

**ORIGINAL**

**IN THE SUPREME COURT OF OHIO**

**CLAUDE BEVERLY, ET AL**

**CASE NO. 09-0909**

Plaintiff, /Appellee  
Movants/Interveners

**-VS.-**

**MOTION FOR  
RECONSIDERATION**

**ONICA BEVERLY**

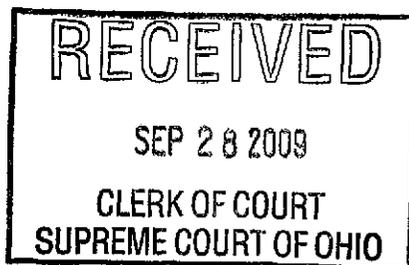
**PLAINTIFF**

AND

**DERRICK E. ROBERTS**

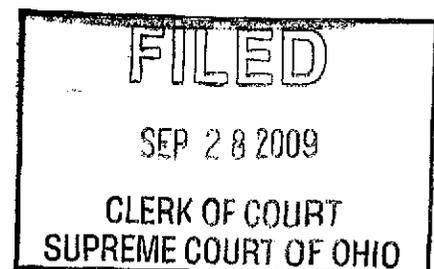
**DEFENDANT/APPELLANT**

NOW comes the Defendant/Appellant, Derrick E. Roberts, by and through his counsel, and hereby moves this court to reconsider his discretionary appeal based upon this court's finding that the Defendant/Appellant does not raise a substantial constitutional question. The memorandum supporting said motion is set forth below.



Respectfully submitted

William D. Bell, Sr., 0027596  
Attorney for Derrick E. Roberts  
830 Main Street - Suite 604  
Cincinnati, Ohio 45202  
(513) 241 - 2355



## MEMORANDUM

In re: Hockstok, (2002) 98 Ohio St. 3d 238., 781 N. E. 2d 971 makes it abundantly clear that as defined by the statutes, the overriding principles in custody cases are the parents' liberty interest in the care, custody, and management of their children (Also see In re: Murray, (1990) 52 Ohio St. 3d 155, 556 N. E. 2d 1169). It is the due process clause of the Fourteenth Amendment of the United States Constitution and section 16, Article I of the Ohio Constitution which protect this interest. In re: Shaeffer Children (1993), 85 Ohio App. 3d 683, 621 N. E. 2d 426. Where there are proceedings to terminate these parental rights, such proceedings interfere with the fundamental liberty interest. In re: Adoption of Mays (1986) 30 Ohio App. 3d 195, 200, 507 N. E. 2d 453. Hence, if the fundamental liberty interest is impeded in this respect, the requisite procedural safeguard in a custody hearing, i.e., a determination of unsuitability on the record, must be followed to insure that custody proceeding is fundamentally fair. *Id.*

Furthermore, the judiciary may make orders involving the exercise of the police power. Board of Commissioners of Franklin County v. Public Utilities Commission (1923) 107 Ohio St. 465; 140 N. E. 87. In other words, it is allowed to make orders which promote health, safety, morals, and general welfare as long as those orders do not violate United States Constitution Amendment XIV section 1 and Ohio Constitution Article Section 1, 16.

Hence, the Clark County Court of Appeals affirmed the trial court's decision without any entry showing that the trial court made an adjudication of unsuitability "on the record." The order affirming the trial court's decision and the trial court's decision itself, under the circumstances in this case, are the judiciary's invalid exercise of police power. This is the case because the court's exercise of police power in this fashion conflicts with the framework of the statutes and the case law governing custody cases between parents and non-parents. This statutory framework and

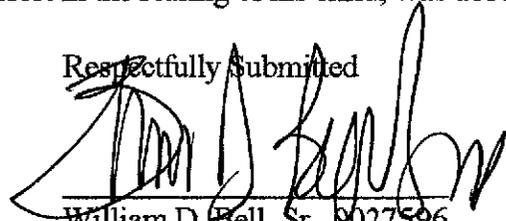
case law are predicated on the overriding principle that natural parents have a fundamental interest in the care, custody and management of their children.

### CONCLUSION

There are procedural safeguards set forth in Ohio Supreme Court and Ohio Appellate precedent for ensuring that a custody proceeding is fundamentally fair where there is a custody dispute between a parent and non-parent are firmly established. These cases make it clear that a determination of unsuitability on the record is the only mechanism for guaranteeing that a parents' due process guarantees are not deprived. In Re: Hockstok (2002) 98 Ohio St. 3d 238k; 781 N. E. 2d 971.

The lower courts, both the trial court and the appellate court, completely ignored this "on the record" requirement when the trial court's entry did not contain language that an unsuitability determination was ever made "on the record." The finding of unsuitability by the trial court was made for the first time in the decision/ entry itself! Where the trial court proceeded in this manner, the Defendant Appellant's trial was defective. This is the case because the constitutional prophylactics essential for a fair custody proceeding and for due process protection against government interference of a natural parent's liberty interest in the rearing of his child, was absent.

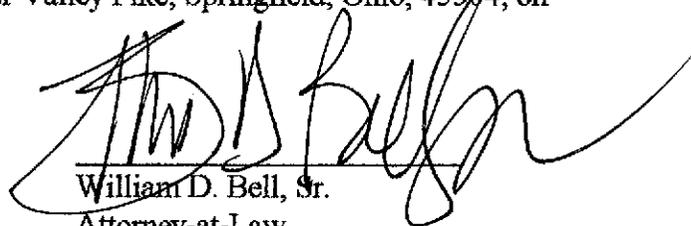
Respectfully Submitted



William D. Bell, Sr., 0027596  
Attorney for Derrick E. Roberts  
830 Main Street - Suite 604  
Cincinnati, Ohio 45202  
(513) 241 - 2355

**CERTIFICATE OF SERVICE**

I, the undersigned attorney, hereby certify that a true and accurate copy of the foregoing Motion for Reconsideration was deposited in U. S. Mail, postage prepaid, to David D. Heier, attorney for Appellee/Interveners-Appellees, 451 Upper Valley Pike, Springfield, Ohio, 45504, on this, the 23th day of September, 2009.



William D. Bell, Sr.  
Attorney-at-Law