

ORIGINAL

IN THE SUPREME COURT OF OHIO

In The Matter of:

Case No. 2010-0180

C. B.

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

Dependent Child

Court of Appeals
Case No. 92775

FATHER'S MOTION FOR RECONSIDERATION

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IN THE SUPREME COURT OF OHIO

In The Matter of:

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Case No. 2010-0180

C. B.

Dependent Child

FATHER'S MOTION FOR RECONSIDERATION

Now comes Appellee Natural Father of C.B., Anthony Wylie, *pro se* hereinafter referred to as "Father."

Father hereby submits his Motion for Reconsideration pursuant to S. Ct. Prac. R. 11.2(A), S. Ct. Prac. R. 14.3 (A) (1), and S. Ct. Prac. R. 11.2 (B) (4) to the pleading standard as set forth and described by the United States Supreme Court in Haines v. Kerner,¹ wherein the Court unanimously held that in a pro se complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."² "Pro se litigants' court submissions are to be construed liberally and held to less stringent standards than submissions of lawyers. If the court can reasonably read the submissions, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with rule requirements."³ "The courts provide pro se parties wide latitude when

¹ 404 U.S. 519 520-521 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972)

² Id. quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

construing their pleadings and papers. When interpreting pro se papers, the Court should use common sense to determine what relief the party desires.”⁴ Appellee Father “has the right to submit *pro se* briefs on appeal, even though they may be inartfully drawn, but the court can reasonably read and understand them.”⁵ “All litigants have a constitutional right to have adjudicated according to the rule of precedent.”⁶ “Statements of counsel, in their briefs or their arguments are not sufficient for a motion to dismiss or for summary judgment.”⁷ Further, “Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but it consists in its effectiveness as a means to accomplish the end of a just judgment.”⁸

S. Ct. Prac. R. 11.2 (A) provides and states in pertinent part that:

“...any motion for reconsideration must be filed within ten days *after* the Supreme Court’s judgment entry or order is filed with the Clerk.” [*Emphasis added*] As this Court issued its

³ Boag v. MacDougall, 454 U.S. 364, 102 S.Ct.700, 70 L.Ed.2d 551 (1982); Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)(quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)); Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); McDowell v. Delaware State Police, 88 F.3d 188, 189 (3rd Cir. 1996); United States v. Day, 969 F.2d 39, 42 (3rd Cir. 1992)(holding pro se petition cannot be held to same standard as pleadings drafted by attorneys);

⁴ S.E.C. v. Elliott, 953 F.2d 1560, 1582 (11th Cir. 1992). See also, United States v. Miller, 197 F.3d 644, 648 (3rd Cir. 1999) (Court has special obligation to construe pro se litigants' pleadings liberally); Poling v. K. Hovnanian Enterprises, 99 F.Supp.2d 502, 506-07 (D.N.J. 2000).

⁵ See, Vega v. Johnson, 149 F.3d 354 (5th Cir. 1998).

⁶ See Anastoff v. United States, 223 F.3d 898 (8th Cir. 2000)

⁷ Trinsey v. Pagliaro, D.C. Pa. 1964, 229 F. Supp. 647

⁸ Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938).

“judgment entry” on Wednesday, June 22, 2011 and “filed it with the Clerk” for journalization that same day, thus the Father in accordance with S. Ct. Prac. R. 11.2 (A) had “... ten days after...” Wednesday, June 22, 2011 beginning Thursday, June 23, 2011 with which to file his “Motion for Reconsideration” in accordance with the provisions of S. Ct. Prac. R. 11.2(A). The Father respectfully points out that the “ten” [th] day fell on Saturday, July 2, 2011, the Court was closed and the next day being Sunday being July 3, 2011, (the 11th day) the Court was closed on Monday July 4, 2011 falling on a the “4th of July” (being the 12th day) closed due to the “legal holiday.”

Thus in accordance with S. Ct. Prac. R. 14.3 (A) (1) states and provides: “... In computing any period of time prescribed or allowed by these rules or by an order of the Supreme Court, the day of the act from which the designated period of time begins to run shall not be included and the last day of the period shall be included. *If the last day of the period is a Saturday, Sunday, or legal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.*” [Emphasis added]

Thus the fathers hereby timely submits his Motion for Reconsideration, which is due on Tuesday, July 5, 2011 for reasons as set forth above in accordance with S. Ct. Prac. R. 11.2 (B) (4).⁹

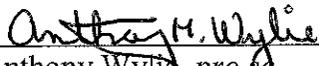
Lines of distinction, are starkly absent from Author Cupp’s majority opinion, which *juxtaposes* with the “*separate concurring opinion*” authored by *J. McGee Brown*, which was joined by only two other Justices namely C.J., O’Connor and J., Lundberg Stratton (J, McGee Brown’s separate concurring opinion of the majority, was not joined or concurred by either J., Lanzinger, J., O’

provides and states in pertinent part that: “A motion for reconsideration...” “...may be filed “...with respect to “A decision on the merits of a case.”

Donnell, or J., Pfeifer). All which is yet *further juxtaposed* with J., Pfeifer's *dissenting opinion* expressing disagreement with the majority opinion. It should be further noted that J., O'Donnell "concurred in judgment only" with majority opinion of J. Cupp which is to say that J., O'Donnell "*agrees with the majority decision , but not with the reasoning of the majority opinion...*"

Father 's Motion for Reconsideration is supported by a Memorandum of Law and Argument which is incorporated herein as if fully rewritten and is more fully stated therein.

Respectfully submitted,



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MEMORANDUM OF LAW AND ARGUMENT

On June 22, 2011 this Court issued an opinion authored by J. Cupp which is currently to be cited as In re C.B. Slip Opinion No. 2011-Ohio-2899.

