

MEMORANDUM IN SUPPORT OF JURISDICTION

IN THE SUPREME COURT OF OHIO

Ann Hiddens  
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APPELLANT

-vs-

Barbara and Richard Leibold  
337 Cushing Ave  
Dayton, OH 45429

APPELLEES

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CASE NO.

09-0775

On Appeal from the Montgomery County Court of Appeals,  
Second Appellate District

Court of Appeals  
Case No. CA-21861

DATE: April 25, 2009

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT ANN HIDDENS

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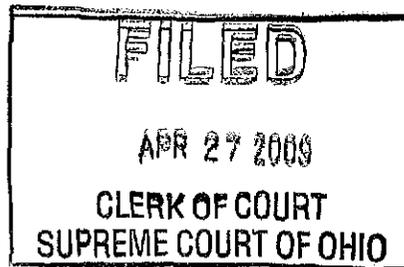
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COUNSELS FOR APPELLEES, THE LEIBOLD



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CERTIFICATE OF SERVICE

The Appellant hereby certifies that a copy of the foregoing was (Type): 1) Mailed/ 2). Faxed/ 3). Emailed/ 4). Hand Delivered to Mr. Dowd at 1 Prestige Place, Ste-700, Dayton Ohio 45342 by Faxed, on this 28th day of April, 2009.

  
\_\_\_\_\_  
Ann Hiddens

## **I. EXPLANATION OF A PUBLIC OR GREAT GENERAL INTEREST AND AFFECTING ON A SUBSTANTIAL CONSTITUTIONAL**

This cause presents one critical issue for the future case law in Ohio: Whether the Civil Rule 60 (A) and (B) can be asserted at the appellate court for voided of the judgment and relief when the judgment was entered by the court of appeals after it lacked of jurisdiction?

In this case, the judgment was entered by the court of appeals when it lacked jurisdiction and the allegation of submitting fraud and misrepresentation of the records also occurred during period of the court of appeal lacked of jurisdiction, and the newly discovery of evidences have significant affect on its final order, the court of appeals ruled, the Appellate Court only reviews the Rule of Appellate Procedure.

The decision of the court of appeals undermines the legislature's intent and ignores the purpose of the Civil Rule 60 (A) and (B) or the term "just" in the Civil Rule 60's language. Furthermore, no language in the Civil Rule 60 (A) and (B) prohibit the motion not to be moved in the Appellate Court nor is the Civil Rule 60 stating a motion must only move in the trial court. Moreover, the court of appeals' decision establishes that when a mistaking, fraud and misrepresentation happen during period of it lacks of jurisdiction there is no remedy for just to the injury party. Even though, it has been held that Ohio courts have inherent power to set aside a **void judgment**; see, the *Lincoln Tavern, Inc. v. Snader*, 165 Ohio St. 61, [59 O.O. 74] (1956). Finally, the court of appeals' decision also affects injury party's procedural due process right as it denies a remedy by due course of law pursuant to Section 16, Article I of the Ohio Constitution.

The implications of the decision of the court of appeals affect and take away the available tool that the language of the Civil Rule 60 provides for--"just". As a result, the proceedings leave a published opinion to be unfairly and erroneously denied a remedy to injustice by due course of law. Likewise, the public interest is affected if the fundamentally core of justice or the plain language of the term "just" in the Civil Rule 60, that have duly adopted by the General Assembly, can be judicially ignored or altered. A part from legislature's intent, which makes this case one of the great public interest, the decision of the court of appeals has broad general significance; it will affect both the future law cases and public confidence in our judicial system. Finally, this case involves a substantial constitutional question, because the court of appeals' decision offends Ohio's constitutional scheme by elevating the Appellate Procedure over the due course of law of the Section 16, Article I of the Ohio Constitution.

If the decision of the court of appeals--elevating the Appellate Procedure over the due course of law allowed standing, the purpose of the Civil Rule 60 (B) designed to combat an injustice would be vanished and frustrated and the public confident in our judicial system would also be ravaged. Therefore, this Court must grant jurisdiction to hear this case and review the erroneous and dangerous decision of the court of appeals.

