

ORIGINAL

IN THE SUPREME COURT OF OHIO

T.M.

Appellant,

vs.

J.H.

Appellee.

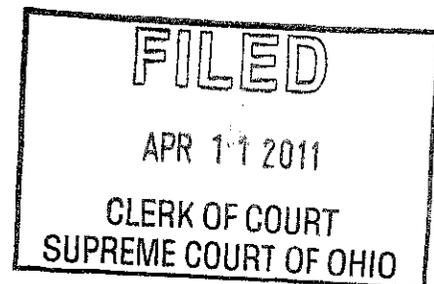
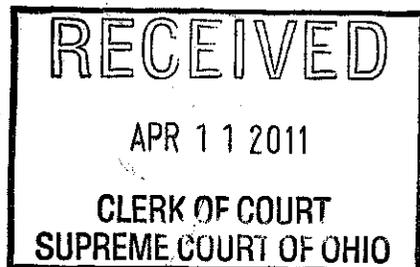
Case No. 2011-0517

On Appeal from the Lucas County Court
of Appeals, Sixth Appellate District

Court of Appeals
Case Nos. L-10-1014 and L-10-1034

MEMORANDUM IN SUPPORT OF JURISDICTION
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TABLE OF CONTENTS

TABLE OF CONTENTS i

EXPLANATION OF WHY THIS CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST.1

STATEMENT OF THE CASE AND FACTS4

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW8

Proposition of Law No. I: The Court Of Appeals Errs (And Exceeds Its Jurisdictional And Constitutional Authority) By Issuing A Decision And Judgment On The Merits From A Custody Order Previously Held By The Same Court Of Appeals To Be A Non-Final Order. ...8

Proposition of Law No. II: It Is Constitutional Error For An Appellate Court To Issue A Decision On The Merits Of An Appeal After Declining To Rule On Multiple Challenges To Its Jurisdiction Timely Raised By Motion And By Assignments Of Error.9

Proposition of Law No. III: The Court Of Appeals Errs As A Matter Of Law In Holding That A Magistrate Judge May Lawfully Conduct A Trial, Exercise Judicial Power And Adjudicate Fundamental Constitutional Rights, Notwithstanding The Entry Of An Order Withdrawing The Reference To The Magistrate Before The Trial Commenced.11

Proposition of Law No. IV: After Entry of Final Judgment Disposing Of All Issues Framed In The Pleadings, A Court Loses All Power And Jurisdiction To Proceed Any Further12

Proposition of Law No. V: R.C.3111.13(C) Does Not Confer Jurisdiction On Juvenile Courts To *Sua Sponte* Convert A Child Support Action Against An Unwed Father Into A Custody Dispute Against The Mother, After Entry of Final Judgment Against The Unwed Father On The Support Issues, Where No Complaint Or Other Proper Pleading Was Ever Before The Court Concerning Custody Or Parentage Issues.13

CONCLUSION.....15

CERTIFICATE OF SERVICE17

APPENDIX.....1

 Appendix A: Decision and Judgment of the Lucas County Court of Appeals (Feb. 14, 2011) ..1

 Appendix B: Decision and Judgment of the Lucas County Court of Appeals (Jan. 21, 2011) ...5

 Appendix C: Decision and Judgment of the Lucas County Court of Appeals (Nov. 29, 2010)34

 Appendix D: Decision and Judgment of the Lucas County Court of Appeals (Jan. 6, 2011)...39

Constitution, Statutes and Rules

Civ.R.537
Juvenile Rule 10(B) and (D).....4
Juvenile Rule 22(C)4
Ohio Constitution Article IV, Section 3(B)(2)3
Ohio Constitution, Article II, Section 3(B)(2).....9
Ohio Constitution, Article IV, Section 111
R.C. 2151.23(A)(2).....15
R.C. 2151.23113, 14
R.C. 3109.04215
R.C. 3109.1214
R.C. 3111.13(c).....13, 15

Cases

Borkosky v. Mihailoff (3rd App. Dist. 1999), 132 Ohio App. 3d 50815
Demore v. Demore, 2008 Ohio 1328, 2008 W.L. 754891 (11th App. Dist. 2008)14
In Re B.D., (Ohio App. 11 Dist.) 2009 WL 1365025, 2009-Ohio-2299 pgs. 23-2412
In re Gibson, (1991), 61 Ohio St. 3d 168, 1729
Osborn v. State of Ohio, Case No. 01-LW-3814 (6th Dist. 2001).....11
Pasqualone v. Pasqualone (1980) 63 Ohio St.2d 96.....15
Reciardi v. D’Apolito, 1010-Ohio1016 (Mahoning App. 2010)13
State ex rel. Ballard v. O’Donnell (1990), 50 Ohio St.3d 182, 183-1849
State ex rel. White v. Cuyahoga Metropolitan Housing Authority (Ohio 1997), 79 Ohio St. 3d 543, 54411
State of Ohio ex rel. Mosier v. Fornoff (2009) 2010-Ohio-2516.....4
State v. Vanni, 182 Ohio App. 3d. 505, 508 (Medina App. 2009)12
Yavitch & Palmer Co., LPA v. U.S. Four, Inc., 2006-Ohio-4780 (Franklin App. 2006)13

EXPLANATION OF WHY THIS CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST.

This appeal presents two overriding issues of public or great general interest: (1) whether a Juvenile Court, after entry of its Final Judgment on non-custody issues (the only issues properly before the Court as framed by the pleadings) may proceed to adjudicate “custody” issues, without authorization of any provision of the Revised Code, against a non-party to the original Juvenile Court proceeding, and merely upon motion, without any Complaint for Custody properly before the court; and (2) whether the Court of Appeals may rule on the merits of an appeal from a non-final order, after failing to rule on multiple challenges to the jurisdiction of both the trial court and appellate court timely raised by multiple motions and assignments of error, and while an appeal from the actual final order is pending and not yet briefed.

The jurisdictional and other irregularities in the proceedings below are multitudinous. Thus far, **three** separate orders of the trial court have been held void,¹ and a fourth has been held violative of constitutional protections, in adjudicating rights without a hearing,² all by the same Court of Appeals which affirmed the custody determination of the trial court without stating any basis for the trial court’s or its own jurisdiction,³ even though the decision of the Court of Appeals which is now before this Court was acknowledged by the same Court of Appeals to be from a non-final order of the trial court.⁴

¹ The trial court’s orders dated October 6, 2009 and January 12, 2010 were held void as signed by Judge Cubbon after entry of an order of recusal (Appendix D, p. 42), and the trial court’s order dated September 21, 2010 was held void as interfering with a pending appeal. *Id* at p. 43

² Appendix B, pp. 29-32

³ The Court of Appeals treated the trial court’s December 22, 2009 Order as if it were the Final Order on appeal (Appendix B ¶25, Appendix p. 14, even though the same Court of Appeals had previously expressly held that same December 22, 2009 Order of the trial court not to be a Final Order. See footnote 4, below.

⁴ See Appendix C at p.33-38 (order of the Court of Appeals holding the December 22, 2009 custody order to be a non-final order). No explanation has been proffered, and none exists, as to

Additional troubling jurisdictional and other irregularities cast a shadow on the proceedings below, and merit this Court's attention and correction in order to prevent a precedent from seeping into the jurisprudence of the State of Ohio whereby the constitutional and jurisdictional limitations on the Courts of Appeals are effectively rendered superfluous. That the Court of Appeals ruled on the merits of a non-final order, after having vacated the trial court's void January 12, 2010 actual final custody order, is itself troubling. Further troubling is the fact that, after the Court of Appeals vacated the January 12, 2010 final custody order as void, the trial court entered a new final custody order on December 17, 2010, from which appellants Stephen B. Mosier and Tonya S. Mosier both appealed --- which appeal was pending before the same Court of Appeals in Case No. L-11-1015 on the date the Court of Appeals entered its "Decision and Judgment" dated January 21, 2011 in L-10-1014,--- the Final Judgment of the Court of Appeals from which this appeal to the Supreme Court of Ohio is taken. Thus, the Court of Appeals entered its judgment here on appeal from a non-final order, and even more remarkably, did so during the pendency of the appeal from the actual final order (on custody and support) dated December 17, 2010. Even more troubling is that appellants pointed out all of these jurisdictional errors to the Court of Appeals in their timely-filed motion for reconsideration (and re-hearing *en banc*) filed January 31, 2011, but the Court of Appeals decision on reconsideration did not even acknowledge, address or discuss any of these preclusive jurisdictional issues.

Still more troubling is the fact that the Court of Appeal's order dated November 29, 2010 directed the trial court to enter a "support" order on terms specified by the Court of Appeals,

why the Court of Appeals would possess jurisdiction to issue an opinion on appeal from a non-final order of the trial court, yet that is exactly what happened in the Decision and Judgment now before this Court.

even though the Court of Appeals acknowledged in the same November 29, 2010 order that it was then without jurisdiction, as no final appealable order was before it. This violates all notions of proper limitations on appellate jurisdiction, and is unprecedented.

Even more troubling is that the Court of Appeals ruled on the merits from a non-final order, after having declined to rule on four separate motions to dismiss, and three separate assignments of error, all directed toward dismissal of the appeal in L-10-1014 and L-10-1034 on grounds of lack of jurisdiction of the Court of Appeals. *Infra* at p. 6, footnote 9.

The Court of Appeals violated the first principle of appellate jurisdiction by ruling on the merits of an appeal from a non-final order, and violated the second principle of appellate jurisdiction by ruling on the merits of an appeal without first determining its own jurisdiction. The trial court committed, and the appellate court blessed *sub silentio*, a violation of the third principle of appellate jurisdiction by continuing to rule on newly raised “custody” issues after entry of a Final Judgment, i.e., after all issues framed in the pleading before it had been fully adjudicated. Each one of these jurisdictional errors, singularly or in the aggregate, reflect a nearly total abandonment of any meaningful limitation on the jurisdiction of the Courts of Appeals, contrary to the Ohio Constitution, Article IV, Section 3(B)(2).

Especially in view of the gravity and multiplicity of the fundamental jurisdictional errors committed by both the trial court and Court of Appeals below, intervention and correction of these jurisdictional errors by this Court is required as a matter of public and great general interest. It is also a matter of fundamental fairness and justice, on a matter of fundamental constitutional rights, which in itself is another matter of public and great general interest. And finally, this Court’s supervisory direction is also needed to clarify the apparent misunderstanding by the lower courts of this Court’s decision in *State of Ohio ex rel. Mosier v. Fornoff* (2009)

2010-Ohio-2516, because both lower courts have apparently interpreted that decision as holding that the Juvenile Courts of Ohio possess subject matter jurisdiction over any custody determination, notwithstanding serial non-compliance with the jurisdictional and substantive limitations imposed by the Ohio Constitution, the statutory provisions of the Revised Code and Juvenile Rules governing custody determinations in Ohio.