On June 22, 2011, this Court issued its “Journal Entry” “Appeal from the Court of Appeals” which was signed by Chief Justice O’ Connor and filed with and journalized by the Clerk of Court for the Supreme Court of Ohio on June 22, 2011 which stated:

“This cause, here on appeal from the Court of Appeals for Cuyahoga County, *was considered in the manner prescribed by law*. On consideration thereof,¹⁰ the judgment of the court of appeals is reversed, and the cause is remanded to the court of appeals for farther proceedings consistent with the opinion rendered herein.”

“It is further ordered that a mandate be sent to the Court of Appeals for Cuyahoga County by certifying a copy of this judgment entry and filing it with the Clerk of the Court of Appeals for Cuyahoga County.” (Cuyahoga County Court of Appeals; No. 92775)¹¹

At the outset, Father points out that because, “The Ohio Supreme Court *decisions are binding* and no lower court is entitled to deviate from them, even if the mandate of an intermediate court was to require otherwise.”¹² Thus, “The *law-of-the case doctrine* holds that the decision of the reviewing court in a case remains the law of the case on questions of law involved for all subsequent proceedings at the trial and appellate levels. The Doctrine functions to compel trial courts to follow the mandates of reviewing courts.”¹³ Further as aptly set forth by the 10th Dist.

¹⁰ [*Emphasis added*]

¹¹ Id.

¹² Thacker v. Bd. of Trustees of Ohio (1971), 31 Ohio App.2d 17, 21, 285 N.E.2d 380.

Ct. of Appeals of Ohio in *In re L.W.*¹⁴ “A “moot” case is one which seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it is or has been actually asserted and contested, or a judgment upon some matter which, when rendered, for any reason cannot have any practical legal effect...” Id.

“Initially, *this Court* must determine whether this appeal is properly before us. Appellate courts will not review questions that do not involve live controversies.”¹⁵ “Thus, an action *must* be dismissed as moot unless it appears that a live controversy exists.”¹⁶ “The doctrine of mootness is rooted both in the “case” and “controversy” language of Section 2, Article III of the United States Constitution and in the general notion of judicial restraint. * * * While Ohio has no constitutional counterpart to Section 2, Article III, the courts of Ohio have long recognized that a court cannot entertain jurisdiction over a moot question.”¹⁷ Further, “*It is well-settled law that this court will not issue advisory opinions.*” “It has been long and well established that it is the duty of every judicial tribunal to decide actual controversies between parties legitimately affected by specific facts and to render judgments which can be carried into effect.”¹⁸

¹³ *Kooyman v. Staffco Constr. Inc.*, 2010-Ohio -2268 2nd Dist. Ct. App. (Clark County), Ohio at 29 citing *Nolan v. Nolan* (1984), 11 Ohio St.3d 1

¹⁴ See *In re L.W.*, Ohio App. 10 Dist. (2006), 861 N.E. 2d 546, 168 Ohio App. 3d 613, 2006-Ohio -644, appeal not allowed 848 N.E. 2d 859, 109 Ohio St. 3d 1497, 2006-Ohio 2762.

¹⁵ See *Tschantz v. Ferguson* (1991), 57 Ohio St.3d 131, 133.

¹⁶ *Lorain Cty. Bd. of Commrs. v. U.S. Fire Ins. Co.* (1992), 81 Ohio App.3d 263, 266-267.

¹⁷ *James A. Keller, Inc. v. Flaherty* (1991), 74 Ohio App.3d 788, 791. (Citations omitted.)

¹⁸ *Allen v. Totes/Isotoner Corp.*, 123 Ohio St.3d 216, 2009-Ohio-4231 at {¶ 10} (J., O’Donnell concurring separately) citing *State ex rel. White v. Kilbane Koch*, 96 Ohio St.3d 395, 2002-Ohio- 4848, 775 N.E.2d 508, ¶ 18, citing *State ex rel Baldzicki v. Cuyahoga Cty. Bd. of Elections* (2000), 90 Ohio St.3d 238, 242, 736 N.E.2d 893; *Egan v. Natl. Distillers & Chem. Corp.* (1986), 25 Ohio St.3d 176, 25 OBR 243, 495 N.E.2d 904, syllabus. *Fortner v. Thomas* (1970), 22 Ohio St.2d 13, 14, 51 O.O.2d 35, 257 N.E.2d 371.

Father points out that this Court therefore may not arrive at an opinion or issue an order without applying or in disregard of the above well settled collective legal principles.

With this said, Father hereby asserts and addresses J., Pfeiffer's dissenting opinion:

Father, in addressing J., Pfeiffer's dissenting opinion, Father will utilize *footnotes* to incorporate the corresponding relevant case law. (**Note: J., Pfeiffer's dissenting opinion, did not contain any footnotes, all footnotes that follow are asserted by and utilized by the Father) further any key points contained in J., Pfeiffer's dissent will be italicized by the Father again **note J., Pfeiffer's dissenting opinion, did not contain any italicized print in the text of his dissenting opinion, thus once again,*** the italics contained therein are those added by the father).(Further any underlining or bold text is made solely by the Father as the dissenting opinion as authored by J., Pfeiffer did not contain underlined or bold text.)

"PFEIFFER, J., dissenting."

