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IN THE SUPREME COURT OF OHIO

ANN HIDDENS,	:	Case No. 2009-0775
	:	
Appellant,	:	
	:	On Appeal from the Montgomery
vs.	:	County Court of Appeals, Second
	:	Appellate District, Judgment filed
BARBARA LEIBOLD, <i>et al.</i> ,	:	March 11, 2009
	:	
Appellees.	:	Court of Appeals Case No. 21861

MEMORANDUM OF APPELLEES BARBARA LEIBOLD AND RICHARD LEIBOLD  
IN RESPONSE TO APPELLANT'S MEMORANDUM IN SUPPORT OF  
JURISDICTION

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FILED  
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**EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC  
OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A  
SUBSTANTIAL CONSTITUTIONAL QUESTION**

This appeal involves neither an issue of public or great general interest nor a substantial constitutional question. Public interest indicates something in which the public, the community at large, has some interest by which their legal rights or liabilities are affected. *State ex rel. Ross v. Guion* (1959), 161 N.E.2d 800, 803 (citing *State ex rel. Freeling v. Lyon*, 63 Okl. 285, 165 P. 419, 420). A substantial constitutional question or general interest would arise only if this Honorable Court accepted this appeal. In this latest in her incessant actions against the Appellees, the Appellant challenges the Second District Court of Appeals' application of well-settled law: Ohio Civil Rule 60 does not apply in a court of appeals considering an appeal from a lower trial court. The Appellant seeks to avoid this consequence by arguing the Second District's decision "undermines the legislature's intent[.] \* \* \*" (Mem. in Supp. of Jurisdiction at 1 (emphasis added)). Since it is this Court -- not the legislative branch -- to which the Ohio Constitution grants rule-making authority, Section 5(B), Article IV of the Ohio Constitution; *Rockey v. 84 Lumber Co.*, 66 Ohio St.3d 221, 224-25, 1993-Ohio-174, the instant appeal poses neither the sufficient interest nor the substantial constitutional question required to exercise the Court's jurisdiction over a discretionary appeal.

Instead, what this appeal poses is Appellant's effort to avoid sanctions imposed by the lower courts in response to her frivolous and scandalous actions against the Appellees, which, while meritless, have resulted in significant harassment, costs and impugning of their character. The Appellees respectfully request that this Honorable Court join in sanctioning the Appellant for this frivolous appeal and, in addition, declare her to be a vexatious litigator in this forum. S. Ct. Prac. R.

XIV, Section 5. (See Appellants' Mot. for Sanctions, filed contemporaneously herewith).

### STATEMENT OF THE CASE

These parties were before the Court in the case of *Hiddens v. Leibold*, Case No. 2008-0220.<sup>1</sup> When the instant Appellant noticed the appeal in Case No. 2008-0220 on January 28, 2008, the Second District Court of Appeals had granted sanctions pursuant to App.R. 23 on December 14, 2007, but had not yet awarded a sum certain; the court did so on February 13, 2008. Although the Appellant attached the lower court's App.R. 23 decision to her jurisdictional memorandum and complained of the Second District's holding therein, (Mem. in Supp. of Jurisdiction, Case No, 2008-0220, at 1, 3), she did not argue contrary to the decision in her propositions of law, (*id.* at 4-15).<sup>2</sup> In addition, inasmuch as the Second District's December 14, 2007 Decision and Entry left for determination the amount of sanctions, its decision was interlocutory and not final and appealable. Cf. *Smith v. Board of Trustees* (1979), 60 Ohio St.2d 13, 15 (contempt order must impose sanction to be reviewable). The time for Appellant's appeal of the lower court's monetary award was March 31, 2008, S. Ct. Prac. R. II, Section 2(A)(1)(a), which passed without appeal.

This Honorable Court declined to exercise jurisdiction in Case Number 2008-0220 on or about May 21, 2008 and, on or about August 6, 2008, denied the Appellant's motion for reconsideration. On or about August 20, 2008, the Appellant petitioned the United States Supreme

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<sup>1</sup> In fact, this is the third case involving these litigants to come before this Court, all upon the appeal of the instant Appellant: *Leibold v. Hiddens*, No. 2007-1340; *Hiddens v. Leibold*, No. 2008-0220; and *Leibold v. Hiddens*, No. 2009-0775. This Court declined to exercise jurisdiction in the previous two cases. The United States Supreme Court denied Appellant's petitions for certiorari in both previous cases.

<sup>2</sup> See generally, *Estate of Ridley v. Hamilton Cty. Bd. of Mental Retardation & Dev. Disabilities*, 102 Ohio St.3d 230, 2004-Ohio-2629, at ¶ 18, 27.

Court for certiorari to the Second District. The High Court denied certiorari on or about November 10, 2008 and Appellant's motion for rehearing on January 12, 2009.