STATEMENT OF THE CASE AND FACTS

Even though the order here on appeal is a child custody order, the proceeding below was a child support case, not a child custody case, commenced by Complaint filed by the local child support enforcement agency (“LCCSEA”). The father, Appellee Haaser, who had abandoned his baby for a period in excess of a year, finally consented to begin supporting his baby by Stipulated Judgment entered May 5, 2008, confirmed by Final Judgment entered on June 16, 2008. All proceedings on the newly-raised custody issue conducted by the trial court thereafter are a nullity, as no issue remained pending or undecided before the court for adjudication.

Multiple jurisdictional defects were interjected by the trial court thereafter when it converted the child support action into a child custody dispute, based on the father’s May 9, 2008, “Motion” for custody. Ironically, the mother was not even a party to the support action; no “Complaint” for custody was ever filed in the case below, within the meaning of Juvenile Rule 10(B) and (D), and certainly no pleading for custody was ever served on her, facts indisputable on this record.

Although unrepresented by legal counsel for various periods of time, the mother raised multiple jurisdictional objections⁵ Her objections were disregarded by the trial court from and

⁵ As permitted by the Juvenile Rules, these objections were timely raised before any trial commenced. Transcript of March 30, 2009, pp.33-35. Juvenile Rule 22(C) provides that no Answer is required to be filed to a custody complaint.

after March 30, 2009, until entry on December 22, 2009 of the non-final order now on appeal.

From and after June 16, 2008, the trial court began to exercise jurisdiction over custody issues, notwithstanding that the Final Order fully adjudicated child support---the only issue properly framed in the only pleading properly before the trial court.

Over the mother's continuing and repeated objections, the Magistrate conducted a trial on custody issues on March 30, April 23, July 8 and July 9, 2009. The Magistrate even continued to conduct the custody trial after the reference had been withdrawn from her by order entered July 7, 2009⁶. Notably, this was the only trial that the mother was given, and it was conducted by a Magistrate Judge acting without lawful jurisdiction, conducted in principal part after the reference had expressly been withdrawn by order of Judge Cubbon entered July 7, 2009.

On the last day of the trial, the Magistrate ordered an immediate change of temporary custody, and four months later, on November 4, 2009, based on the trial she conducted in part after withdrawal of the reference from her, ordered full, permanent residential custody to be taken away from the mother and awarded to the father, even though the mother was expressly determined to be a fit and proper mother under whose care the child was thriving.⁷

Visiting Judge Ray, by order entered December 22, 2009, affirmed the Magistrate's custody determination, without meaningfully addressing any of these issues and without

⁶ The Court of Appeals overlooked this error, asserting it was not factually supported by the record, even though the Magistrate's Decision entered November 4, 2009 at page 1 expressly states that the hearing was held, *inter alia*, on July 8-9, 2009.

⁷ The Mother has since been effectively precluded from all visitation with her daughter, by the financial preconditions imposed in requiring private supervised visitation, yet another tragic injustice flowing from these proceedings. The psychological harm to the persons involved which has resulted from the child's forced separation from the loving mother who was her sole caregiver for the first 30 months of her life has never even been evaluated, much less considered, by either court below, but will be discussed subsequently under seal.

conducting a trial or taking any other evidence.⁸ On January 12, 2010, the Magistrate correctly determined that the December 22, 2009, order was not a final order, so she simply signed Judge Cubbon's name to a newly created support order and entered it that date as the purported Final Judgment, even though: (1) Judge Cubbon had not authorized the Magistrate to do so, and in fact Judge Cubbon had previously recused herself; and (2) the Magistrate's signing of the previously recused Judge Cubbon's name to the January 12, 2010 Final Judgment amounted to quasi-judicial review by the Magistrate over her own November 4, 2009 custody Decision, contrary to law and Due Process in multiple, obvious respects.

The timely appeal in this case arose out of the purported Final Judgment entered January 12, 2010 in which the Magistrate had, without lawful authority, signed Judge Cubbon's name---an obviously void order. See Appendix D. The mother's legal counsel devoted much of the next year to filing motions and briefs trying to persuade first the Court of Appeals and then the trial court, to vacate the obviously void January 12, 2010 Final Judgment, and expressly included it as an assigned error on appeal. The appellate court steadfastly refused to vacate the apparently void order, denying on grounds otherwise than on the merits multiple motions to dismiss, in a series of orders declining to address its own (and the trial court's) obvious lack of jurisdiction over the January 12, 2010 order, or indeed, over any custody issues.⁹

On September 21, 2010, after a new visiting judge had been assigned, the trial court sua sponte vacated the January 12, 2010 void Final Judgment on custody and support. The Court of

⁸ Since the December 22, 2009 order contained no provision for child support, however, it was determined later by the Court of Appeals to be a non-final, non-appealable order. (See Opinion and Judgment of the Sixth District dated November 29, 2010, Appendix C hereto.)

⁹ Appellant filed Motions to Dismiss for lack of jurisdiction with the Court of Appeals on June 4, 2010, August 3, 2010, August 30, 2010 and October 18, 2010. All were denied without being considered or decided by the Court of Appeals substantively on the merits. Although the court may have acted within its discretion to defer ruling on these motion, failing to ever rule on them was clearly prejudicial error.

Appeals thereupon interceded and, unfortunately, interjected multiple additional layers of further jurisdictional error into the proceedings, in particular by its orders entered January 6, 2011, (Appendix D hereto) and November 29, 2010 (Appendix C hereto) which together held: (1) the trial court's *sua sponte* order vacating the January 12, 2010 Final Judgment was itself void, as an appeal of that order was then pending; and (2) the Court of Appeals itself finally *sua sponte* vacated the January 12, 2010 Final Judgment as signed by a "recused judge" without jurisdiction (Appendix D); and (3) most importantly, the Court of Appeals' order dated November 29, 2010 (Appendix C) directed the trial court to enter a new final order, albeit on terms dictated by the Court of Appeals itself, as follows:

The juvenile court's December 22, judgment "adopts" the magistrate's decisions, states the dates of the magistrate's decisions, and is a separate document from these decisions. *** But while it appears the juvenile court believed it properly entered a final judgment on all necessary issues, the December 22 judgment does not specify the terms of the child support obligation the magistrate imposed on T.M. Therefore, we conclude the December 22 judgment does not comply with all of the requirements of Civ.R.53.

Therefore, in the interests of judicial economy, the court remands this case to the Lucas County Court of Common Pleas, Juvenile Division, for a period of 14 days to enter a final judgment under Civ.R.53 which adopts the magistrate's decisions specified in the December 22, 2009 judgment, and addresses the juvenile court's final custody determination, the visitation schedule, and the support obligation with respect to the parties' minor child. (emphasis supplied) (Appendix C hereto)

Thus, remarkably, the Court of Appeals, acting without any Final Judgment before it and thus patently without jurisdiction except to dismiss and remand the appeal, instead **purported to direct the trial court to enter a particular final judgment on terms dictated and specified with particularity by the Court of Appeals on the issue of child support**, without benefit of judicial review by any Judge acting with lawful judicial power.

In compliance with and on the terms which the Court of Appeals (unlawfully) had just

dictated, the trial court on December 17, 2010 entered the new Final Judgment. The Mother and the maternal grandfather on January 18, 2011 took timely appeals of the trial court's newly-entered Final Order; those appeals remain pending before the Sixth District, styled L-11-1015, and briefing had not yet commenced, when the Court of Appeals acted again.

Compounding the multiple substantive and procedural irregularities endemic to this case, on January 21, 2011 the Court of Appeals entered its Decision and Judgment Entry on the custody issues in this appeal, from the non-final custody order of the trial court entered **December 22, 2009**, despite the pendency of the appeal from the actual final order. The Court of Appeals was patently without jurisdiction to enter its Decision and Judgment Entry here on appeal; its decision was entered while an appeal of the actual Final Order dated December 17, 2010 was still pending, and before any briefing on that timely and validly framed appeal had been commenced. Despite the fact that Appellants pointed out these fundamental errors by motion for reconsideration and *en banc* determination, the Court of Appeals' reaffirmed its January 21, 2011 decision on reconsideration by order entered February 14, 2011, without mentioning or discussing any of these preclusive jurisdictional issues. The appellate court gave no reason why it believed it had jurisdiction over a non-final order, when an appeal of the actual Final Order remained pending in another appeal (L-11-1015), from which appeal the custody and support issues arising from the actual Final Order remain pending to this day, unaddressed and unbriefed.

This case is about the serial usurpation of judicial power first by the trial court and then the Court of Appeals, in derogation of the Ohio Constitution and statutory law.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: The Court Of Appeals Errs (And Exceeds Its Jurisdictional And Constitutional Authority) By Issuing A Decision And Judgment On The Merits From A Custody Order Previously Held By The Same Court Of Appeals To Be A Non-Final Order.

The Courts of Appeals possess no appellate jurisdiction over non-final orders (Ohio Constitution, Article IV, Section 3(B)(2)), such as the December 22, 2009 custody order on which the Court of Appeals' Final Judgment entered January 21, 2011 is explicitly predicated. See Appendix B at ¶25, Appendix p. 14.

Final Orders generally are ones leaving no issues to be determined. *In re Gibson*, (1991), 61 Ohio St. 3d 168, 172. The Court of Appeals expressly held in its November 29, 2010 order that the trial court's December 22, 2009 custody order was a non-final order, yet the Court of Appeals proceeded to adjudicate custody issues from that same December 22, 2009 custody order, even though it was non-final, and even though an appeal was timely taken (and is still pending) from the subsequent actual Final Order of December 17, 2010.

The Court of Appeals' action, issuing an opinion and determining appellate rights predicated on a non-final order, is unprecedented. Fundamental and long settled appellate authority precludes a Court of Appeals from exercising jurisdiction over a non-final order.

A decision rendered by a court acting without jurisdiction or beyond its lawful jurisdiction is unauthorized by law. *State ex rel. Ballard v. O'Donnell* (1990), 50 Ohio St.3d 182, 183-184 ("It is thus well-settled that a decision rendered by a court without jurisdiction is unauthorized by law and amounts to usurpation of judicial power.").¹⁰

Proposition of Law No. II: It Is Constitutional Error For An Appellate Court To Issue A Decision On The Merits Of An Appeal After Declining To Rule On Multiple Challenges To Its Jurisdiction Timely Raised By Motion And By Assignments Of Error.