*"I dissent. I would affirm the holding of the court of appeals that there is no final, appealable order in this case. I base this conclusion on the state of the record."*¹⁹The order committing the child to the temporary custody of the Cuyahoga County Department of Children and Family Services ("CCDCFS") was never terminated. *The court of appeals' entry denying a motion to reconsider its denial of an en banc consideration of the case tells the story:*

"Once again, the denial of a state's motion for permanent custody is not a final appealable

¹⁹ ("Appellate review is strictly limited to the record." "A reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter.") *The Warder, Bushnell & Glessner Co. v. Jacobs* (1898), 58 Ohio St. 77, 50 N.E. 97; *Carran v. Soline Co.* (1928), 7 Ohio Law Abs. 5; *Republic Steel Corp. v. Sontag* (1935), 21 Ohio Law Abs. 358; *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio- 662 at 20 citing *State ex rel. Duncan v. Chippewa Twp. Trustees* (1995), 73 Ohio St.3d 728, 730, 654 N.E.2d 1254, quoting *State v. Ishmail* (1978), 54 Ohio St.2d 402, 8 O.O.3d 405, 377 N.E.2d 500, paragraph one of the syllabus. See also *State ex rel. Brantley v. Ghee* (1997), 80 Ohio St.3d 287, 288, 685 N.E.2d 1243, 1244.

order. Child is in protective custody of the county. *Issues remain pending in the trial court.*”

“*In an entry signed February 1, 2009,*²⁰ the juvenile court judge originally terminated CCDCFS’s temporary custody, effective February 5, 2009; then, *in response to a CCDCFS motion, in an order signed on February 3, 2009, the judge stayed*²¹ the termination of temporary custody pending a February 27, 2009 hearing. Before that hearing was held, C.B.’s mother appealed to the court of appeals. I would hold that there was no final order in place²²for the mother to have appealed from.”²³

²⁰ (“...the court never journalized those orders.”) Cleveland Hts. v. DiFrancesco, Case No. 88871, 2007-Ohio 4680 Eighth Dist. Ct. App. Ohio (Cuyahoga County) at P9.

²¹ (Black’s Law Dictionary defines a “stay” as: “The postponement or halting of a proceeding, judgment, or the like.”) Eighth Edition, definition number 1 at pg. 1453

²² (“Appellate Courts only have jurisdiction over final orders or judgments of trial courts within its district. Section (3) (B) (2), Article IV, Ohio Constitution; R.C. 2505.02. This Court must raise jurisdictional issues sua sponte.” “The word “must” is mandatory. It creates an obligation. It means obliged, required, and imposes a physical or moral necessity.” “We have repeatedly held when the right to appeal is conferred by statute, an appeal can be perfected only in the manner prescribed by the applicable statute.” “Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred” “If there is no final appealable order, then there can be no reviewable decision over which jurisdiction can be exercised.” “If a judgment is not a final appealable order, appellate courts do not have jurisdiction to consider the judgment and the appeal be dismissed.”) Ohio v. Moore Case No. 14-06-53 3rd Dist. Ct. App. of Ohio (Union County) 2007 Ohio 4941; 2007 Ohio App. Lexis 4627 at P7 citing In re Murray (1990), 52 Ohio St. 3d 155, 159, fn 2., 556 N.E. 2d 1169. See also: In re Nichols, 2004 Ohio App. Lexis 1760, 2004 Ohio 2026, (2004) at P6-P7; Willis v. Seeley (Scioto County Common Pleas Court) 68 N.E.2d 484, 33 O.O. 287 (1946).

²³ (“We have repeatedly held when the right to appeal is conferred by statute, an appeal can be perfected only in the manner prescribed by the applicable statute.” “Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred” “If there is no final appealable order, then there can be no reviewable decision over which jurisdiction can be exercised.” “If a judgment is not a final appealable order, appellate courts do not have jurisdiction to consider the judgment and the appeal be dismissed.”) Welsh Dev. Co. v. Warren, Nos. 2010-0611 and 2010-0858, 128 Ohio St. 3d 471; 2011 Ohio 1604; 946 N.E. 2d 215; 2011 Ohio LEXIS 814; Am. Restaurant & Lunch Co. v. Glander (1946), 147 Ohio St. 147, 34 O.O. 8, 70 N.E.2d 93, paragraph one of the syllabus; Ohio v. Anthony M. Defabio Case No. 2003-P-0111 Eleventh Dist. Ct. of Appeals-Ohio (Portage County) 2004 Ohio 1436; 2004 Ohio App. Lexis 1279 at P3; In re Removal of Lavetta Sites,

“The case unfolded like this. In the judgment entry *signed February 1, 2009*, the juvenile court judge decreed:

““The order heretofore made committing the child to the temporary custody of the Cuyahoga County Department of Children and Family Services is terminated effective February 5, 2009. The child is committed to the protective supervision of CCDCFS with the legal custody of the father, Anthony Wylie * * *.

““Amended case plan to be filed with the following modifications: reinstatement of unsupervised visitation; progressive implementation for in-home visitation, bi-weekly extended visitation, and overnight weekend visitation; referral for family preservation to assist child and parent with transition needs and services including appropriate day care, medical care, etc.””

““This matter is continued to February 27, 2009 at 9:30 a.m. for a custody review hearing pursuant to O.R.C. §2151.147(C), for preliminary hearing upon the [child support enforcement agency’s] motion to establish support filed April 18, 2006 and Attorney Witt’s motion for attorney fees filed 4-28-08.”

““Parties are advised that they have thirty (30) days from the date of this entry to file an appeal with the Court of Appeals.””

“Despite the fact that the entry bears the date of February 1, 2009, under the judge’s signature, a statement below that date reads, “Filed with the clerk and journalized by Cuyahoga Juvenile Court Clerks [sic] Office, Volume 10, Page 2556, February 5, 2009, cjdmh.””

“On February 3, 2009, CCDCFS filed a motion for modification of the dispositional order and requested an immediate hearing. The agency asked that its temporary custody be extended to

Wanda Jenkins, and Paul Johnson from Office as an Elected Official and Member of the Board of Education of the Rock Hill School District Case No. 05CA39 Fourth Dist. Ct. of App. (Lawrence County) 2006 Ohio 3787; 2006 Ohio App. LEXIS 3742 at P-14.

April 16, 2009.”