#### **STATEMENT OF THE CASE AND FACTS**

This appeal arises from the facts that when this case was pending of appeal with the high courts, the new evidences that substantially affect the final orders were discovered, and so the fraud and misrepresentation of record for the judgment entry that entered by the court of appeals on February 13, 2008.

So on February 2, 2009, Hiddens filed the Civil Rule **60 (A) and (B)** for relief and voided of the judgment entered on February 13, 2008 against her by the court of appeals. The fact in this case was on January 18, 2008, Hiddens filed a notice of appeal with this Court; despite the fact that the court of appeals lacked of jurisdiction after notice of appeal had filed, the court of appeals decided to rule on the items that the Leibolds submitted to the court of appeals, in which Hiddens also has no chance to dispute the items that the court of appeals had entered the judgment entry against her on February 13, 2008. Addition during the case was pending in the high court, Hiddens also discovered a present of misrepresentation and fraud in the records that the Leibolds submitted for the judgment entry on February 13, 2008, and the Civil 60 (B) (5) also moved for relief from unjust operation of a judgment when the newly discovery of evidences have substantially affected the final orders. In this period, the Leibolds had also offered settlement terms; unfortunately, the both parties couldn't agree to the terms.

The Leibolds requested for extension of time to respond, but the court of appeals appeared to find that the Leibolds' response was not necessary, because it could rule for the Leibolds and it had. After the court of appeals ruled for the Leibolds by elevating the Appellate Procedure over the due course of law and procedural due process, the Leibolds filed motion for sanction on this issue, even though they did not have to file a response when the court of appeals ruled in their favor.

### **ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW**

Proposition of Law No. 1: The Appellate Procedure could not be elevated over the due course of law, intent of legislatures, and procedural of due process.

The court of appeals could not elevate the Appellate Procedure over the intent of legislatures and the due course of law. Especially, when the language of the Civil Rule 60 (B) specifically expressed "any other reason justifying relief from the operation of the judgment" and the Civil Rule 60 (B) intent for: "motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding...").

In this case, the court of appeals decided to judicially ignored the clean language of the Civil Rule 60 (A) and (B), in which the legislatures intent that the Civil Rule 60 to be used as a tool to combat an unjust operation of a judgment, and/or to protect public interest and safeguard a basic fundamental of fair and just. By elevating the Appellate Procedure over the General Assembly's duly adopted of the Civil Rule 60 (A) and (B), the court of appeals altered the law, took away the available tool to combat unjust, and undermines the legislatures' intent. The fact in this case showed that the Civil Rule 60 (A) and (B) or the intent of legislatures of the Civil Rule 60 is warranted to safeguard a basic of fairness and just in our judicially system. For instance, the court of appeals knew that Hiddens has not get a chance to disputing the records that it relied on to enter the judgment against her, and it also knew when it decided to enter the judgment entry that it lacked of jurisdiction, and now the records that it riled on also have fraud and misrepresentation allegation, and so the newly discovery of evidence that would affect the final order; nonetheless, the court of appeals still overlooked the judicial rule---that when the notice of appeal was filed, that mean it lacked of jurisdiction, so the motion for reconsideration or App. R. 26 (A) that it suggested would not be a correct tool to assert , except the Civil Rule 60. Moreover, the record violating of the procedural due process and a miscarriage of just in this case from judicial bias and prejudice is furthermore illustrated that the Appellate Procedure shouldn't and couldn't allow elevating over the legislature's intent and the law, especially when procedural due process is violated and miscarriage of just occur.

So Hiddens filed a notice of appeal with this Court on January 28, 2008, should give a clear of notice that the court of appeals was lacked of jurisdiction; therefore, the judgment entered on February 13, 2008 by the court of appeals is voided. See Internatl. Lottery, Inc. v. Kerouac, 102 Ohio App. 3d 660, 657 N.E.2d 820 (1995); In re Miller, 33 Ohio App. 3d 224, 515 N.E.2d 635 (1986); Lincoln Tavern v.. Snader (1956), 165 Ohio St. 61 [59 O.O. 74]; Hayes v..