¹⁰ The Court of Appeals' wrongful assumption of jurisdiction was especially prejudicial where, as here, it was undertaken during the pendency of the appeal from the actual final order, in that it essentially finessed (and rendered moot) not only the assigned error in the pending appeal in Case No. L-10-1014, but also circumvented any meaningful ability to challenge the December 17, 2010 actual final order concurrently now on appeal to the Sixth District Court of Appeals in Case No. L-11-1015.

Appellant timely raised, by assignment of error and by motions, multiple challenges to the jurisdiction of the appellate court over custody issues. None of those jurisdictional challenges was ever actually decided on the merits. In addition to the four motions noted in footnote 9 above, Appellants also raised, *inter alia*, the following jurisdictional assignments of error:

Assignment of Error Number 1: “The Juvenile Court, a Court of limited statutory jurisdiction, erred by acting without jurisdiction in purporting to decide parenting issues between unwed parents, issues requiring determination in a proceeding defined by statute, when the statutory prerequisites necessary to establish jurisdiction to decide such issues were not observed.”

Assignment of Error Number 2: “The Juvenile Court, in a proceeding brought by a child support enforcement agency solely to enforce a child support obligation of an unwed father, erred by continuing to act after its jurisdiction ceased by virtue of entry of a final judgment on all issues framed by the pleadings”; and

Assignment of Error Number 3: “The Juvenile Court erred by acting without jurisdiction in purporting to adjudicate custody issues against a non-party.”

The Sixth District Court of Appeals below simply declined to rule on any of the seven timely challenges to its jurisdiction. Instead of actually deciding the multiple jurisdictional issues timely and properly raised by both Appellants, the Court of Appeals simply stated that Appellant Tonya Mosier had raised the wrong statute to challenge jurisdiction. (Decision and Judgment entered January 21, 2011 at ¶67, Appendix p. 21)¹¹ Notably, however, the actual wording of the assignments of error as framed by Tonya Mosier (quoted above) refutes the Court of Appeals’ assertion. The Court of Appeals erred both by declining to decide the jurisdictional issues actually raised, and erred further by erroneously reformulating Appellants’ actual assignments of error, and then refusing to rule on the issues as wrongfully reformulated by the Court of Appeals. The Court of Appeals cannot lawfully ignore timely challenges to its own jurisdiction; it was (and is) duty bound (as well as constitutionally required) to decide any timely

¹¹ It likewise expressly declined to rule on Appellant Stephen B. Mosier’s multiple assigned errors challenging jurisdiction.

challenge to its own appellate jurisdiction before ruling on the merits of an appeal (*State ex rel. White v. Cuyahoga Metropolitan Housing Authority* (Ohio 1997), 79 Ohio St. 3d 543, 544). *See also: Osborn v. State of Ohio*, Case No. 01-LW-3814 (6th Dist. 2001) (when a trial court below lacks jurisdiction, so too does the Court of Appeals.) The Sixth District Court of Appeals' declination to determine its own jurisdiction before ruling on the merits of the appeal was in derogation of its most basic, fundamental jurisdictional obligation.

Proposition of Law No. III: The Court Of Appeals Errs As A Matter Of Law In Holding That A Magistrate Judge May Lawfully Conduct A Trial, Exercise Judicial Power And Adjudicate Fundamental Constitutional Rights, Notwithstanding The Entry Of An Order Withdrawing The Reference To The Magistrate Before The Trial Commenced.

The reference of the matter to the Magistrate was withdrawn by order of Judge Cubbon dated July 7, 2009, simultaneous with her recusal order. Insofar as the November 4, 2009 decision of the Magistrate taking permanent custody of Arianna away from Tonya was the product of an evidentiary hearing conducted on July 8 and 9 by a person having no judicial power or authority to act, that hearing was a nullity. Ohio Constitution, Article IV, Section 1. The resulting January 12, 2010 order of Judge Cubbon (and/or the prior, non-final order of Judge Ray entered on December 22, 2009) confirming that Magistrate's Decision, are likewise void. *State v. Vanni*, 182 Ohio App. 3d. 505, 508 (Medina App. 2009) (when a judge is appointed to "conclude any proceedings in which she participated," it is "axiomatic" that "no other judge has the authority to issue substantive rulings in regard to the case.") As stated in another recent case involving Judge Ray, *In Re B.D.*, (Ohio App. 11 Dist.) 2009 WL 1365025, 2009-Ohio-2299 pgs. 23-24. the orders of a judge issued after the judge has been recused are *void ab initio*. By the same rationale, a trial conducted by a non-judicial officer after withdrawal of the reference is likewise void. Our judicial process presumes lawful judicial authority of the presiding Judge. *Id.*

Judicial power is not delegable to a non-judicial officer acting without lawful authority.

Because the only trial on custody issues the mother ever had was conducted below by a non-judicial officer acting patently without jurisdiction after an express order withdrawing the reference, the trial was a nullity. Any order based on such a trial, particularly one adjudicating fundamental constitutional rights, violates due process of law under the U.S. Constitution, and Article IV, Section 1 of the Ohio Constitution.

Proposition of Law No. IV: After Entry of Final Judgment Disposing Of All Issues Framed In The Pleadings, A Court Loses All Power And Jurisdiction To Proceed Any Further.

The May 5, 2008 order entered by consent of the father disposed of all issues pending before the court---thereby obligating the father to provide child support to the minor child whom he had previously abandoned. That consent order became the Final Judgment of the Court when entered June 18, 2008. It was never appealed, and the time for appeal lapsed on May 16, 2008. It is well settled that entry of a Final Judgment which disposes of all claims framed in the pleadings divests the trial court of any further or continuing jurisdiction. *Reciardi v. D'Apolito*, 1010-Ohio1016 (Mahoning App. 2010); *Yavitch & Palmer Co., LPA v. U.S. Four, Inc.*, 2006-Ohio-4780 (Franklin App. 2006). Upon entry of Final Judgment, a court loses all power and jurisdiction to proceed any further in a matter. (*Id.*)

For that reason, the father's "motion" and counter-claim (the latter of which was filed solely against the local child support agency, and which, as admitted in the Certificate of Service, was never served on Tonya Mosier) failed to properly create or extend the Juvenile Court's jurisdiction. The motion certainly did not commence a "custody" proceeding, as the Juvenile Court and the Court of Appeals apparently came to conceive. When the issues of the LCCSEA's complaint, i.e. enforcement of the father's child support obligation were decided, the June 16, 2008 Final Judgment of the trial court below constituted the Final Judgment, after which all Juvenile Court jurisdiction in this case was extinguished. (*Id.*) The Juvenile Court could not

lawfully continue to exercise (or purport to begin to exercise) jurisdiction over entirely new issues (custody) never framed in any proper pleading, after entry of Final Judgment. *Id.* The Juvenile Court's June 18, 2008 Final Judgment on child support extinguished the trial court's lawful jurisdiction, and thus ended the Juvenile Court's lawful authority. This is yet another core error committed by both courts below.

Proposition of Law No. V: R.C.3111.13(C) Does Not Confer Jurisdiction On Juvenile Courts To Sua Sponte Convert A Child Support Action Against An Unwed Father Into A Custody Dispute Against The Mother, After Entry of Final Judgment Against The Unwed Father On The Support Issues, Where No Complaint Or Other Proper Pleading Was Ever Before The Court Concerning Custody Or Parentage Issues.

The trial court erroneously assumed that it possessed jurisdiction over the custody issues because of R.C. 3111.13(C), the parentage statute applicable to the determination of parental status. That rationale is just wrong, because it is well settled that a child support proceeding is not a "parentage action." *Demore v. Demore*, 2008 Ohio 1328, 2008 W.L. 754891 at ¶20(11th App. Dist. 2008) ("**This is not a parentage action; it is an action for child support.**") Moreover, R.C. 2151.231 also forecloses the Court's assertion; the statute specifies that:

"The child support enforcement agency...may bring an action in a juvenile court requesting the court to issue an order requiring a parent of the child to pay an amount for the support of the child without regard to the marital status of the child's parents. ..." Further, "the parties to an action under this section may raise the issue of the existence or nonexistence of a parent-child relationship, **unless...an acknowledgement of paternity signed by the child's parents has become final...**"

A "parentage" proceeding is one in which the parentage of a minor child is put in issue and disputed. In contrast, in the child support proceeding below, it had already been administratively determined beforehand, and conceded by all, that Haaser was the father, and Tonya the mother; that is even acknowledged in the first paragraph of the Complaint for Child Support filed by LCCSEA on January 10, 2008, which states:

"an acknowledgment of Paternity affidavit **was registered and finalized** with the Centralized Paternity Registry between the Defendant [Haaser] and the minor child, Arianna ***" (Complaint To Set Support, p.1)

As paternity was administratively determined in advance and judicially admitted by the father when he consented to the support order, parentage was not at issue in the proceeding below.

Moreover, the reported cases uniformly hold that an unwed father seeking visitation (i.e., “parenting time rights) under R.C. 3109.12 cannot proceed by motion, but must file a Complaint meeting the applicable requisites of the statute and the Civil Rules. *See, e.g., Borkosky v. Mihailoff* (3rd App. Dist. 1999), 132 Ohio App. 3d 508. Any suggestion that a full custody adjudication may be obtained by merely filing a motion, while lesser rights to visitation can only be obtained by the filing of a Complaint, would turn law and logic on its head.

Moreover, R.C. 2151.231 by its terms precludes the court in a child support proceeding from adjudicating custody issues, when parentage was not disputed in the support action (having been resolved before the complaint for support was filed), and no complaint for custody was ever filed, as here.

Pasqualone v. Pasqualone (1980) 63 Ohio St.2d 96(abrogated on other grounds by 816 N.E. 2d 594, 596), which held that compliance with statutory pleading requirements for a custody proceeding was a “mandatory jurisdictional requirement”, directly supports Appellant’s proposition of law. The trial court’s *sua sponte* transmutation of a complaint for child support against the father into a custody proceeding against the mother, without any basis, is simply unsupportable. While pleading standards have been relaxed, they are not non-existent.

In rendering its Decision and Judgment on custody, the Court of Appeals did not even address the jurisdictional issues, noting merely: “the improper exercise of jurisdiction appellant claims is based on a statute inapplicable to the present circumstances.” (Appendix B, Decision and Judgment, ¶67 at Appendix p. 21) The Court of Appeals’ observation begs the question, mischaracterizes Appellant’s actual assigned errors and more importantly, wrongfully avoids

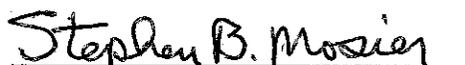
making any determination of whether any lawful basis exists under Ohio law for reaching a custody determination when the trial court's jurisdiction was never properly invoked. The parentage statute upon which the trial court relied, R.C. 3111.13(C), is equally "inapplicable to the present circumstances," as no parentage proceeding was ever commenced. Absent some lawful statutory basis, neither the trial court nor the Court of Appeals constitutionally could exercise jurisdiction to adjudicate custody issues. The appellate court's ruling on the merits of the custody issues, without first determining the multiple threshold jurisdictional issues raised both by motion and by assigned error, was contrary to bedrock appellate principles and precedent.