“*In response, the judge released another order:*

““*This matter came on for consideration this 3rd day of February, 2009 before the Honorable Judge Alison L. Floyd upon the [sic] with prayer for as [sic] to the Child heretofore judged to be dependent.*””

““Whereupon the Court finds that CCDCFS through counsel has entered a written notice for modification of dispositional order. *The Court, upon its own motion, shall stay its order terminating the agency temporary custody of the child pending hearing on February 27, 2009.*””

““*It is therefore ordered that the Court’s prior order terminating the temporary custody of CCDCFS effective February 5, 2009 is stayed from execution*²⁴ *pending review hearing on February 27, 2009 at 9:30 a.m. and for preliminary hearing upon the agency’s motion for modification of the dispositional order of February 1, 2009.*””

“ *This order was dated February 3, 2009, beneath the judge’s signature line. Again, a separate statement below that date states that the order was filed on February 5, 2009: “Filed with the clerk and journalized*²⁵ *by Cuyahoga County Juvenile Court Clerks [sic] Office, Volume 10,*

²⁴(*Black’s Law Dictionary* further defines a “stay” as: “An order to suspend all or part of a judicial proceeding—Also termed stay of execution; suspension of judgment.”) Eighth Edition, definition number 2 at pg. 1453

²⁵ (“A judge as the court speaks through the courts journal.” This Court has stated “[a] court of record speaks only through its journal its journal entries.” “[i]t is axiomatic in this State that an order of a court becomes effective only when reduced to writing, signed by the judge, **and filed with clerk for journalization.** “Were the rule otherwise, it would provide a wide open field for controversy as to what the court actually decided.”) State v. ex rel. Ruth v. Hoffman, 1947 82 Ohio App. 266, 80 N.E. 235; State ex rel. Indust. Comm. v. Day (1940), 136 Ohio St. 477, paragraph one of the syllabus; See also: Oney v. Allen (June 7, 1988), 39 Ohio St.3d 103, 107, 529 N.E.2d 471; Also see: State v. Brook, 113 Ohio St.3d 199, 2007 Ohio 1533, 863 N.E.2D 1024 at P-47; State ex rel. Indust. Comm. v. Day (1940), 136 Ohio St. 477, paragraph one of the syllabus; See also: Oney v. Allen (June 7, 1988), 39 Ohio St.3d 103, 107, 529 N.E.2d 471; Also see: State v. Brook, 113 Ohio St.3d 199, 2007 Ohio 1533, 863 N.E.2D 1024 at P47

Page 2138, February 5, 2009, cjds3.””

“C.B.’s mother filed a notice of appeal on February 5, 2009. Nothing in the record²⁶ indicates that the February 27, 2009 hearing that may have modified the court’s decision ever occurred.

There was no final order to form the basis of an appeal. This case was not over at the juvenile court level.” “...the correct disposition here is to affirm the judgment of the court of appeals and remand the case to the juvenile court for a resolution.”” Id. *In re C.B.*²⁷ at ¶ 24 through ¶ 39.

Thus this brings us to the decision of the Eighth District Court of Appeals as J., Pfeiffer does correctly assert:

“The order committing the child to the temporary custody of the Cuyahoga County Department of Children and Family Services (“CCDCFS”) was never terminated. The court of appeals’ entry denying a motion to reconsider its denial of an en banc consideration of the case tells the story:

“Once again, the denial of a state’s motion for permanent custody is not a final appealable order. Child is in protective custody of the county. Issues remain pending in the trial court.””²⁸

Thus this brings us to “jurisdictional” issue because of the “lack of final appealable order.”

²⁶ Once again: (“Appellate review is strictly limited to the record.” “A reviewing court cannot add matter to the record before it, which was not a part of the trial court’s proceedings, and then decide the appeal on the basis of the new matter.”) *The Warder, Bushnell & Glessner Co. v. Jacobs* (1898), 58 Ohio St. 77, 50 N.E. 97; *Carran v. Soline Co.* (1928), 7 Ohio Law Abs. 5; *Republic Steel Corp. v. Sontag* (1935), 21 Ohio Law Abs. 358; *State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St.3d 207, 2006-Ohio- 662 at 20 citing *State ex rel. Duncan v. Chippewa Twp. Trustees* (1995), 73 Ohio St.3d 728, 730, 654 N.E.2d 1254, quoting *State v. Ishmail* (1978), 54 Ohio St.2d 402, 8 O.O.3d 405, 377 N.E.2d 500, paragraph one of the syllabus. See also *State ex rel. Brantley v. Ghee* (1997), 80 Ohio St.3d 287, 288, 685 N.E.2d 1243, 1244.

²⁷ Slip Opinion No. 2011 Ohio-2899

²⁸ In re C.B. Slip Opinion No. 2011-Ohio-2899 (J., Pfeiffer dissenting) at P24-25 citing Eighth District Court of Appeals Order of January, 26, 2010 reaffirming its decision dismissing the underlying action for lack of jurisdiction due to *lack final appealable order...*

*Jurisdiction is "[t]he legal power and authority of a court to make a decision that binds the parties to any matter properly brought before it."*²⁹ *"A universal principle as old as the law is that the proceedings of a court without jurisdiction of the subject matter are a nullity."* Subject matter jurisdiction is the indispensable foundation upon which valid judicial decisions rest, and in its absence a court has no power to act: *A judgment is void, when there is a want of jurisdiction by the court over the subject matter "A void judgment is in legal effect no judgment. No rights are acquired or divested by it. It neither binds nor bars any one, and all proceedings founded upon it are worthless."*³⁰ *"A void judgment is one rendered by a court lacking subject-matter jurisdiction or the authority to act."*³¹ "Because subject-matter jurisdiction goes to the power of the court to adjudicate the merits of a case, *it can never be waived and may be challenged at any time.*"³² "The issue of a court's subject matter jurisdiction cannot be waived. A party's failure to challenge a court's subject matter jurisdiction cannot be used, in effect, to bestow jurisdiction on a court when there is none."³³ *"[A] judgment rendered by a court lacking subject matter jurisdiction is void ab initio."*³⁴ Thus, as this Court has

²⁹ Black's Law Dictionary (7th ed. 1999) pg. 856 (defining judicial jurisdiction). . . .

