLING

#293649

IN THE SUPREME COURT OF OHIO

08-1562

IN THE MATTER OF:)
)
)
MEREDITH POLING,)
)
ALLEGED DELINQUENT CHILD)
)
[STATE OF OHIO - APPELLANT].)

Supreme Court Case No.

On Appeal from the Court of Appeals
of the Third Appellate Judicial District
of Ohio, Hardin County

Court of Appeals Case No. 6-08-09

NOTICE OF APPEAL OF APPELLANT STATE OF OHIO

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FILED
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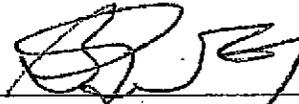
EXHIBIT
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NOTICE OF APPEAL OF APPELLANT STATE OF OHIO

The Appellant, the State of Ohio, hereby gives notice of its appeal to the Supreme Court of Ohio from the judgment of the Hardin County Court of Appeals, Third Appellate Judicial District, filed on June 25, 2008, in Court of Appeals Case No. 6-08-09.

This appeal was taken from the Juvenile Division of the Court of Common Pleas of Hardin County, and it involves a felony and is one of public and of great general interest.

Respectfully submitted,



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Attorney for the State of Ohio

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing, Notice of Appeal, was sent by United States Mail, first-class postage prepaid, upon William F. Kluge, Attorney for the Appellee, Alleged Delinquent Child, at 124 S. Metcalf Street, Lima, Ohio 45801, Bridget Hawkins, *Guardian Ad Litem* for the Child, P.O. Box 549, Bellefontaine, Ohio 43311, and Teresa Glover, Attorney for H.C.J.&F.S., at 175 W. Franklin Street, Kenton, Ohio 43326 on this 8th day of August, 2008.



Bradford W. Bailey (#0017814)
Hardin County Prosecutor
Attorney for the State of Ohio