As no parentage case was pending and no Complaint for child custody in compliance with R.C. 2151.23(A)(2), R.C. 3111.13(C) or R.C. 3109.042 was before the Court, the Juvenile Court's jurisdiction over custody issues in the underlying proceedings was never lawfully invoked. The absence of lawful jurisdiction renders the Juvenile Court's custody determination a nullity. Neither the Juvenile Court nor the Court of Appeals could lawfully make any ruling whatsoever affecting the rights of the mother or her minor child on custody issues. Nor could the Court of Appeals lawfully decide the merits of Appellant's appeal without first determining the threshold issue of its own jurisdiction.

CONCLUSION

For the reasons discussed above, this case involves a substantial constitutional question and matters of public and great general interest. The Appellant requests that this Court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,


Stephen B. Mosier, *Pro Se*

CERTIFICATE OF SERVICE

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail, postage prepaid, on April 11, 2011 to counsel for Appellees, Dennis P. Strong, Esq. 5600 Monroe St., Bldg. B, #202, Sylvania, Ohio 43560; Charles S. Rowell, Esq., 520 Madison Ave., Ste 955, Toledo, Ohio 43604; Jill Wolff, Esq. Lucas County Children Services, 705 Adams St., Toledo, Ohio 43604 and to counsel for Appellant, Daniel T. Ellis, Lydy & Moan, Ltd. 4930 Holland-Sylvania Road, Sylvania, Ohio 43560-2149.


Stephen B. Mosier, *Pro Se*

APPENDIX A

Decision and Judgment of the Lucas County Court of Appeals (Feb. 14, 2011)

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2011 FEB 14 P 2:44
COMMON PLEAS COURT
BERNARD GUILTER
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

T.M.

Court of Appeals Nos. L-10-1014
L-10-1034

Appellant

Trial Court No. JC 08-177645

v.

J.H.

DECISION AND JUDGMENT

Appellee

Decided: FEB 14 2011

This matter is before the court on the motion on appellant, T.M., for reconsideration, en banc rehearing and to certify a conflict.

"The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for consideration that was either not considered at all or not fully considered by the court when it should have been." *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, 143. "A motion for reconsideration is not designed for use in instances when a party merely disagrees with the conclusions reached and the logic used

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by the appellate court." *In re Richardson*, 7th Dist. No. 01-CA-78, 2002-Ohio-6709, ¶ 2, citing *Audia v. Rossi Bros. Funeral Home, Inc.* (2001), 140 Ohio App.3d 589.

Appellant has reargued her appeal in excruciating detail, yet has failed to bring to our attention any unconsidered issue or obvious error. Accordingly, appellant's motion for reconsideration is not well-taken.

"Upon a determination that two or more decisions of the court on which they sit are in conflict, a majority of the court of appeals judges in an appellate district may order that an appeal or other proceeding be considered en banc. * * * Consideration en banc is not favored and will not be ordered unless necessary to secure or maintain uniformity of decisions within the district on an issue that is dispositive in the case in which the application is filed." App.R. 26(A)(2)(a).

Appellant fails to articulate what other decision of this court conflicts with the principal decision, instead she argues that our procedural rulings antecedent to consideration on the merits were flawed. This is insufficient to merit en banc rehearing. Accordingly, appellant's motion pursuant to App.R. 26(A)(2) is not well-taken.

Section 3(B)(4), Article IV of the Ohio Constitution requires that when a court of appeals finds itself in conflict with another court of appeals on the same question of law, that court must certify its decision and the record of the matter to the Supreme Court of Ohio for a resolution of the question. *Whitelock v. Gilbane Bldg. Co.* (1993), 66 Ohio St.3d 594, 596.

Although, in this instance, appellant cites two cases, *Engineering Excellence, Inc. v. Northland Assoc., L.L.C.*, 10th Dist. No. 10AP-402, 2010-Ohio-6535, ¶ 9, and *In the matter of S.M.*, 8th Dist. No. 81566, 2004-Ohio-1243, ¶ 30, both of these cases concern an appellate court's decision at various points of the case that the case was not based on a final appealable order. Neither case concerns a court's inherent ability to control the flow of its cases or to determine its own jurisdiction.

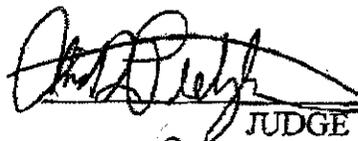
Appellant contends, not that this court did not have jurisdiction by virtue of a final appealable order when we entered our decision, but that we were required to earlier dismiss the case for lack of jurisdiction. We find nothing in either of the cases cited that would conflict with our decision. Accordingly, appellant's motion to certify a conflict is not well-taken.

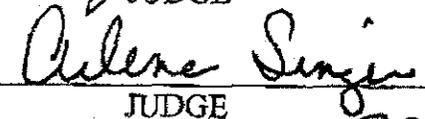
Appellant's motions to reconsider, rehear en banc and to certify a conflict are denied.

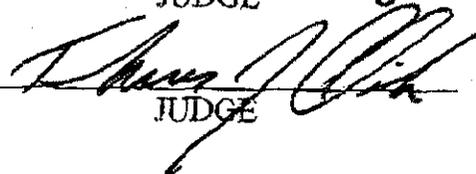
Mark L. Pietrykowski, J.

Arlene Singer, J.

Thomas J. Osowik, P.J.
CONCUR.


JUDGE


JUDGE


JUDGE

APPENDIX B

Decision and Judgment of the Lucas County Court of Appeals (Jan. 21, 2011)

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HAYES SOLOWAY P.C.

FILED
COURT OF APPEALS
2011 JAN 21 A 8:03

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

T.M.

Court of Appeals Nos. L-10-1014
L-10-1034

Appellant

Trial Court No. JC 08-177645

v.

J.H.

DECISION AND JUDGMENT

Appellee

Decided: JAN 21 2011

Daniel T. Ellis and Frederick E. Kalmbach, for appellants T.M.
and Lydy & Moan, LTD.

Stephen B. Mosier, pro se, and for appellant Hayes Soloway P.C.

Dennis P. Strong, for appellee J.H.

Charles S. Rowell, Jr., for appellee Ann Baronas, Guardian ad Litem.

SINGER, J.

{¶ 1} This is a consolidated appeal from judgments of the Lucas County Court of
Common Pleas, Juvenile Division, designating the father of a child the residential,

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custodial parent and exacting sanctions against law firms representing the child's mother.

For the reasons that follow, we affirm, in part, and reverse, in part.

{¶ 2} Appellant mother, T.M., and appellee father, J.H., are the parents of now four year-old A.H. A.H.'s father and mother were not married at the time of her birth. They nonetheless lived together for a number of months after the birth, at which point J.H. left. In 2007, J.H. was adjudicated A.H.'s father in an administrative proceeding.

{¶ 3} On January 10, 2008, the Lucas County Child Support Enforcement Agency ("LCCSEA") filed a complaint in the trial court seeking a child support order for A.H. LCCSEA and T.M. were the named plaintiffs and J.H. the defendant. J.H. eventually answered the complaint and interposed a counterclaim for custody of the child and establishment of a support order. Accompanying the counterclaim was a motion seeking the same result. T.M., through counsel, responded with her own motion requesting that she be designated the residential and custodial parent of the child. The trial court entered an interim support order and appointed attorney Ann Baronas to be A.H.'s guardian ad litem.

{¶ 4} At an October 15, 2008 parental rights hearing, a magistrate ordered both parents to attend parenting classes and granted J.H. visitation on Tuesdays and Wednesdays. On October 24, 2008, J.H. filed a show cause motion, accusing T.M. of refusing to allow J.H.'s court ordered visitation. Following a hearing, the court entered a judgment clarifying the responsibilities of the parties with respect to visitation. Trial was set for March 2009.

{¶ 5} In the intervening time, T.M.'s original counsel sought and was granted leave to withdraw. For a period, T.M. represented herself, until attorney Thomas Goodwin entered an appearance on her behalf a few weeks before trial. Shortly thereafter, T.M.'s father, attorney Stephen B. Mosier, moved to intervene seeking grandfather visitation or, alternatively, custody. Stephen Mosier would later withdraw his intervention motion and enter an appearance as co-counsel for appellant mother.

{¶ 6} On March 19, 2009, the guardian ad litem filed her report and recommendation. The guardian observed that the child was healthy and without special needs. With respect to the parents, the guardian noted that appellant mother was uncooperative in allowing appellee father visitation from the outset, refused to comply with the court's visitation order for a full week after the order and attempted to file municipal court criminal charges against appellee father to prevent visitation. Moreover, appellant mother would appear with the child while appellee father was at work and come unannounced to appellee father's home during visitation for "specious reasons."

{¶ 7} The guardian suspected that appellant mother had mental health issues and noted a recommendation from a court diagnostic psychologist that the mother have a mental health assessment and treatment. The guardian ad litem concluded that it was in the best interest of the child that appellee father be immediately named the residential parent and legal custodian, and that both parents attend parenting classes.

{¶ 8} While attorney Mosier's motion to intervene was pending, and prior to his entry of appearance in representation of his daughter, he filed a flurry of motions,

including motions to view the guardian's and psychologist's reports, to permit appellant mother to review the same reports, for appellant mother to have copies of the audiotapes of prior hearings and to dismiss appellee father's "motion" for custody for want of subject matter jurisdiction. Most of these motions would later be renewed by appellant attorney Mosier or other counsel for appellant mother and rejected, or at least not granted to appellant mother's satisfaction.

{¶ 9} Just prior to Easter in 2009, appellee father called the guardian ad litem to propose a visitation modification for the holiday. Appellee father told the guardian that he was able to obtain Easter Sunday off work and hoped to arrange holiday visitation on that day. The guardian agreed to attempt to assist and, according to her testimony, visited the office of appellant mother's attorney. Appellant mother happened to be there at the time.