³⁰ In re T.R.P., 360 N.C. 588, 590, 636 S.E.2d 787, 789-90 (2006) (quoting Burgess v. Gibbs, 262 N.C. 462, 465, 137 S.E.2d 806, 808 (1964)), and Hart v. Thomasville Motors, Inc., 244 N.C. 84, 90, 92 S.E.2d 673, 678 (1956)) (internal citation omitted).

³¹ Grupo Dataflux v. Atlas Global Group (2004), 541 U.S. 567, 575, 124 S.Ct. 1920, 1926, 158 L.Ed.2d 866, 875; Pratts v. Hurley, 102 Ohio St.3d at 84; State v. Beasley (1984), 14 Ohio St.3d 74, 75, 14 Ohio B. 511, 471 N.E.2d 774.

³² Pratts v. Hurley, 102 Ohio St.3d at 83, citing United States v. Cotton (2002), 535 U.S. 625, 630, 122 S. Ct. 1781, 152 L. Ed. 2d 860; State ex rel. Tubbs Jones v. Suster (1998), 84 Ohio St.3d 70, 75, 1998 Ohio 275, 701 N.E.2d 1002, reconsideration denied (1999), 84 Ohio St. 3d 1475, 704 N.E.2d 582.

³³ State v. Wilson (1995), 73 Ohio St. 3d 40, 46.

³⁴ Patton v. Diemer (1988), 35 Ohio St.3d 68, 70, 518 N.E.2d 941; see, also, Pratts, at P12.

stated: ""The effect of determining that a judgment is void is well established. It is as though such proceedings had never occurred; the judgment is a mere nullity and the parties are in the same position as if there had been no judgment.""³⁵ "An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed."³⁶

As this Court is without jurisdiction the "lack of final appealable order it has no authority issue an opinion in this matter, in a pretend controversy, one is advisory in nature and cannot be lawfully carried into effect, thus the opinion authored by J., Cupp, is void and without effect.

J. McGee Brown writes in her separate concurring opinion and states in pertinent part that:

"I concur in the judgment but write separately to express concern about *how the legal system has handled C.B.'s case.*"*Id.* "...five years after C.B. became a dependent child, she does not have permanency, the adults responsible for her continue to argue over legal issues..."³⁷

English Writer, and Clergyman, Robert Burton writes that:

"Our wrangling lawyers are so litigious and busy here on earth, that I think they will plead their clients' cases hereafter, some of them in *hell*..."*Id.*³⁸ Father asserts that "...judicial rulings"

"...never excuses" "attorney" [s] "...from behaving properly" "...as" "...attorney"[s] "...and" as "...officer" [s] "of the court..."³⁹ or to engage in the following practices as described by the

³⁵ State v. Bezak, 114 Ohio St.3d 94 at ¶ 12 citing Romito v. Maxwell (1967), 10 Ohio St.2d 266, 267-268.

³⁶ See Norton v. Shelby County 118 US 425 (1885) [*Emphasis added*]

³⁷ at P19

³⁸ - (1577-1640)

³⁹ In the Matter of A.T., 12th Dist. Court of Appeals of Ohio 2007 Ohio 593; 2007 Ohio App. LEXIS 548 at P17 [*Emphasis added*] see Stark Cty. Bar Assn. v. Ake, 111 Ohio St. 3d 266, 2006 Ohio 5704, 855 N.E.2d 1206.

U.S. Supreme Court in *Roadway Express, Inc. v. Piper*,⁴⁰ in these words: “Due to sloth, inattention, or desire to seize tactical advantage, *lawyers have long indulged in dilatory practices.*” “...many actions are extended unnecessarily by lawyers who exploit or abuse judicial procedures...” “The glacial pace of much litigation breeds frustration with the...” “...courts and, ultimately, disrespect for the law.” Id. [Emphasis added]

To lump the parties together on this latter aforementioned assertion is gross as the Father has proceeded in the matter with a conscience and has sought only to protect his parental rights those of which are naturally interwoven with the child’s rights to her natural parent, not to protract or to act in less than an honorable fashion. The Father has not sought to argue merely over “legal issues”, but has sought only to lift his daughter up...

This Court must share in J., McGee’s indictment of what she refers to the “legal system” as with all due respect, here is a news flash: This Court has assisted in protracting this matter without a little thing called “jurisdiction” (from January 29, 2010 until June 22, 2011) and now nearly a (1 and ½ years later) it wishes to issue an order ultra vires which cannot be carried into effect because it lacks jurisdiction. Suddenly, (“5 yrs in foster care”) seems to be (tied to 1 ½ years in the Ohio Supreme Court) which is in fact “unconscionable” (3 ½ yrs. in foster care)

This leads us to counting back (from January 26, 2010 back to February 06, 2009) to (nearly 1 year) in the Eighth District Court of Appeals where it did not have jurisdiction and correctly dismissed the case; (suddenly that “5 years in foster care) is now (2 ½ years in foster care) Which takes us back the Trial Court to the Cuyahoga County Juvenile Court to February 05, 2009 when the Mother filed an appeal to February 03, 2009 when the agency sought to extend the matter and the Court stayed its decision of February 01, 2009 decision back (three more

⁴⁰ *Roadway Express, Inc. v. Piper*, 447 U.S. 752, at fn4(1980) citing Cf. C. Dickens, Bleak House 2-5 (1948).

months) prior to the November 03, 2009 conclusion of the 5-day October 28, 2008 through November 3, 2008 trial, which is another (*3 month wait for a decision*) which now becomes (*2 ¼ years in foster care*) which takes us back from October 27, 2009 to August 11, 2009 (*two months further back to pretrial hearings,*) motions and a third appointment of a new GAL for C.B.

