

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

**APPELLEE FATHER ANTHONY WYLIE'S CITATION
TO ADDITIONAL RELEVANT AUTHORITIES**

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Now comes Appellee Father Anthony Wylie, *pro se* hereinafter referred to as "Father" pursuant to S. Ct. Prac. R. 9.8 which states and provides that:

"A party who intends to rely during oral argument on authorities not cited in the merit briefs shall file a list of citations to those authorities no fewer than seven days before oral argument."

In accordance with S. Ct. Prac. R. 9.8 Father hereby cites to the Court the following additional relevant authorities which he will be relying on during oral argument which is currently set for hearing on Wednesday, February 16, 2011 at 9:00 a.m.:

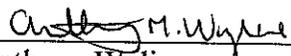
- 1.) State ex rel. Zollner v. Indus. Comm. (1993), 66 Ohio St.3d 276, 278, 611 N.E.2d 830, 832; (Stating that: "It is well settled that we will not consider issues not presented in the trial court.");
- 2.) Foran v. Fisher Foods, Inc. (1985), 17 Ohio St.3d 193, 194, 17 OBR 430, 431, 478 N.E.2d 998, 999; ("We will not consider a claim of error that an appellant failed to raise in the court of appeals.");
- 3.) F. Enterprises v. Kentucky Fried Chicken Corp. (1976), 47 Ohio St. 2d 154, 163; ("This Court will not review questions not presented in the court of appeals.");
- 4.) State exrel. Gutierrez v. Trumbull Cty. Bd. of Elections (1992), 65 Ohio St. 3d 175, 177; ("Appellant cannot change the theory of his case and present these new arguments for the first time on appeal.");

- 5.) Mark v. Mellott Mfg. Co., Inc. (1995), 106 Ohio App. 3d 571, 589 ("Litigants must not be permitted to hold their arguments in reserve for appeal, thus evading the trial court process.");
- 6.) Sperle v. Michigan Dept. of Corrections (C.A.6, 2002), 297 F.3d 483, 494, quoting Corbin v. Baltimore & O.R. Co. (C.A.6, 1956), 234 F.2d 78, 81; (When an appellant makes a contradictory argument on appeal, it has more than just "silently misled" the trial court into the commission of error; instead, it has affirmatively invited the error it complains of on appeal. " " 'The theory upon which the case was submitted and argued in the [trial] court cannot, when an adverse judgment results, be discarded and a new, contradictory theory be substituted and successfully invoked on appeal.' ");
- 7.) State ex rel. Quarto. Mining Co.v. Foreman (1997), 79 OhioSt.3d at 81: (Appellate courts refuse to review contradictory arguments because they offend the purpose behind the waiver doctrine. Rejecting an argument pursuant to the waiver doctrine, "protect[s] the role of the courts and the dignity of the proceedings * * * by imposing upon counsel the duty to exercise diligence in his or her own cause and to aid the court rather than silently mislead it into the commission of error.");
- 8.) Glidden Co. v. Lumbermens Mut. Cas. Co., 112 Ohio St. 3d 470, 861 N.E.2d 109, 2006 Ohio LEXIS 3531, 2006 Ohio 6553, (2006): (Assignments of error filed by an appellee pursuant to R.C. 2505.22 may be used by the appellee as a shield to protect the judgment of the lower court, but may not be used by the appellee as a sword to destroy or modify that judgment.);
- 9.) Henry v. Serey, 46 Ohio App. 3d 93, 546 N.E.2d 474 (1989): (Where an appellee's assignments of error are not advanced pursuant to R.C. 2505.22, the proper practice is to file a timely, independent notice of appeal, pay the proper cost, and have the cross-appeal assigned its own number.);
- 10.) Chapman v. Ohio Dental Bd., 33 Ohio App. 3d 324, 515 N.E.2d 992 (1986)(An appellee who has not filed a notice (cross-appeal) can file cross assignments of error under R.C. 2505.22. However, such assignments of error are only for the limited purpose of preventing the reversal of the judgment under review.);
- 11.) Morgan v. Cincinnati, 25 Ohio St. 3d 285, 496 N.E.2d 468 (1986): (Revised Code 2505.22 authorizes an appellee who has not filed an appeal or cross-appeal nonetheless to file assignments of error in the interest of preventing reversal.);
- 12.) Bryant v. Lawson Milk Co., 22 Ohio 3d 69, 488 N.E.2d 934 (1985): (Under R.C. 2505.22, an appellate court may consider assignments of error raised by an appellee solely for the purpose of preventing reversal of the lower court's judgment.);
- 13.) Loewenstine v. Delta Airlines, Inc., 7 Ohio App 3d 185, 455 N.E.2d 3 (1982): (An appellee who has not filed a notice of appeal can file assignments of error under

R.C. 2505.22 only for limited purpose of preventing the reversal of the judgment under review.);

- 14.) City of Lakewood v. Papadelis 32 Ohio St. 3d 1; 511 N.E.2d 1138; 1987 Ohio LEXIS 340 at 7, citing Dorrian v. Scioto Conserv. Dist. (1971), 27 Ohio St. 2d 102, 56 O.O. 2d 58, 271 N.E. 2d 834, paragraph one of the syllabus: ("The word shall has been consistently interpreted to make mandatory the provision in which it is contained, absent a clear and unequivocal intent that it receive a construction other than its ordinary meaning.");
- 15.) Ohio Revised Code 2503.20 provides and states in pertinent part that: "All such cases shall be reported in accordance with this section before they are recognized by and receive the official sanction of any court." (Effective Date: 04-04-1985; 12-01-2006);
- 16.) Rules for Reporting Opinions "Rule 4" states and provides in pertinent part that: "All court of appeals opinions issued *after the effective date of these rules* may be cited as legal authority and weighted as deemed appropriate by the courts. ")¹

Respectfully submitted,



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¹ Reported vs. Unreported Ohio Decisions: As of May 1, 2002, the Ohio Supreme Court abolished the distinction between "controlling" and "persuasive" opinions, based merely upon whether a case appears in the Official Reporter. Opinions for *all cases decided on or after May 1, 2002 may be cited* as legal authority and "weighted as deemed appropriate by the court"

CERTIFICATE OF SERVICE

This certifies that a true copy of Appellee Father Anthony Wylie's Citation to Additional Relevant Authorities has been faxed or emailed to all parties or their attorneys of record as listed and designated below on this 9th day of February 2011.

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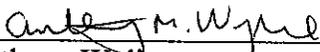
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