{¶ 10} The guardian later testified that appellant mother indicated that she had plans for Sunday afternoon, but that she did not object to a Saturday visitation. Appellant mother also indicated that she wanted the child on her birthday, Tuesday, which would have been appellee father's regular visitation day. After some discussion between the guardian, appellant mother's attorney and appellee father's attorney, who was reached by telephone, the lawyers concluded that it would be a fair compromise to permit appellee father to have the child from 9:00 a.m. Saturday morning until 11:00 a.m. on Sunday. Appellant mother would keep the child on Tuesday with appellee father's schedule set back a day. Appellant mother apparently agreed to this arrangement.

{¶ 11} According to appellee father's testimony, when his attorney advised him of this plan, he called the guardian immediately. Appellee father told the guardian that he was scheduled to work all day Saturday and that rescheduling his work to accommodate the day change the next week was not practical. Appellee father informed the guardian that he would rather return to the previously ordered regular visitation schedule. According to the guardian, she advised appellee father to notify appellant mother and his counsel of his decision. It is undisputed that he did this.

{¶ 12} On Tuesday, when appellee father arrived to pick up A.H. for regular visitation, appellant mother refused to cooperate. Appellee father called the guardian ad litem to advise her of appellant mother's refusal to abide with the original visitation order. The guardian then called appellant mother and her lead attorney, leaving messages with both to return her call. The lead attorney was on vacation and did not immediately respond. According to the guardian, appellant mother returned the call, but refused to speak to the guardian unless her father, who by now was her co-counsel, joined the call.

{¶ 13} Appellant mother's father was initially without any knowledge of the situation, but eventually, after talking to his daughter, told the guardian that appellant mother believed there had been an agreement reached at her lead counsel's office and that appellant mother was uncertain how to proceed when appellee father called to say there would be no change in visitation. When she did not receive any response from her call to her lead attorney, appellant mother elected to follow her attorney's last instruction, which

was based on the office agreement. This entailed appellant mother keeping A.H. on what would have been appellee father's usual day to have the child.

{¶ 14} The guardian ad litem would later testify that she believed that appellant mother was "trying to play ostrich," pretending that appellee father never called her and doing "exactly" what her lawyer last told her, irrespective of the changed circumstances. As a result, the guardian filed a second supplemental report to the court, detailing the episode and reiterating her recommendation that appellee father be named custodial parent. The guardian also suggested that the court consider granting appellee father temporary custody pending completion of the trial.

{¶ 15} Appellant mother responded with an "emergency motion," drafted by appellant attorney Mosier, to compel the guardian ad litem to supplement her report and "other relief." In the motion, appellant mother asked the court to compel the guardian to disclose the existence of an agreement concerning Easter visitation reached with the guardian's direct participation, explain why the guardian advised appellee father to contact appellant mother outside the presence of counsel for the purpose of persuading appellant mother to rescind the agreement and to explain why the guardian's failure to inform the court of the "agreement" and its terms "* * * does not constitute a direct and egregious violation of her Duties of Candor and Truthfulness to the Court * * *." Appellant mother characterized the guardian's report as containing "multiple highly material misrepresentations and omissions of facts" and called for the immediate removal of the guardian, referral of the guardian to a bar grievance committee, an order that the

guardian reimburse appellant mother costs and attorney fees and other unspecified sanctions.

{¶ 16} The guardian ad litem responded with the entry of appearance of counsel to represent her. The guardian also sent notice to the parties that the fees of the guardian's counsel would be taxed as guardian fees.

{¶ 17} The next hearing date set in the continuing trial was April 23, 2009. Prior to that time both of appellant mother's attorneys sought to withdraw, ostensibly to testify at the hearing regarding the events prior to Easter. Both also submitted to the court declarations concerning those events. Substitute counsel's motion for a continuance was overruled and the matter proceeded as scheduled. This proceeding concerned the Easter visitation incident.

{¶ 18} Following the hearing, the magistrate denied appellant mother's motion to compel the guardian to supplement her report and to remove the guardian. The magistrate ordered her original visitation agreement amended to incorporate the standard juvenile court holiday schedule and directed that child exchange be at a neutral site. The order did not change appellant mother's status as residential parent.

{¶ 19} Appellant mother moved to set aside the magistrate's order, complaining of the denial of her motion for a continuance and evidentiary rulings within the hearing and reiterating her allegation that the guardian attempted "to defraud the Court, by multiple material misrepresentations and material omissions of relevant facts, concerning [what the guardian] deceitfully characterized as a 'refusal' by [appellant mother] to permit * * *

visitation * * *." (Emphasis sic.) Appellant mother also moved the court to assess sanctions against appellee father's counsel.

{¶ 20} While appellant mother's motion was pending, she filed a motion challenging the magistrate's authority to issue subsequent orders while the decision from the April 23 hearing was "on appeal." Appellant mother also moved to disqualify the magistrate. On July 1, 2009, the judge to whom the case had originally been assigned recused herself. A retired juvenile judge was appointed visiting judge in her stead. The first action of the visiting judge was to deny appellant mother's motion to disqualify the magistrate.

{¶ 21} On July 9, 2009, the parental rights and responsibilities hearing continued. No transcript of that hearing is in the record, but as a result of those proceedings the magistrate ordered an immediate change of possession of A.H. to appellee father. In her findings of fact related to this hearing, the magistrate noted that appellant mother has significant mental health history, has had outbursts in the courtroom, including once bolting from the room, and had engaged in violent behavior with at least four persons, including her mother and brother.

{¶ 22} Appellant mother filed objections and a motion to set aside the magistrate's July 9 order. Concurrently, she applied to this court for writs of prohibition and mandamus. Appellant mother sought orders prohibiting the juvenile court from proceeding with the case and mandating the return of A.H. to her mother. We denied the writs and dismissed appellant mother's complaint. *State ex rel. T.M v. Fornof*, 6th Dist.

No. L-09-1192, 2009-Ohio-5618, affirmed, *State ex rel. Mosier v. Fornof*, 126 Ohio St.3d 47, 2010-Ohio-2516.

{¶ 23} Meanwhile, another incident at the neutral site for visitation exchange resulted in the site staff calling police to cope with appellant mother's disruptive behavior. As a result, appellee father moved for, and following a hearing, was granted an order that further visitation between appellant mother and A.H. be supervised. Appellant mother again responded with a motion to set aside the order.

{¶ 24} On November 4, 2009, the magistrate entered her final decision. Appellee father was designated the residential parent and legal custodian of A.H. The magistrate ordered appellant mother to pay \$215.45 plus processing charge for monthly child support. Appellant mother filed objections to this decision.

{¶ 25} On December 22, 2009, the visiting judge assigned to the case issued a global judgment disposing of all outstanding matters. The court found all of appellant mother's objections, motions to set aside and motions to stay not well-taken and affirmed the prior orders and decisions of the magistrate. This is the judgment at issue in one of the appeals now before us.

{¶ 26} On January 11, 2010, counsel for the guardian ad litem moved that the attorney fees accrued in service of the guardian be taxed to the law firms representing appellant mother as sanctions pursuant to Civ.R. 11.

{¶ 27} On January 26, 2010, the trial court found the guardian's motion for sanctions well-taken and entered a joint and several judgment in the amount of \$8,748.50

against the law firms of appellant mother's counsel. This is the second judgment at issue in this consolidated appeal.

{¶ 28} Appellant mother sets forth the following eight assignments of error:

{¶ 29} "1. The Juvenile Court, a Court of limited statutory jurisdiction, erred by acting without jurisdiction in purporting to decide parenting issues between unwed parents, issues requiring determination in a proceeding defined by statute, when the statutory prerequisites necessary to establish jurisdiction to decide such issues were not observed.

{¶ 30} "2. The Juvenile Court, in a proceeding brought by a child support enforcement agency solely to enforce a child support obligation of an unwed father, erred by continuing to act after its jurisdiction ceased by virtue of entry of final judgment on all issues framed by the pleadings.

{¶ 31} "3. The Juvenile Court erred by acting without jurisdiction in purporting to adjudicate custody issues against a non-party.

{¶ 32} "4. The Juvenile Court erred by entering orders signed by proxy, by or on behalf of a Judge previously recused from all further proceedings.

{¶ 33} "5. The Juvenile Court erred by conducting proceedings under a Magistrate judge after a reference to the Magistrate had been withdrawn.

{¶ 34} "6. The Juvenile court erred by entering an order purporting to retroactively reinstate reference to a Magistrate Judge, with respect to a proceeding previously conducted by the Magistrate Judge acting after reference had been withdrawn.

{¶ 35} "7. The Juvenile Court erred by improperly interfering with a party's rights to counsel.

{¶ 36} "8. The Juvenile Court erred by denying the Appellant due process and fundamental fairness in the proceedings by:

{¶ 37} "precluding Appellant from reviewing the guardian ad litem's reports and the psychologist's report, key evidence considered by the court in making its determination of child custody, and prohibiting Appellant's counsel from discussing such evidence with appellant prior to the evidentiary hearing; and .[sic]

{¶ 38} "denying Appellant's counsel's request for a stay and/or continuance to allow counsel to review audio tapes of hearings that took place prior to counsel's representation of the Appellant thereby impairing counsel's ability to adequately prepare for the evidentiary hearing."

{¶ 39} Appellants Hayes Soloway P.C. and Stephen B. Mosier assert the following six assignments of error;

{¶ 40} "Assignment of Error Number 1

{¶ 41} "The Juvenile Court errs by imposing Rule 11 sanctions without conducting an evidentiary hearing as mandated by that rule.

{¶ 42} "Assignment of Error Number 2

{¶ 43} "The Juvenile Court errs by awarding attorney's fees in favor of a non-party movant, when the literal language of Rule 11 grants 'standing' only to 'parties' to seek such an award.

{¶ 44} "Assignment of Error Number 3

{¶ 45} "The Juvenile Court errs as a matter of law in assessing Rule 11 sanctions purportedly based on a motion first filed nearly 19 months after entry of final judgment, and without any lawful continuing jurisdiction, during proceedings which are a legal nullity.

{¶ 46} "Assignment of Error Number 4

{¶ 47} "Insofar as Rule 11 sanctions may only be assessed against a party or its individual counsel, the Juvenile Court errs in assessing Rule 11 sanctions against non-party law firms.

{¶ 48} "Assignment of Error Number 5

{¶ 49} "The Juvenile Court errs in awarding attorney's fees which bear no causal relationship to any wrongful conduct as defined by Rule 11.

{¶ 50} "Assignment of Error Number 6

{¶ 51} "Where a guardian *ad litem* makes material misrepresentation of fact to the court in connection with a purported emergency motion and interrelated custody recommendations and where multiple good grounds are shown to exist supporting and fully warranting factually accurate criticism of the guardian's of said conduct, such criticism is not sanctionable conduct under Rule 11 as a matter of law."

