

ORIGINAL

IN THE SUPREME COURT OF OHIO

In The Matter of:

C. B.

Dependent Child

Case No. 2010-0180

On Appeal From The
Cuyahoga County Court of Appeals
Eighth Appellate District

Court of Appeals
Case No. 92775

REQUEST FOR EXTENSION OF TIME TO FILE APPELEE'S MERIT BRIEF

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Dependent Child

REQUEST FOR EXTENSION OF TIME TO FILE APPELEE'S MERIT BRIEF

MEMORANDUM OF LAW AND BRIEF

Comes now Appellee Natural Father of C.B. Anthony Wylie, *pro se* hereinafter referred to as "Apellee Father."

Apellee Father pursuant to S. Ct. Prac. R. 14.3 (B) (2)(b) hereby submits his Request for Extension of Time to File Appellee's Merit Brief and first respectfully points out that:

"Equality before the law, like universal suffrage, holds a privileged place in our political system, and to deny equality before the law delegitimizes that system... when these rights are denied, the expectation that the affronted parties should continue to respect the political systems... that they should continue to treat it as a legitimate political system—has no basis." ¹ "Lest the citizenry lose faith in the substance of the system and the procedures use to administer it, we can ill afford to confront them with a government dominated by forms and mysterious rituals and tell them they lose because they did not know how to play the game or should have taken us at our word." Moore v. Price, 914 S.W.2d 318, 323 Ark. (1996) (Mayfield, J. dissenting). "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between

¹ David Luban, Lawyers and Justice: An Ethical Study, 251, 264-266 n.12 (Princeton Univ.)

litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but it consists in its effectiveness as a means to accomplish the end of a just judgment." Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938).

Appellee Father further submits his *Request for Extension of Time to File Appellee's Merit Brief* to the pleading standard as set forth and described by the United States Supreme Court in Haines v. Kerner, 404 U.S. 519 520-521 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972) wherein the Court unanimously held that in a pro se complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.*, at 520-521, quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

Moreover, because the Appellee Father is pro se, the Court has a higher standard when faced with a motion to dismiss, White v. Bloom, 621 F.2d 276 makes this point clear and states:

"A court faced with a motion to dismiss a pro se complaint must read the complaint's allegations expansively, Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972), and take them as true for purposes of deciding whether they state a claim. Cruz v. Beto, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 263 (1972). "Pro se litigants' court submissions are to be construed liberally and held to less stringent standards than submissions of lawyers. If the court can reasonably read the submissions, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with rule requirements." Boag v. MacDougall, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982); Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251

(1976)(quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)); Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); McDowell v. Delaware State Police, 88 F.3d 188, 189 (3rd Cir. 1996); United States v. Day, 969 F.2d 39, 42 (3rd Cir. 1992)(holding pro se petition cannot be held to same standard as pleadings drafted by attorneys); Then v. I.N.S., 58 F.Supp.2d 422, 429 (D.N.J. 1999). "The courts provide pro se parties wide latitude when construing their pleadings and papers. When interpreting pro se papers, the Court should use common sense to determine what relief the party desires." S.E.C. v. Elliott, 953 F.2d 1560, 1582 (11th Cir. 1992). See also, United States v. Miller, 197 F.3d 644, 648 (3rd Cir. 1999) (Court has special obligation to construe pro se litigants' pleadings liberally); Poling v. K. Hovnanian Enterprises, 99 F.Supp.2d 502, 506-07 (D.N.J. 2000). Appellee Father "has the right to submit pro se briefs on appeal, even though they may be inartfully drawn, but the court can reasonably read and understand them." See, Vega v. Johnson, 149 F.3d 354 (5th Cir. 1998). "Courts will go to particular pains to protect pro se litigants against consequences of technical errors if injustice would otherwise result." U.S. v. Sanchez, 88 F.3d 1243 (D.C.Cir. 1996). Moreover, "the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory." Bonner v. Circuit Court of St. Louis, 526 F.2d 1331, 1334 (8th Cir. 1975) (quoting Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir. 1974)). Thus, if this court were to entertain any motion to dismiss this court would have to apply the standards of White v. Bloom.

Furthermore, "if there is any possible theory that would entitle the" Appellee Father "to relief, even one that the" Appellee Father "hasn't thought of, the court cannot dismiss this case." "All litigants have a constitutional right to have adjudicated according to the rule of precedent." See Anastoff v. United States, 223 F.3d 898 (8th Cir. 2000) Further, "Statements of counsel, in

their briefs or their arguments are not sufficient for a motion to dismiss or for summary judgment.” Trinsey v. Pagliaro, D.C. Pa. 1964, 229 F. Supp. 647 and relies on the Court to explain any deficiency concerning Appellee Father’s pleadings as outlined in Plarsky v. C.I.A. 953 F 2d 25(1991) and further points out that “pro se litigants are to be given reasonable opportunity to remedy the defects in their pleadings.” Reynold v. Shillinger 907 F.2d 124, 126, (10th Cir. 1990); See also Jaxon v. Circle K. Corp. 773 F. 2d 1138, 1140 (10th Cir. 1985)