Thomas Kozel, back to the August 5, 2008 to the withdrawal of Judi Wallace who was appointed on August 4, 2008 then to the second G.A.L. for C.B. back to (July 25, 2008) where the original G.A.L. for C.B. Jeffrey Froud withdrew July 25, 2008

On July 17, 2008(*yet nearly another 1 month period*) which now makes it (*2 years in foster care*) (*verses the 5years asserted by J. McGee Brown*)the trial Court declared a mistrial after the G.A.L. for the child filed a motion to withdraw and thus this matter did not proceed to a new trial until October 28, 2008 and concluding on November 3, 2008 (*more than three months later*) which brings us to the delay from July 17, 2008 back May 7, 2008 (*another more than three month period*) to (*1 ¾ years in foster care*) slightly more than 12 out of 24 months (*13 months*) “...13 out of 24) which now does not seem so out of line with so called statutory guidelines back to further delays to getting the matter to trial.

Suddenly, J. McGee Brown’s assertions now seems so vaguely misplaced because of the lack proper chronology of events and now the factual circumstances now suddenly seem more in tune with reality... as illuminated by the Father (*A total of 2 ½ years on appeal in both the Ohio Supreme Court and the Eighth District Court of Appeals of Ohio*) further (*more than 6 month delays caused by a mistrial*) May 7, 2008 to October 27, 2008) along with initial additional delays from December 23, 2005 to February 2006 in notifying the Father, (*nearly 3month delays in hearing from March -June 2006*) while C.B.’S mother sadly, was unable to appear, because of a three month incarceration in Florida

J. McGee Brown further writes

“A parent's right to his or her children generally trumps the rights of all others, but not when there is clear and convincing evidence of abuse or neglect.” “In the event that a court removes a child from a parent because of abuse or neglect...” Id. ⁴¹

In Beekman vs. Beekman, ⁴² in a concurring opinion, Presiding Judge William H. Harsha observed that the tactic of making a false allegation about child abuse, to achieve a preferential posture in a custody case, is “*almost as despicable as the act itself.*” Id. [Emphasis added] The Ohio Supreme Court has further observed that adults sometimes persuade children to make false allegations of abuse: “*Not every child who says he or she has been abused has in fact been abused.* Sometimes a child can be a pawn in power games and rivalries between significant adults in the child’s world. Sometimes the adults are willing to believe the worst about their adult adversaries and encourage, consciously or subconsciously, stories of abuse when abuse has not occurred. . . . The innocent desire of small children to please the adults they encounter makes the problem more complicated still. The child may be guided less by objective standards of truth than by the desire to say what a significant adult wants to hear. For the child, “truth” can be what pleases the adult.” Id. ⁴³

Late Chief Justice Thomas Moyer and former Justice Herbert Brown further observed, that in one study, it was found that forty-one percent of cases involving alleged sexual abuse arose in divorce and custody cases. Id. ⁴⁴ *Unsubstantiated allegations of abuse are*

⁴¹ at P20

⁴² Beekman vs. Beekman (1994), 96 Ohio App.3d at 792 (Harsha, J., concurring).

⁴³ State v. Storch, (1993), 66 Ohio St.3d 280, 284-285 (emphasis added).

*the worst kind of poisoning of the relationship.*⁴⁵ Further, late Chief Justice Thomas Moyer and former Justice Herbert Brown have observed that, when an accusation of child abuse is made during a “custody fight,” there is “always the underlying suspicion that the accusation was linked to the custody dispute.”⁴⁶

J., McGee Brown’s assertion that:

“In this case, the legal system has done harm to this child. No child should spend five years in foster care. It is unconscionable.” *Id.*⁴⁷ This is an understatement of gross proportions, it is the “legal system” that “is unconscionable”!

In the case at bar, unlike the assertions of J., McGee Brown, C.B. was not removed from the Father, C.B. was removed from her natural mother, C.B. was not removed because of “abuse or neglect” and thus J., McGee Brown’s assertions to the contrary are grossly misplaced and falsely inaccurate... Further, like the above observations of this Court and others, Father had a false abuse accusation leveled at him by CCDCFS working in concert with unscrupulous parties with what they believe are vested interests in the matter *just ever so conveniently* after it filed its first Motion to Terminate Parental Rights on July 27, 2007 less than 11 days later on August 7, 2007 which was determined to be you guessed it: “unsubstantiated.” *The only person to pursue the matter at trial was the Father, not the G.A.L. for C.B., and not the accusing agency...!*

C.B. was never adjudicated as an “abused or neglected” child, but instead was adjudicated a “dependent” child and any assertion to the contrary or attempting to elude to another reality is

⁴⁴ State v. Boston (1989), 46 Ohio St.3d 108, 129 (Brown, J., concurring).

⁴⁵ *Beekman, supra*, at 789 (emphasis added).

⁴⁶ *Boston, supra*, at 130 (Brown, J., concurring).

⁴⁷ at P21

gross, unjust, and flies counter to the well seasoned wisdom of the *Storch, Boston*, and *Beekman Courts*. See also: Leving, Jefferey M. (1997). *Fathers' Rights: Hard hitting and fair advice for every father involved in a custody dispute*. New York, NY: Basic Books; Seidenberg, Robert (1997). *The Father's Emergency Guide to Divorce-Custody Battle: A Tour through the Predatory World of Judges, Lawyers, Psychologists & Social Workers, in the Subculture of Divorce*. Takoma Park, MD: JES Books; Wexler, Richard (1990). *Wounded Innocents: The real victims of the war against child abuse*. Amherst, NY: Prometheus Books.

Finally, J., McGee Brown asserts:

“We are required to remand this case for determinations consistent with our *decision*.” Id. ⁴⁸

Because this Court does not have jurisdiction due to lack of final appealable order, J., Brown's assertion *predicated thereon* is also misplaced.