{¶ 52} Appellant law firm Lydy & Moan, LTD, interpose the following five assignments of error:

{¶ 53} "1. The Juvenile Court erred by imposing Rule 11 sanctions without conducting an evidentiary hearing.

{¶ 54} "2. The Juvenile Court erred by awarding attorneys' fees in favor of a non-party when Rule 11 grants standing only to a party to seek an award under Rule 11.

{¶ 55} "3. The Juvenile Court erred in assessing Rule 11 sanctions against a law firm insofar as Rule 11 sanctions may be only assessed against a party or his counsel.

{¶ 56} "4. The Juvenile Court erred in awarding attorneys' fees which are not argued or shown to be in any way causally related to any wrongful conduct of a party or his counsel.

{¶ 57} "5. The Juvenile Court erred as a matter of law when it held the challenge to its subject matter jurisdiction (the appeal on behalf of appellant's client during its pendency) was 'without basis in law or fact' because it was divested of jurisdiction."

I. Jurisdiction

{¶ 58} We shall discuss appellant mother's first three assignments of error together.

{¶ 59} Once appellee father had entered his counterclaim for custody, appellant mother, on numerous occasions, attempted to challenge the jurisdiction of the court to hear the case. Initially, she argued that, because R.C. 3109.12 provides that one who has been found to be the father of a child, "* * * *may file a complaint* * * * for reasonable parenting time rights * * *" (emphasis added), the filing of a complaint is statutorily

prerequisite to the exercise of a court's jurisdiction. Since appellee father did not file a complaint, appellant mother argued, any action by the trial court is void.

{¶ 60} Later, appellant mother set forth an alternative argument concerning the trial court's jurisdiction, suggesting that she was never more than a "nominal" plaintiff in the child support case. Even though her name appeared in the caption of the action as a plaintiff, the real party was the LCCSEA. Appellant mother cites Morganstern and Sowald, Baldwin's Ohio Domestic Relations Law (2009) Section 22:24 (which in turn cites and quotes Op. No. 90-10 (June 15, 1990) Ohio Sup.Ct. Bd. of Commrs. on Grievances and Discipline) for the proposition that the LCCSEA represents the interests of the state, not the custodial parent. Since appellant mother did not have the power to settle, dismiss or compromise the child support claim, she argues, she was a party in name only, necessitating that appellee father take the statutory steps to initiate a custody action before she can be bound by a determination.

{¶ 61} To some extent these issues have been addressed. When the trial court ordered temporary custody of A.H. to appellee father, appellant mother applied to this court for writs of prohibition and mandamus, seeking to bar the trial court's further consideration of the case and to compel the surrender of the child to appellant mother. The foundation of appellant mother's plea for relief was the trial court's lack of jurisdiction.

{¶ 62} We denied the writs, concluding that absent the trial court's patent and unambiguous lack of jurisdiction the writs should not issue. Since, pursuant to R.C.

2151.23(A), a juvenile court has jurisdiction to determine the custody of any child not the ward of another court, the juvenile court was not unambiguously without jurisdiction.

State ex rel. T.M., supra, 2009-Ohio-5618, at ¶ 8.

{¶ 63} When appellant mother appealed that decision, the Supreme Court of Ohio affirmed, noting that appellant mother's reliance on any intricacies in R.C. 3109.12 was misplaced because that statute deals with "parenting time" rather than custody. *State ex rel. Mosier*, 2010-Ohio-2516, ¶ 6. What appellee father sought was custody. "Therefore, Mosier's claim alleges, at best, an error in the court's exercise of its jurisdiction rather than a lack of subject-matter jurisdiction." *Id* at ¶ 7.

{¶ 64} "'Jurisdiction' means 'the courts' statutory or constitutional power to adjudicate the case.' The term encompasses jurisdiction over the subject matter and over the person. * * *. It is a 'condition precedent to the court's ability to hear the case. If a court acts without jurisdiction, then any proclamation by that court is void.'

{¶ 65} "The term 'jurisdiction' is also used when referring to a court's exercise of its jurisdiction over a particular case. The third category of jurisdiction [i.e., jurisdiction over the particular case] encompasses the trial court's authority to determine a specific case within that class of cases that is within its subject matter jurisdiction." *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶ 11-12. (Citations omitted.)

{¶ 66} Jurisdiction over a particular case is an elusive concept, defined best by example. A common pleas court is a court of general jurisdiction and has subject matter jurisdiction over crimes committed by an adult. Nevertheless, where the common pleas

court fails to strictly comply with procedures in a capital case, such as the failure to utilize a statutorily mandated three judge panel, it is an improper exercise of jurisdiction over the case. *Id.*, syllabus.

{¶ 67} This example is similar to that which appellant mother claims here.

However, the improper exercise of jurisdiction appellant claims is based on a statute inapplicable to the present circumstances. *State ex rel. Mosier*, 2010-Ohio-2516, ¶ 6. In any event, appellant mother's assertion of lack of subject matter jurisdiction is unavailing. *Id.* at ¶ 4.

{¶ 68} Appellant mother's argument with respect to personal jurisdiction is similarly unpersuasive. Appellant mother asserts that she is only a "nominal" plaintiff because the LCCSEA represents not her, but the state. In support, she indirectly cites a 1990 Board of Grievances advisory opinion. The question there was not whether the child support recipient was a party to an enforcement action, but who the child support agency attorney represented.

{¶ 69} At the time, there was concern that, if the agency lawyer represented the child support obligee, a conflict might exist should custody change and the former obligor became the obligee. The Board of Grievances concluded that the state has a strong interest in the enforcement of child support obligations and it is, therefore, the state that is the CSEA's client. The opinion recognized that the state and the obligee are separate parties that may have conflicting interests. Thus, the board recommended that, "[t]he custodial parent therefore should be informed at the outset that the CSEA attorney

represents the state and that the custodial parent should obtain counsel." Op. 90-10, supra.

{¶ 70} The state and the obligee, in this case appellant mother, have related but distinct interests in a child support enforcement action. Consequently, the case caption, which lists the LCCSEA and appellant mother as separate plaintiffs, would appear accurate. Moreover, while appellant mother's role was initially passive, after appellee father interposed his counterclaim for custody, she obtained counsel who entered an appearance, filed numerous motions and actively participated in the proceedings. Such participation would constitute a waiver of any challenge to in personam jurisdiction even had appellant mother not been an original named plaintiff. *Maryhew v. Yova* (1984) 11 Ohio St.3d 154, 156.

{¶ 71} Accordingly, the trial court had both personal and subject matter jurisdiction in this matter and there is nothing to suggest that the court improperly exercised jurisdiction over the case. Appellant's first three assignments of error are not well-taken.

II. Acts After Recusal

{¶ 72} On two occasions after the original trial judge recused herself, she signed judgment entries on the case from which she had removed herself. In her fourth assignment of error, appellant mother suggests this was error.

{¶ 73} An order signed by a judge who has recused himself or herself from a case is void because the judge possessed no authority to act on behalf of the court. *In re B.D.*,

11th Dist. Nos. 2009-L-003, 2009-L-007, 2010-Ohio-2299, ¶ 76. A void judgment has no legal force or effect. *Hague v. Hague*, 11th Dist. No. 2008-A-0069, 2009-Ohio-6509, ¶ 37. For a judgment or order to constitute reversible error on appeal it must have operated to the prejudice of the appellant. *Smith v. Flesher* (1967), 12 Ohio St.2d 107, paragraph one of the syllabus. Since the orders apparently signed in error had no legal force and no action was taken pursuant to them, appellant could not have been prejudiced by them. Accordingly, appellant's fourth assignment of error is not well-taken.

III. Magistrate Referral

{¶ 74} In her fifth and sixth assignments of error, appellant maintains that the magistrate acted without authority in the interim between the recusal of the original judge on the case and the magistrate's reappointment by the visiting judge.

{¶ 75} The entry of the original judge's recusal was journalized on July 7, 2009. On July 8, 2009, the visiting judge signed a judgment that overruled appellant mother's motion to disqualify the magistrate and continued the referral of the case to the magistrate. That entry was journalized on July 9, 2009, the same day as the magistrate's hearing on allocation of parental rights and responsibilities of the parties and the date of the magistrate's decision granting appellee father possession of the child.

{¶ 76} Appellant insists that the hearing actually commenced on July 8, 2009. The record does not support that assertion. Moreover, even were that true, the visiting judge's re-referral of the case to the magistrate occurred concurrently and the magistrate took no action until July 9, 2009, the day the order of re-referral was journalized. On this record,

we find that the magistrate had authority to act at all times. Accordingly, appellant mother's fifth and sixth assignments of error are not well-taken.

IV. Interference with Counsel

{¶ 77} In her seventh and eighth assignments of error, appellant mother suggests that the trial court interfered with her right to counsel by 1) refusing to appoint her counsel at the state's expense, 2) denying her trial transcripts and/or copies of hearing audiotapes at state's expense, 3) restricting her personal access to psychological and guardian ad litem reports and prohibiting counsel from discussing these reports with her, and 4) denying her motion for a continuance when her co-counsel elected to withdraw in order to testify about the Easter visitation incident.

{¶ 78} Appellant regularly confuses the posture of these proceedings, referring to this as a permanent custody action. It is not. "Permanent custody" is a term of art referring to the ultimate disposition of a termination of parental rights action. In such a proceeding, the parental rights of a natural parent is wholly abrogated without any residual rights or responsibilities and "permanent custody" ordinarily is awarded to a children's services agency antecedent to adoption. R.C. 2151.011(B)(30).

{¶ 79} This is a proceeding for legal custody of a child who is not a ward of any other court in the state, pursuant to R.C. 2151.23(A)(2). *State ex rel. Mosier, supra*, at ¶ 4. Legal custody, " * * * vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food,

shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities. * * *." R.C. 2151.011(B)(19). When a parent loses legal custody of a child, he or she retains certain residual parental rights including visitation. That parent also retains the right to request return of legal custody in the future. *In re Nice* (2001), 141 Ohio App.3d 445, 455. Legal custody is determined by that which is the best interest of the child. *In re Bell*, 7th Dist. No. 04 NO 321, 2005-Ohio-6603, ¶ 37.

{¶ 80} Appellee father's counterclaim for custody is the equivalent of a request for an initial determination of custody in a domestic relations proceeding. The result is that a proceeding under R.C. 2151.23(A)(2) is considered a civil matter, excepted from any entitlement to appointed counsel for an indigent party as might be the case in other juvenile court proceedings. R.C. 2151.352. Concomitantly, a party to such a proceeding is no more entitled to transcripts, copies or other items at the expense of the state than would a party to a civil proceeding. Consequently, the trial court did not err in denying appellant mother's requests for such material at the public's expense.