Next, on or about February 17, 2009, the Appellant filed a "Motion for Relief from Judgment Pursuant [*sic*] to the [*sic*] Civ.R. 60" in the Second District. In this motion, the Appellant sought relief from the lower court's aforementioned award of App.R. 23 sanctions and from a then-inchoate trial court entry of Civ.R. 11 and/or R.C. 2323.51 sanctions arising from the appellate panel's remand of the issue as ordered in a December 14, 2007 opinion. The Appellees sought an extension to file their opposing memorandum and filed their response on or about March 6, 2009. On or about March 11, 2009, the court below issued the decision appealed from herein. The court held Civil Rule 60 did not apply and, *sua sponte*, converted Appellant's motion to an App.R. 26 motion for reconsideration. *Hiddens v. Leibold*, 2<sup>nd</sup> Dist. No 21861, at \*1-2 (Decision and Entry, Mar. 11, 2009) (attached to Appellant's Mem. in Supp. of Jurisdiction as Apx. 1). The court held Appellant's motion untimely and, in addition, held Appellees' opposing memorandum moot. (*Id.* at \*2).<sup>3</sup>

### **STATEMENT OF FACTS**

This Honorable Court is well-aware of the Appellant's efforts to impugn Appellees' character and to harm them through her unremitting abuse of the judicial system. The Appellees provided the Court with the facts that underlie Appellant's regrettable exploitation of the courts in their response to Appellant's jurisdictional memorandum in Case Number 2008-0220. The Appellees need not rehearse them here. This appeal presents the Appellant's effort to escape the consequence of her manipulation -- imposition of App.R. 23 sanctions. The facts essential to this Court's determination

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<sup>3</sup> Subsequently, the Second District granted Appellees' motion for App.R. 23 sanctions.

to decline jurisdiction are presented within the statement of the case, *supra*.

### **ARGUMENT IN OPPOSITION TO PROPOSITIONS OF LAW**

This Honorable Court should decline to exercise jurisdiction because the Second District's March 11, 2009 Decision and Entry comports with established law and procedure. First, it is settled that it is this Court -- and not the General Assembly -- that establishes the procedural rules that govern Ohio courts:

The Civil Rules are the law of this state with regard to practice and procedure in our state courts. The Ohio Rules of Civil Procedure, which were promulgated by the Supreme Court pursuant to Section 5(B), Article IV of the Ohio Constitution, must control over subsequently enacted inconsistent statutes purporting to govern procedural matters. This interpretation is the only one consistent with the original reason for adopting Section 5(B), Article IV of the Ohio Constitution--that of constitutionally granting rule-making power to the Supreme Court.

*Rockey*, 66 Ohio St.3d at 224-25, 1993-Ohio-174 (internal citations and footnote omitted). The Appellant's argument that the appellate panel's decision thwarts legislative intent is frivolous.

Next, this Court clearly stated that the Appellate Rules govern appeals. In *Martin v. Roeder*, the *pro se* appellant moved for Civil Rule 60(B) relief from the Marion County Court of Appeals' judgment affirming the trial court's award of summary judgment. 75 Ohio St.3d 603, 603, 1996-Ohio-451. This Court held "Rule 60(B) is clearly inapplicable to review the court's judgment on appeal. Civ.R. 1(C)(1). The Rules of Appellate Procedure govern appeals from trial courts of record to court of appeals in Ohio. App.R. 1(A)[.] \* \* \*" *Id.* at 604 (other internal citations omitted). The Court went on to hold that, if it had considered the appellant's motion for relief as an application for reconsideration pursuant to App.R. 26(A), the application was untimely.

Finally, the Second District's determination, upon conversion, that the Appellant's

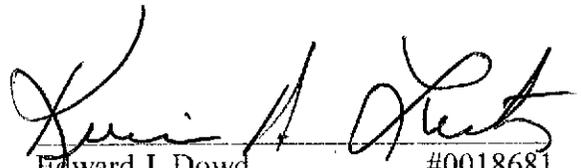
application for reconsideration was untimely, agrees with *Martin* and the Appellate Rules. App.R. 26(A) (application must be filed prior to filing of decision or within ten days after its announcement). Since the Appellant did not file her motion until one year following the decision, the lower court properly denied it as untimely. Because the Appellant may not revisit an appellate court's judgments or final orders through Rule 60(B), this Court should decline jurisdiction.

### **CONCLUSION**

For the reasons discussed above, there is no need for this Honorable Court to exercise its jurisdiction in this case. This case does not involve matters of public or great general interest and does not involve a substantial constitutional question. Appellees respectfully request that this Court decline to review the decision of the Second District Court of Appeals.

Respectfully submitted,

**SURDYK, DOWD & TURNER CO., L.P.A.**



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed by ordinary U.S. Mail to Pro Se Plaintiff-Appellant Ann Hiddens, P.O. Box 292115, Dayton, Ohio 45402 on this 8th day of May, 2009.

A handwritten signature in black ink, appearing to read "Kevin A. Lantz", written over a horizontal line.

Edward J. Dowd  
Kevin A. Lantz