S. Ct. Prac. R. 14.3 (B) (2)(b) provides and states that:

“In an expedited election case or any other case where a stipulation to an agreed extension of time cannot be obtained under S.Ct.Prac.R. 14.3(B)(2)(a), a party may file a request for extension of time to file a brief, the response to a complaint, or evidence. The Supreme Court will grant a party only one extension of time, not to exceed ten days, provided the request for extension of time states good cause for an extension and is filed with the Clerk within the time prescribed by the rules for filing the brief or other document that is the subject of the request.

The Clerk shall refuse to file a request for extension of time that is not tendered timely in accordance with this rule, or if a stipulation to an agreed extension of time has already been filed under division (B)(2) (a) by the party filing the request.” [Emphasis added]

Appellee Father first respectfully points out to this Honorable Court, that in “every appeal involving the termination of parental rights” the Appellee is required to file their Appellee Merit Brief within 20 days from the time the Appellant [s] file their Appellant Merit Brief.

In the case at bar, ****the appeal before this Court, involves the termination of parental rights**** and arises out of an Appeal of a denial of a Motion for Permanent Custody from the Eight District Court of Appeals and a Trial thereof in the Cuyahoga County Juvenile Court.

Accordingly, as the Appellant's jointly filed their Merit Brief on September 20, 2010 which thus requires that the Appellee Father has 20 days from September 20, 2010 until October 12, 2010 (noting first that the 20th day fell both on a weekend day and on Columbus Day) thereafter to either file his Appellee Merit Brief or lieu thereof within the same 20 day period to either request a Stipulation for Extension of Time to File Appellee Brief not to exceed "twenty days." Appellee Father has attempted to obtain stipulated agreement thereto by e-mail on October 9, 2010.

On October 11, 2010 Joint Appellant Attorney Mr. Garver responded by e-mail and advised the Appellee Father that he was in agreement with the twenty day extension of time to file his Appellee Brief.

Also on October 11, 2010 Joint Appellant Attorney Mr. Moriarty responded by e-mail and advised the Appellee Father that he was not in agreement and further requested that the Appellee Father not to list him as a "signatory" therein.

As stated above, the Appellee Father was unable to obtain agreement from opposing parties to a Stipulation for Extension of Time to file his Appellee Brief namely both of the Joint-Appellant's.

Accordingly, the Appellee Father hereby respectfully moves this Court for an Order granting the Appellee Father an extension of 10 days from the faxed filing date of this motion (October 12, 2010) (Appellee has duly included his contact number along with his fax number as required with said fax filing of this Request for Extension of Time to File Appellee Brief)

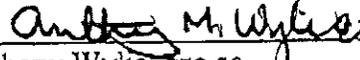
Appellee Father further points out that Court appointed Appellee Counsel for the Appellee Father, Timothy Sterkel filed a Motion to Withdraw on October 1, 2010 which this Court granted on October 5, 2010 as such the Appellee Father is without counsel and thus as result is *pro se*.

Appellee Father has not filed a previous request for an extension of time pursuant to S. Ct. Prac. R. 14.3 (B) (2) (a) and needs the extension of time so that he is accorded the requisite time to review, research, prepare, and draft relevant motions and as well as the additional 10 day extension of time to research, draft, revise, complete and file his Appellee Merit Brief.

Father respectfully points out that *this foregoing request is being timely requested and fax filed* within twenty days of the Appellant's filing of their Appellant's Merit Brief which was filed on September 20, 2010 (*not counting Sat. or Sun. or Columbus Day*) and is an "*appeal involving termination of parental rights*" and thus is an expedited appeal and therefore falls under the providence of the S. Ct. Prac. Rules governing expedited appeals as it involves a constitutionally protected fundamental right, a parents constitutionally protected and fundamental right to ones child as accorded by the Equal Protection provisions of the 14th Amendment of the United States Constitution and its corresponding protections as accorded by the mandates and strictures of due process of law.

WHEREFORE, "for good cause shown" the Appellee Father hereby respectfully moves this Honorable Court for an Order granting the Appellee Father's above aforementioned requested Relief specifically the Requested additional 10 day Extension of Time to file relevant motions and the Appellee Father's Merit Brief

Respectfully submitted,



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CERTIFICATE OF SERVICE

This certifies that a copy of the "Request for Extension of Time to File Appellee Father's Merit Brief" has been faxed, or e-mailed. Individual service provided as denoted by ***asterisks to all parties or their attorneys of record as listed below on this 12th day of October 2010.

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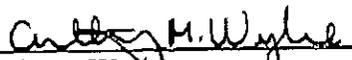
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