In summation, *this Court* “lacks jurisdiction” as “there is no final appealable order” as the trial court “stayed” its decision, this Court is restricted to the record before it, that of the trial court and of the October 28, 2008 through November 3, 2008 trial and any records up to February 05, 2009 and not any matters that may have been improperly asserted, alluded to, or improperly included by the Appellant' with their repeated unethical tactics in this matter. Thus this Court *must* dismiss the case for lack of jurisdiction fully consistent with the Eighth District Court of Appeals decision to do so.

Father again points out that:

“Appellate Courts only have jurisdiction over final orders or judgments of trial courts within its district. Section (3) (B) (2), Article IV, Ohio Constitution; R.C. 2505.02. This Court must raise jurisdictional issues sua sponte.” “The word “must” is mandatory. It creates an obligation. It means obliged, required, and imposes a physical or moral necessity.” “We

⁴⁸ at P22

have repeatedly held when the right to appeal is conferred by statute, an appeal can be perfected only in the manner prescribed by the applicable statute." "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred" "If there is no final appealable order, then there can be no reviewable decision over which jurisdiction can be exercised." "If a judgment is not a final appealable order, appellate courts do not have jurisdiction to consider the judgment and the appeal be dismissed." ⁴⁹ "We have repeatedly held when the right to appeal is conferred by statute, an appeal can be perfected only in the manner prescribed by the applicable statute." "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred" "If there is no final appealable order, then there can be no reviewable decision over which jurisdiction can be exercised." "If a judgment is not a final appealable order, appellate courts do not have jurisdiction to consider the judgment and the appeal be dismissed." ⁵⁰

This Court is prohibited from issuing an opinion or order in a "pretend controversy." Thus as it has improperly done so, its order and corresponding opinion are *void ab initio* and volatile of the Father's 14TH Amendment right to "equal protection of the law" as it violates the provisions of

⁴⁹ Ohio v. Moore Case No. 14-06-53 3rd Dist. Ct. App. of Ohio (Union County) 2007 Ohio 4941; 2007 Ohio App. Lexis 4627 at P7 citing In re Murray (1990), 52 Ohio St. 3d 155, 159, fn 2., 556 N.E. 2d 1169. See also: In re Nichols, 2004 Ohio App. Lexis 1760, 2004 Ohio 2026, (2004) at P6-P7; Willis v. Seeley (Scioto County Common Pleas Court) 68 N.E.2d 484, 33 O.O. 287 (1946).

⁵⁰ Welsh Dev. Co. v. Warren, Nos. 2010-0611 and 2010-0858, 128 Ohio St. 3d 471; 2011 Ohio 1604; 946 N.E. 2d 215; 2011 Ohio LEXIS 814; Am. Restaurant & Lunch Co. v. Glander (1946), 147 Ohio St. 147, 34 O.O. 8, 70 N.E.2d 93, paragraph one of the syllabus; Ohio v. Anthony M. Defabio Case No. 2003-P-0111 Eleventh Dist. Ct. of Appeals-Ohio (Portage County) 2004 Ohio 1436; 2004 Ohio App. Lexis 1279 at P3; In re Removal of Lavetta Sites, Wanda Jenkins, and Paul Johnson from Office as an Elected Official and Member of the Board of Education of the Rock Hill School District Case No. 05CA39 Fourth Dist. Ct. of App. (Lawrence County) 2006 Ohio 3787; 2006 Ohio App. LEXIS 3742 at P-14.

R.C. 2505.02 and has no authority to hear the appeal without a final appealable order.

The 14th Amendment of the United States Constitution establishes that: "no state [shall] deprive any person of life, liberty, or property, without due process of law." Fourteenth Amendment, United States Constitution. To apply procedural due process, a state must take action to deprive an individual of a protectable interest in life, liberty, or property.⁵¹ Judicial action qualifies as state action for procedural due process purposes."⁵² The "equal protection of the laws" implies not merely equal accessibility to the courts for prevention or redress of wrongs and the enforcement of rights, but equal exemption with others in like condition from charges and liabilities of every kind."⁵³ The "equal protection of the laws" as this court has frequently decided, means subjection to equal laws applying alike to all in the same situation, or "equal protection of laws" means that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property of property, but the "equal protection and security should be given to all under like circumstances, in the enjoyment of the personal and civil rights***That no greater burdens should be laid upon anyone than are laid upon others in the same calling and condition."⁵⁴ "Equal protection of the laws" is not an abstract right, but it is a command which the state *must* respect."⁵⁵Id. "The word "*must*" is mandatory. It creates an obligation. *It means*

⁵¹ See *Bd. of Regents of State Colleges v. Roth* (1972), 408 U.S. 564, 570-73, 92 S.Ct. 2701, 3 L.Ed.2d 548.

⁵² *Shelley v. Kraemer* (1948), 334 U.S. 1, 14, 68 S.Ct. 836, 92 L.Ed. 1161.

⁵³ See *Minneapolis & St. L. Ry. Co. v. Beckwith*, (Iowa 1889) 9 S.Ct. 207, 129 U.S. 26, 32 L.Ed. 585 See also *Cotting v. Godard*, (Kan. 1901) 22 S. Ct. 30 183 U.S. 79, 46 L. Ed 92.