{¶ 81} Appellant mother also complains that the trial court violated Sup.R. 48 concerning the availability of guardian ad litem reports when it limited inspection of the supplemental guardian reports and psychological reports to counsel. Appellant mother also complains that she was prejudiced when she was denied access to digital recordings of prior hearings to copy or transcribe at the state's expense.

{¶ 82} As we have already noted, this is a civil matter to which parties are not entitled to services that are taxed to the public. Concerning the availability of the

guardian and psychological reports, Sup.R. 48(F)(2) provides with respect to the guardian ad litem's report:

{¶ 83} "In domestic relations proceedings involving the allocation of parental rights and responsibilities, the final report shall be filed with the court and made available to the parties for inspection no less than seven days before the final hearing unless the due date is extended by the court. Written reports may be accessed in person or by phone by the parties or their legal representatives. A copy of the final report shall be provided to the court at the hearing. The court shall consider the recommendation of the guardian ad litem in determining the best interest of the child only when the report or a portion of the report has been admitted as an exhibit."

{¶ 84} In contrast, appellee father points to Juv.R. 32(C), which states:

{¶ 85} "A reasonable time before the dispositional hearing, or any other hearing at which a social history or physical or mental examination is to be utilized, counsel shall be permitted to inspect any social history or report of a mental or physical examination. The court may, for good cause shown, deny such inspection or limit its scope to specified portions of the history or report. The court may order that the contents of the history or report, in whole or in part, not be disclosed to specified persons. If inspection or disclosure is denied or limited, the court shall state its reasons for such denial or limitation to counsel."

{¶ 86} Sup.R. 48(F) provides for the availability to the parties of guardian ad litem reports. Juv.R. 32(C) declares social histories and reports of physical and mental

examinations, absent good cause shown, are ordinarily available only to counsel.

Clearly, the trial court acted in conformity with Juv.R. 32(C) with respect to restricting access to the parties' psychological reports.

{¶ 87} Arguably, a guardian ad litem's report contains a social history. But Sup.R. 48(F) specifically deals with a guardian ad litem's report in "domestic relations proceedings involving the allocation of parental rights and responsibilities * * *." It is a rule of construction that where general and special provisions cannot be reconciled, the special provision prevails. R.C. 1.51. Applying this rule to the present situation, it would appear that the trial court should have made the guardian ad litem's report available to appellant mother.

{¶ 88} Nevertheless, for this denial of access to constitute reversible error, it must also be shown that the error was prejudicial to appellant. App.R. 12(B). Appellant mother has not persuasively articulated the manner in which her inability to personally view the guardian's report operated to her prejudice. From the time the report was issued until the conclusion of the case, appellant mother was represent by counsel, frequently co-counsel, who were permitted access to the report and its various supplements. Throughout the case, the recommendation of the guardian was no secret, nor were the grounds for that recommendation. Given this access by counsel to the documents, we can conceive of no manner in which appellant mother's inability to personally view the documents harmed her case.

{¶ 89} Finally, appellant mother complains that the trial court abused its discretion when it denied her motion for a continuance for the April 23, 2009 hearing. This is the hearing at which appellant mother's co-counsel withdrew, ostensibly to provide factual testimony as to the events surrounding the Easter visitation incident. Appellant mother insists that she suffered a disadvantage, because her replacement counsel had inadequate time to prepare for the hearing.

{¶ 90} The decision to grant or deny a continuance rests within the sound discretion of the court and will not be reversed absent an abuse of that discretion. *State v. Unger* (1981), 67 Ohio St.2d 65, syllabus. An abuse of discretion is more than an error of judgment or a mistake of law, the term connotes that the court's attitude is arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 91} In the present matter, there was a long-standing hearing date set, rescheduling of which would have involved the coordination of the parties, the court, the guardian ad litem and many attorneys. Moreover, since the reason for the request for a continuance was the withdrawal of co-counsel to provide witness testimony, the preparation and timing of the request with respect to new counsel was in the hands of the party requesting a continuance. Additionally, since the co-counsel who had withdrawn were available in the courtroom to assist substitute counsel, the need for extensive preparation appears lessened. We might also add that, having reviewed the transcript of the proceeding, substitute counsel appears to have been fully prepared. Balancing all of these factors, we can only conclude that the court acted within its discretion when it

denied appellant mother's motion for a continuance. Accordingly appellant mother's seventh and eighth assignments of error are not well-taken.

V. Attorney Sanctions

{¶ 92} On January 26, 2010, the trial court, without a hearing, ruled on the motion from counsel for the guardian ad litem that the attorney fees incurred by the guardian be assessed to the law firms that represented appellant mother. The trial court found the motion well-taken. In doing so, the court found that appellant Stephen Mosier, as a partner in the firm of appellant law firm Hayes Soloway P.C., signed pleadings accusing the guardian ad litem of unethical conduct and requesting that she be referred to a bar grievance committee. The court further found that appellant attorney Mosier filed a declaration with the court "purportedly under oath," the content of which was defamatory and scandalous. The court concluded that appellant attorney Mosier's acts "were specious and scandalous matter within the meaning of Civ.R. 11."

{¶ 93} The court further found that Daniel Ellis, as a partner in appellant law firm Lydy & Moan LTD, advanced the allegations of Steven Mosier which were found to be "baseless and untrue." Further, the court found that Lydy & Moan repeatedly filed challenges to the jurisdiction of the court which were "without basis in law or fact."

{¶ 94} Both appellant law firms assert in their first assignment of error that the trial court erred in assessing Civ.R. 11 sanctions without first conducting a hearing.¹ In material part, Civ.R. 11 provides:

{¶ 95} "Every pleading, motion, or other document of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name * * *. The signature * * * constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. * * * For a willful violation of this rule, an attorney or pro se party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule. Similar action may be taken if scandalous or indecent matter is inserted."

{¶ 96} Citing cases related to frivolous conduct sanctions imposed pursuant to R.C. 2323.51, appellant law firm Hayes Soloway P.C. insists that fundamental fairness requires that, before a court imposes a sanction, it must conduct a hearing to provide the party opposing sanctions an opportunity to establish a good faith basis for his or her pleading. While no hearing is required to deny such a motion, due process demands such a hearing when an award may be made. The same principles apply with respect to a

¹Appellant Lydy & Moan LTD, intent on arguing the merits of the Civ.R. 11 sanction, never actually addresses its first assignment of error.

Civ.R. 11 sanction, appellant law firm insists. Consequently, the trial court's order imposing sanctions should be vacated and the matter remanded for a hearing.

{¶ 97} Appellee guardian ad litem responds, arguing that there was no need for a hearing in this matter, or alternatively that the April 23, 2009 hearing was sufficient to satisfy any hearing requirement. Appellee guardian notes that the trial court waited for approximately two weeks to rule on her motion. When neither law firm responded, the court issued what appellee guardian characterizes as the equivalent of a default judgment. Additionally, appellee guardian asserts, appellant law firms' accusation of that the guardian ad litem engaged in unethical conduct was scandalous per se when found unsupported after the April 23 hearing.

{¶ 98} We are not persuaded that there should be a significant difference in the manner in which R.C. 2323.51 sanctions and Civ.R. 11 sanctions are imposed. The principal difference between these provisions is that broader sanctions may be imposed under the rule, but these sanctions may only be imposed upon attorneys or, in certain circumstances, pro se litigants. *Shaffer v. Mease* (1991), 66 Ohio App.3d 400, 409, 410. Both provisions require that, prior to the imposition of sanctions, the trial court must conduct a hearing. *Sandberg v. Crouch*, 2d Dist No. 21342, 2006-Ohio-4519, ¶ 156; *Rondini v. Semen*, 11th Dist. No. 2002-L-017, 2002-Ohio-6590, ¶ 7; *Cic v. Nozik* (July 20, 2001), 11th Dist. No. 2000- L-117. "[B]oth Civ.R. 11 and R.C. 2323.51 require the trial court to conduct an evidentiary hearing at which the parties and counsel must be given the opportunity to present any evidence relevant to the issues raised before

imposing sanctions." *Nozik v. Sanson* (June 8, 1995), 8th Dist. No 68269. It is an abuse of discretion to award attorney fees without such a hearing. *Goff v. Ameritrust Co.* (May 5, 1994), 8th Dist. Nos. 65196, 66016.

{¶ 99} In this matter, it is undisputed that the trial court never held a hearing at which those against whom sanctions were sought were afforded an opportunity to explain their actions. Accordingly, appellant law firms' first assignment of error is well-taken.

{¶ 100} Both appellant law firms raise issues in their remaining assignments of error which are best raised first before the trial court. Given that this matter must be remanded for a sanction hearing, those issues are not yet ripe and are found moot.

{¶ 101} On consideration whereof, the judgments of the Lucas County Court of Common Pleas, Juvenile Division, are affirmed, in part, and reversed, in part. This matter is remanded to said court for further proceedings in conformity with this decision. Court costs pursuant to App.R. 24 are assessed to appellant mother in case No. L-10-1014 and to appellee guardian ad litem in case No. L-10-1034.

JUDGMENTS AFFIRMED, IN PART,
AND REVERSED, IN PART.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

T.M. v. J.H.
C.A. Nos. L-10-1014
L-10-1034

Mark L. Pietrykowski, J.

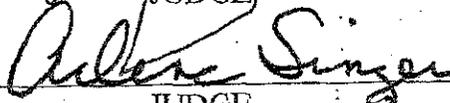
Arlene Singer, J.

Thomas J. Osowik, P.J.

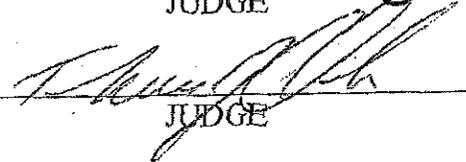
CONCUR.



JUDGE



JUDGE



JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.

APPENDIX C

Decision and Judgment of the Lucas County Court of Appeals (Nov. 29, 2010)

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COURT OF APPEALS
2010 NOV 29 P 3:27

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

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HAYES SOLOWAY P.C.

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

T.M.

Court of Appeals Nos. L-10-1014
L-10-1034

Appellant

Trial Court No. JC 08-177645

v.

J.H.

DECISION AND JUDGMENT

Appellee

Decided: NOV 29 2010

This matter is before the court on appellants', Lydy & Moan, LTD. and T.M., "Motion for Entry of an Order Correcting the Record and Dismissing this Appeal." Appellants assert that there is no final appealable order before this court because the issue of child support remains outstanding. Appellee, J.H., filed a memorandum in opposition to appellants' motion.