Kentucky Joint Land Bank of Lexington (1932), 125 Ohio St. 359. Under 60 (B) a meritorious defenses, when the court of appeals lack of jurisdiction Hiddens was not able to dispute the Leibolds' items. GTE Automatic Electric v.. ARC Industries (1976), 47 Ohio St. 2d 146 [1 O.O.3d 86]. Similarly, when there is reasonable base--said a fraud and misrepresentation has been committed regard to the record in issue, and Hiddens is affecting by the false statement or a windfall of intentionally submitted false record, so the matter in issue is governed by the 60 (B). See Bankers Trust Co. of California, N.A. v. Munoz, 142 Ohio App. 3d 103, 754 N.E.2d 265 (2001) and Mitchell v. Whitaker, 33 Ohio App. 3d 170, 514 N.E.2d 937 (1986); Estate of Ralph E. Heffner v. Cornwall, 2003 Ohio App. LEXIS 5659 (Nov. 24, 2003). So the newly discovery evidence and/or impeachment evidence; said the evidence is materially impact to the final order that granted against Hiddens both at the trial and appellate court; and similarly, said a judge's participation in a case had also given an appearance of prejudice and judicial bias could also constitute grounds for relief under Ohio R. Civ. P. 60(B) (5). See Wells v. Spirit Fabrication, Ltd., 113 Ohio App. 3d 282, 680 N.E.2d 1046 (1996).

#### **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.

Respectfully Submitted,

  
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Ann Hiddens, Pro Se

APPENDIX - I



FILED  
COURT OF APPEALS

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G. L. W. SMITH  
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MONTGOMERY CO. OHIO  
38

IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY

ANN HIDDENS	:	Appellate Case No. 21861
	:	
<i>Plaintiff-Appellant/ Cross-Appellee</i>	:	Trial Ct. Case No. 05-CV-3885
	:	
v.	:	
BARBARA LEIBOLD, et al.	:	
	:	
<i>Defendant-Appellees/ Cross-Appellants</i>	:	

**DECISION AND ENTRY**  
March 11, 2009

**PER CURIAM:**

This matter is before the court on Appellant, Ann Hiddens', February 13, 2009 "Motion for Relief from Judgment Pursuant to Civil Rule 60." Hiddens requests that this Court set aside its February 13, 2008 decision and entry ordering that costs and attorney fees be awarded to Appellees, Barbara Leibold, et al., payable by Hiddens, in the amount of \$4739.60. We note that Appellees filed a motion for an extension of time to respond to the instant motion on February 27, 2009.

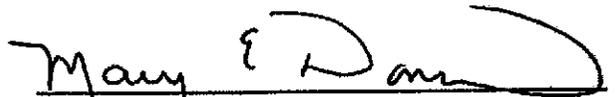
Upon consideration of the foregoing, we do not find Hiddens' February 13, 2009 motion well-taken. Procedure in this Court is generally governed by the Ohio Rules of Appellate Procedure. Therefore, Hiddens' motion for relief under the Rules of Civil Procedure, 60(A) or (B), is not properly before us.

For the sake of argument, however, this Court will review the instant motion as if filed pursuant to App.R. 26(A), which provides, in part, that "[a]pplication for reconsideration of any cause or motion submitted on appeal shall be made in writing *before the judgment or order of the court has been approved by the court and filed by the court with the clerk for journalization or within ten days after the announcement of the court's decision, whichever is the later.*" (Emphasis added.)

In the present case, this Court filed the decision and entry subject to Hiddens' motion for relief from judgment on February 13, 2008. Thereafter, Hiddens filed the instant motion on February 13, 2009, approximately one year after this Court's decision was filed. Accordingly, we find that Hiddens has failed to comply with the requirements of App.R. 26(A), as her motion for relief from judgment is untimely. Moreover, this Court does not find that Hiddens has otherwise raised a justifiable reason why the present motion should be sustained.

Accordingly, Appellant's "Motion for Relief from Judgment Pursuant to Civil Rule 60" is hereby OVERRULED. Furthermore, Appellees' February 27, 2009 motion for an extension of time is OVERRULED as moot.

SO ORDERED.

  
MARY E. DONOVAN, Presiding Judge

  
MIKE FAIN, Judge

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