

ORIGINAL

IN THE SUPREME COURT OF OHIO

Meijer Stores Limited Partnership, :

Appellant, :

v. :

Franklin County Board of Revision, et al, :

Appellees. :

Case No. 2008-1248

Appeal from the Ohio Board of Tax Appeals

Case No. 2005-T-441 and 443

**MOTION OF APPELLEE BOARD OF EDUCATION OF
THE LICKING HEIGHTS LOCAL SCHOOL DISTRICT TO
STRIKE APPELLANT'S CITATION TO ADDITIONAL AUTHORITY**

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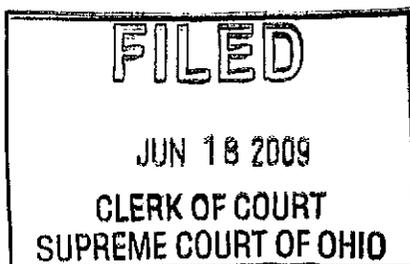
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Revision



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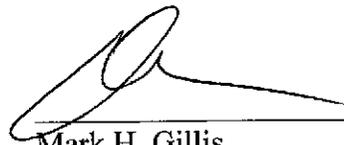
Now comes Appellee, the Board of Education of the Licking Heights Local School District, and moves this Court to strike the Citation to Additional Authority filed by the Appellant on June 12, 2009. The grounds for this motion are that Appellant’s Citation to Additional Authority violated the provisions of S. Ct. Prac. Rule IX, Section 9, in that Appellant’s Citation sets forth two pages of additional argument, which is specifically prohibited by the Rule.

Rule IX, Section 9 of this Court’s Rules specifically states that “a party may file a citation to the relevant authority but shall not file additional argument.” Appellant’s citation to the additional authority was accomplished in the second sentence of the document in question. What followed the citation was two additional pages of argument. The Staff Commentary to Rule IX (2008 Amendments) states that citation to this Court’s decisions as additional authority following oral argument “is unnecessary” but that “doing so does not prejudice anyone.” However, Appellant’s two additional pages of additional argument do, in fact, doubly prejudice Appellee because the arguments were added to the Citation and because the arguments are not correct.

The difference between this Court's *Target* decision (*Target Corp. v. Greene Cty. Bd. of Revision*, Slip Opinion No. 2009-Ohio-2492.), cited by Appellant, and the appeal at hand is clear from a reading of the *Target* decision. In *Target*, only the property owner presented an appraisal report to the BTA and in the present appeal the Board of Education presented an appraisal prepared by an expert appraiser. The Board of Education's appraiser not only provided the BTA with his opinion of value and supported that opinion with detailed appraisal evidence, but also provided the BTA with persuasive evidence showing why Appellant's appraiser did not accurately estimate the true value of Appellant's property. The BTA properly accepted the opinions of appraiser for the Board of Education. In *Target*, this Court noted that the BTA gave emphasis to the fact that no competing appraisal evidence was offered to BTA by the Appellees in "rebuttal" of the owner's appraisal [P9]. This Court then held that "[t]he BTA is responsible for determining factual issues" and held that it "will not reverse the BTA's determination on credibility of witnesses and weight given to their testimony unless we find an abuse of * * * discretion." *Satullo v. Wilkins*, 111 Ohio St.3d 399, 2006-Ohio-5856, 856 N.E.2d 954, [P14]. and *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 112 Ohio St.3d 309, 2007-Ohio-6, 859 N.E.2d 540, [P15]. As this Court has said numerous times, "[t]his court does not sit either as a super BTA or as a trier of fact de novo." *DAK, PLL v. Franklin Cty. Bd. of Revision*, 105 Ohio St.3d 84, 2005-Ohio-573, 822 N.E.2d 790, [P16].

For these reasons, Appellee respectfully requests this Court to strike Appellant's Citation to Additional Authority filed with this Court on June 9, 2009.

Respectfully submitted,

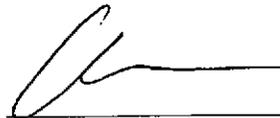


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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing motion was served upon Nicholas M.J. Ray, 3001 Bethel Road, Suite 208, Columbus, Ohio, 43220, William J. Stehle, 373 South High Street, 20th Floor, Columbus, Ohio 45215, and Richard Cordray, Ohio Attorney General, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215 by regular U.S. mail, postage prepaid, this 18th day of June, 2009.



Mark H. Gillis