This custody dispute has previously been before the court on numerous occasions. In this court's January 11, 2010 decision (case No. L-09-1288), the court stated that a juvenile court's custody determination does not become a final order until all remaining

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issues, including child support, are determined with finality.¹ *Id.* See, also, *Christian v. Johnson*, 9th Dist. No. 24327, 2009-Ohio-3863, ¶ 9.

The magistrate entered a series of orders: April 22, 2009, May 11, 2009, May 29, 2009, June 9, 2009, July 9, 2009, July 17, 2009, July 28, 2009, September 15, 2009, and November 4, 2009. The magistrate addressed all outstanding issues with finality in these orders, including custody, visitation, and support. T.M. filed several objections to each of these decisions.

On December 22, 2010, the juvenile court issued a nine-page decision adopting each of the magistrate's decisions and overruling all of T.M.'s objections to the magistrate's orders. In "adopting" the magistrate's decisions, the juvenile court also specifically stated it was issuing a final custody determination and a final order with respect to T.M.'s visitation rights. It appeared the juvenile court believed it was issuing a final appealable custody determination.

One of the magistrate's orders, which the juvenile court adopted, designates T.M. as the support obligor and orders T.M. to make child support payments of \$219.76 per month. And while the juvenile court "adopted" the magistrate's decision on support determination, the question is whether the juvenile court sufficiently detailed, for

¹In our July 15, 2010 decision, the court stated the January 12, 2010 judgment was a final appealable order. However, the court was incorrect as it appears the January 12 judgment was signed by, or on behalf of, Judge Cubbon, who previously recused herself. See *In re B.D.*, 11th Dist. Nos. 2009-L-003, 2009-L-007, 2010-Ohio-2299, ¶ 76.

purposes of Civ.R. 53, the support obligation it was imposing in the December 22 judgment.

In *Sabrina J. v. Robbin C.* (Jan. 26, 2001), 6th Dist. No. L-00-1374, unreported, this court held:

"[A]n order of a trial court which merely adopts a magistrate's decision and enters it as the judgment of the court is not a final appealable order. * * * [T]o be final, an entry of judgment by the trial court pursuant to Civ.R. 53(E)(4) must:

"1. pursuant to subsection (b), 'adopt reject or modify' the magistrate's decision and should state, for identification purposes, the date the magistrate's decision was signed by the magistrate,

"2. state the outcome (for example, 'defendant's motion for change of custody is denied') and contain an order *which states the relief granted so that the parties are able to determine their rights and obligations by referring solely to the judgment entry*, and,

"3. be a document separate from the magistrate's decision." (Emphasis added.)

The juvenile court's December 22 judgment "adopts" the magistrate's decisions, states the dates of the magistrate's decisions, and is a separate document from these decisions. It also sets forth some of the relief granted (final custody determination and visitation order). But while it appears the juvenile court believed it properly entered a final judgment on all necessary issues, the December 22 judgment does not specify the terms of the child support obligation the magistrate imposed on T.M. Therefore, we

conclude the December 22 judgment does not comply with all of the requirements of Civ.R. 53.

Therefore, in the interests of judicial economy, the court remands this case to the Lucas County Court of Common Pleas, Juvenile Division, for a period of 14 days to enter a final judgment under Civ.R. 53 which adopts the magistrate's decisions specified in the December 22, 2009 judgment, and addresses the juvenile court's final custody determination, the visitation schedule, and the support obligation with respect to the parties' minor child.

The clerk of the Lucas County Court of Common Pleas, Juvenile Division, shall notify this court when the juvenile court issues a final judgment and it has been entered on the court's journal. All due dates and proceedings in this court are stayed pending further order of the court. Appellants' motion to dismiss is found not well-taken and denied. It is so ordered.

Mark L. Pietrykowski, J.

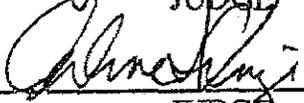
Arlene Singer, J.

Thomas J. Osowik, P.J.

CONCUR.



JUDGE



JUDGE



JUDGE

APPENDIX D

Decision and Judgment of the Lucas County Court of Appeals (Jan. 6, 2011)

FILED
COURT OF APPEALS

2011 JAN -6 P 2:43

COMMON PLEAS COURT
BERNIE GUILTER
CLERK OF COURTS

RECEIVED

JAN 13 2011

HAYES SOLOWAY P.C.

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

T.M.

Court of Appeals No. L-10-1312

Appellee

Trial Court No. JC 08-177645

v.

J.H.

DECISION AND JUDGMENT

Appellant/Cross-Appellee

Decided:

JAN 08 2011

This matter is before the court sua sponte. J.H. filed a notice of appeal on October 21, 2010, from the September 21, 2010 "Nunc Pro Tunc" judgment of the Lucas County Court of Common Pleas, Juvenile Division, in which the visiting judge sought to vacate the January 12, 2010 judgment signed by or on behalf of Judge Cubbon. Judge Cubbon previously recused herself from these proceedings on July 7, 2009. T.M. had filed a notice of appeal on January 20, 2010, from the January 12 judgment and that appeal was pending at the time the visiting judge entered the September 21 judgment.

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On November 1, 2010, S.M. and Hayes Soloway P.C. (collectively hereafter "S.M.") timely filed a cross-appeal. S.M. sought to appeal the September 21 judgment along with the October 18, 2010 judgment, which permitted S.M. to intervene as a party solely for the purposes of grandparent visitation. S.M. also seeks to appeal the following juvenile court judgments in this appeal: (1) the January 12 and 26 judgments; (2) the December 22, 2009 judgments and corresponding magistrate's decision; and (3) the July 9, 2009 judgment.

We will address each judgment separately to determine whether the court has jurisdiction to review the respective judgments on this appeal.

September 21, 2010 Judgment

On September 21, 2010, the visiting judge issued what he characterized as a "nunc pro tunc judgment" amending and vacating the January 12, 2010 judgment signed by Judge Cubbon. The visiting judge sought to correct the record and vacate Judge Cubbon's order because Judge Cubbon recused herself from this case on July 7, 2009. In doing so, the visiting judge noted that Judge Ray, and not Judge Cubbon, had already decided the issues addressed in Judge Cubbon's January 12 judgment, and adopted the magistrate's November 4, 2009 decision in a judgment journalized on December 22, 2010.

We recognize that Judge Cubbon no longer had authority to act after she recused herself concerning the underlying case. See *In re B.D.*, 11th Dist. Nos. 2009-L-003, 2009-L-007, 2010-Ohio-2299, ¶ 76, citing *State v. Raypole* (Nov. 15, 1999), 12th Dist.

No. CA99-05-012. (Additional citations omitted.) See, also, *State ex rel. Stern v. Mascio* (1998), 81 Ohio St.3d 297, 299-300. An order signed by a judge who has previously recused his or herself from the proceedings is void because the judge possessed no authority to act on behalf of the court. *In re B.D.*, 2010-Ohio-2299, ¶ 76.

However, we also note that the visiting judge was divested of jurisdiction to enter the September 21 judgment attempting to vacate Judge Cubbon's January 12 judgment because the January 12 judgment was, on September 21, before this court on a separate appeal, consolidated case No. L-10-1014. Once the notice of appeal was filed, the trial court lost jurisdiction except to take action in aid of the appeal. *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, ¶ 12. This is true even though the January 12 judgment was void. See *In re: S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, where the court states:

"In this case, the juvenile judge proceeded with the adjudication of S.J. despite knowing that the state had filed a written notice of appeal of the court's probable-cause findings. The judge supported her decision to proceed by reasoning that the state lacked a final and appealable order. *However, the judge's opinions regarding the propriety of the state's appeal could not alter the fact that the filing of the notice of appeal had divested the juvenile court of any jurisdiction to proceed with the adjudication during the pendency of the appeal.*

"Since the juvenile court in this case acted without jurisdiction, the court's order adjudicating S.J. a delinquent child is void." (Emphasis added.) Id. at ¶ 11 and 15.

In the instant case, the visiting judge entered the September 21 judgment vacating the January 12 judgment while the January 12 judgment was on appeal to this court. Therefore, the trial court had no jurisdiction to enter that judgment and the September 21 judgment is void. No appeal can be taken from a void judgment. *Gordon v. Gordon*, 5th Dist. Nos. CT2007-0072, CT2007-0081, 2009-Ohio-177, ¶ 30-31. Thus, J.H.'s appeal and S.M.'s cross-appeal of the September 21, 2010 judgment is dismissed.

Miscellaneous Orders

S.M. has also attached several orders from juvenile court to his notice of cross-appeal, including orders of the juvenile court journalized January 26, 2010 (which S.M. has already appealed and is decisional before the court in consolidated case No. L-10-1014), January 12, 2010 (order issued by recused Judge Cubbon),¹ July 9, 2009 (denial of motion to disqualify the juvenile magistrate), December 22, 2009 (final order on custody and T.M.'s visitation, overruling objections and adopting the magistrate's decisions, and order denying T.M.'s motion for public payment of record transcript).

S.M. lacks standing to appeal these judgments. In our July 15, 2010 decision, case No. L-10-1014, this court held S.M. lacked standing to challenge the juvenile court's December 22, 2009 judgment. Similarly, that analysis also extends to S.M.'s attempts to appeal the December 22 judgment denying T.M.'s motion for public payment of record

¹As noted, no appeal may be taken from a void judgment.

transcript and the July 9 judgment denying T.M.'s motion to disqualify the magistrate.

T.M., not S.M., filed these motions. Moreover, S.M. was not a party to these proceedings at that time. Thus, S.M. is also without standing to appeal the December 22, 2009 judgment denying T.M.'s request for transcript and the July 9, 2009 judgment.

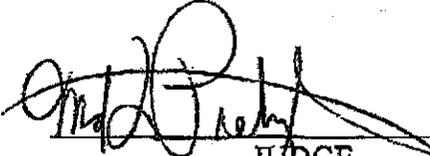
Based upon the foregoing, J.H.'s appeal and S.M.'s cross-appeal of the September 21, 2010 judgment is dismissed. S.M.'s cross-appeal of the January 12 and 26 judgments, the December 22 judgments, and the July 9 judgment, filed on November 1, 2010, and assigned case No. L-10-1312, are dismissed. S.M.'s cross-appeal of the October 18, 2010 judgment remains pending before this court in case No. L-10-1312.

Mark L. Pietrykowski, J.

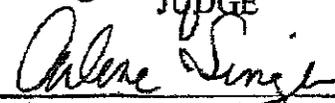
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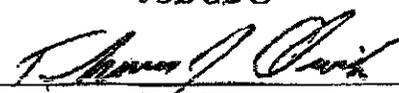
CONCUR.



JUDGE



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