

**ORIGINAL**

**IN THE SUPREME COURT OF OHIO**

**STATE OF OHIO, ex rel,** )  
**DENNIS J. VARNAU,** )

**Plaintiff-Appellant,** )

**-vs-** )

**DWAYNE WENNINGER,** )

**Defendant-Appellee.** )

**SUPREME CT. CASE NO. 10-1655**

On Appeal from the Twelfth District  
Court of Appeals, Brown County Ohio

Court of Appeals Case No.  
CA2009-02-10

---

**APPELLANT DENNIS J. VARNAU'S MOTION FOR STAY OF BRIEFING  
SCHEDULE-REQUEST FOR EXPEDITED RULING**

---

Thomas G. Eagle (#0034492) COUNSEL OF RECORD  
THOMAS G. EAGLE CO., L.P.A.  
3386 N. State Rt. 123  
Lebanon, Ohio 45036  
Phone: (937) 743-2545  
Fax: (937) 704-9826  
E-mail: [eaglelawoffice@cs.com](mailto:eaglelawoffice@cs.com)

COUNSEL FOR APPELLANT, DENNIS J. VARNAU

**Patrick L. Gregory** (#0001147)  
717 W. Plane  
Bethel, Ohio 45106  
Phone: (513) 734-0950

**Gary A. Rosenhoffer** (#0003276)  
302 E. Main St.  
Batavia, Ohio 45103  
Phone: (513) 732-0300

**FILED**  
NOV 17 2010  
CLERK OF COURT  
SUPREME COURT OF OHIO

COUNSEL FOR APPELLEE, DWAYNE WENNINGER

**RECEIVED**  
NOV 17 2010  
CLERK OF COURT  
SUPREME COURT OF OHIO

Now comes the Appellant, by and through counsel, and moves this Court to issue a stay of the briefing schedule in this case pending resolution of a current Motion, and temporary remand to the lower court for the purposes stated in that Motion.

As grounds for this Motion, Counsel states, and incorporates herein by reference, that this Appellant previously filed in this case (October 4, 2010), a Motion for limited and temporary stay of this appeal and remand to the trial court (the 12<sup>th</sup> District Court of Appeals, in this original action filed there) for the purposes of permitting the lower Court to exercise proper jurisdiction to rule upon a then pending post-judgment Motion (filed pursuant to Ohio Rule of Civil Procedure 60 (B)). That Motion pending before this Court (October 4, 2010) has not yet been ruled upon. It would be the intent of the Appellant, upon resolution of the post-judgment Rule 60(B) Motion by the lower court, and within its jurisdiction, to file an appeal of it, to consolidate that appeal with this one, and have only one series of briefing on the merits of this appeal and on that Motion.

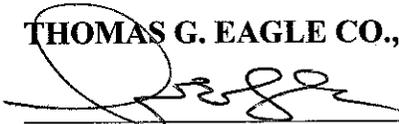
Although the 12<sup>th</sup> District Court of Appeals ruled upon that post-judgment motion, it did so while this Court had acquired jurisdiction over this case, and is therefore a nullity. Sup. Ct. Prac. R. 2.2(D)(1). A stay and remand is required for the lower court to issue a judgment that is within its jurisdiction. See Howard vs. Catholic Social Serv., Inc. (1994), 70 Ohio St.3d 141, 147 (appellate court may remand case to lower court to rule on post-trial motions); State ex rel. East Mfg. Corp. vs. Ohio Civ. Rights Comm. (1992), 63 Ohio St.3d 179, 181; Majnaric vs. Majnaric (1975), 46 Ohio App.2d 157. See also, Holbrook vs. Lexis-Nexis, 169 Ohio App.3d 345, 350, 2006-Ohio-5762, ¶ 18 (Court noting the prior grant of a motion to stay and remand to the lower court to consider a post-judgment 60(B) motion); G & S Mfg. Vs. Lagos & Lagos, 2007-Ohio-1507, ¶ 3 (appeal court recognizing its ability to stay an appeal and order a limited

remand for resolution of pending post-judgment 60(B) motion). Until then, that issue cannot be appealed, and briefing in this case at this time will likely therefore require two series of briefs in the same case, when a stay and remand, and then consolidation, will reduce that to only one.

A stay of this case and a limited remand to the lower court to issue a ruling on that post-judgment Motion, within its proper jurisdiction, is necessary to finalize that proceeding, perfect an appeal of that to this Court, and then consolidate that appeal with this one for the purposes of briefing. The Appellant's Merit Brief in this case is due on *December 1, 2010*. Therefore a stay of the briefing schedule is necessary to efficiently resolve this case in only one appeal, and only one series of briefs, instead of potentially two.

It is therefore requested that the Court issue an order staying the briefing schedule in this case, and granting the Motion originally filed October 4, 2010, for a stay and limited remand to the lower court for a ruling on the post-judgment motion.

**THOMAS G. EAGLE CO., L.P.A.**

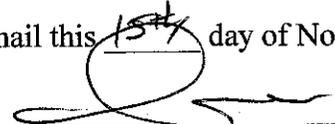


---

**Thomas G. Eagle** (#0034492)  
Counsel of Record for Appellant  
3386 N. State Rt. 123  
Lebanon, Ohio 45036  
Phone: (937) 743-2545  
Fax: (937) 704-9826  
Email: [eaglelawoffice@cs.com](mailto:eaglelawoffice@cs.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served upon Gary A. Rosenhoffer, 302 E. Main St., Batavia, OH 45103, and Patrick L. Gregory, 717 W. Plane, Bethel, OH 45106, Attorneys for Respondent, by ordinary U.S. mail this 15<sup>th</sup> day of November 2010.



---

Thomas G. Eagle (#0034492)