⁵⁴ See *State of South Carolina ex rel. Phoenix Mut. Life Ins. Co. v. McMaster*, (U.S.S.C. 1915) 35 S. Ct. 504, 237 U.S. 63, 59 L. Ed. 839

⁵⁵ See *Hill v. State of Tex.*, (U.S. Tex. 1942) 62 S.Ct. 1159, 316 U.S. 400, 86 L. Ed. 1559.

obliged, required, and imposes a physical or moral necessity."⁵⁶

"When we consider the nature and the theory of our institutions of government, the principles on which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal an arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And law is the definition and limitation of power."⁵⁷ Thus "The individual may stand upon his constitutional Rights as a citizen." "His Rights are such as existed by the law of the land [Common Law] long antecedent to the organization of the State, and can only be taken from him by due process of law, and *in accordance with the Constitution.*"⁵⁸ No higher *duty* rests upon this court than to exert its full authority to prevent all violation of the principles of the Constitution."⁵⁹ "...and it is the *duty* of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."⁶⁰ "Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example..."⁶¹ "Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberate forces should

⁵⁶ Willis v. Seeley (Scioto County Common Pleas Court) 68 N.E.2d 484, 33 O.O. 287 (1946)

⁵⁷ See Yik Wo v. Hopkins 118 US 356 (1885)

⁵⁸ Hale v. Henkel, 201 U.S. at 47(1905).

⁵⁹ See Downes v. Bidwell, 182 U.S. 244 (1901), (Harlan dissenting.) [Emphasis added]

⁶⁰ Byars v. U.S., 273 US 28 (1927)[Emphasis added]

⁶¹ Olmstead v. U.S., 277 US at 485 (1928)

prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of American government...they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies...”⁶²

"Nothing in the world can take the place of persistence. Talent will not; nothing is more common than unsuccessful men with talent. Genius will not; unrewarded genius is almost a proverb.

*Education will not; the world is full of educated derelicts. Persistence and determination alone...”*⁶³ Applying Calvin Coolidge’s maxims and utilizing a real world example of this as an

analogy, watch and listen to a radio call announced by Lon Simmons of former San Francisco 49ers QB Steve Young’s run against the Minnesota Vikings:⁶⁴ Steve Sabol, President of NFL

Films, narrating: “Steve Young’s run against the Vikings in my mind, is the greatest *run* in the history of the game.” “It was an expression of one man’s will...” Brian Murphy of KNBR Sports

⁶² *Whitney v. People of the State of California*, 274 US at 375 (1927) (Justice Louis Brandeis)

⁶³ Calvin Coolidge (30th President of U.S. (1872-1933) The Quotations Page: located at: www.quotationspage.com/quote/2771.html (Last viewed June 22, 2011)

⁶⁴ See www.nfl.com/videos/nfl...highlights/.../Top-Ten-Mobile-QBs-Steve-... Titled: “NFL Videos: Top Ten Mobile QBs: Steve Young” from video *minute markers* from 2:16 to 3:09 (Last viewed July 4, 2011)

Radio San Francisco, narrating: “It’s almost no way to describe it other than to see it, or, listen to Lon Simmons’ radio call...” (pause it to watch it in slow motion... to really appreciate truly how many tackles he avoided in his run to daylight...)

Voice of Lon Simmons Sports Radio KNBR announcer:

“In trouble he is going to be sacked...”⁶⁵

“... no gets away...”

“... he runs...”⁶⁶

“... gets away again...”⁶⁷

“... goes to the 40...”

“...gets away again...”⁶⁸

”... to the 35...”

“...cuts back at the 30...”⁶⁹

“...to the 20...”⁷⁰

“...the 15...”

“... the 10...”

“...he dives...”
...touchdown 49er’s!!!”⁷¹

⁶⁵(pocket collapses)

⁶⁶ (scrambles and eludes pursuing linebackers)

⁶⁷ (breaks two tackles)

⁶⁸ (breaks another tackle)

⁶⁹ (breaks and avoids another tackle)

⁷⁰ (breaks another tackle)

Love is not a noun, but a verb, love endures, and love finds a way... Out of love for my daughter⁷², as her Father,⁷³ I made a promise to my daughter standing in Lincoln Park, after hours of playing with her, chasing and playing in leaves, her teasing squirrels by chasing them up trees and trying catch “burdies...”⁷⁴ Chasing after them with reckless abandon. After she was tuckered out, I was holding her and she noticed a silhouette on the ground in the summer sun, she pointed to it with a smile on her face and a glow in her eyes of only a child whose heart is filled with the knowledge that she is loved by her Father..., she exclaimed “Daddy!!” and “C.!”⁷⁵ In that moment I made up my mind that no matter how long it took, no matter how long I had to fight for her, no matter what I had to endure, that I would not allow her heart to run out of summers or allow her heart to be filled with only shadows of a yearning undefined and that I would be more than just a long ago forgotten memory of a shadow⁷⁶ in Lincoln Park. I made a promise to her that she would know her Father⁷⁷ and that knowledge would be experienced in the fullness of time...

When the legal system becomes nothing more than a political process, what are the choices and the decisions one is left with...?” The only sensible answer and conclusion that the Father is left

⁷¹ Id at 3:09

⁷² “C...B...”

⁷³ “Daddy” (or just plain “Dad” when she sometimes sasses me...)

⁷⁴ Birds...

⁷⁵ C.B. (A Neil Diamond song comes to mind that aptly expresses it here...)

⁷⁶ Silhouette...

⁷⁷ “Daddy...”

with, *is to transcend those realities...* Though I myself I am not a particularly religious person, *when it comes to my daughter, I know that there is a God*, and in those moments, when protecting something so precious, I will give all and never waiver as her father in my efforts to protect her and lift her up...

Isaiah 40:31 promises that:

“... those who hope in the LORD will renew their strength.

They will soar on wings like eagles;

they will *run* and *not grow weary*,

they will *walk* and not be faint...”

Isaiah 40:31 Amplified: But those who wait for the Lord [who expect, look for, and hope in Him] shall change and renew their strength and power; they shall lift their wings and mount up [close to God] as eagles [mount up to the sun]; they shall run and not be weary, they shall walk and not faint or become tired. ⁷⁸ Id. "An unconstitutional act is not a law; it confers no rights; it impose no duties; it affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed."⁷⁹ "The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sunbeam, in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power."⁸⁰

Accordingly, Father respectfully moves this Court to vacate its Order of June 22, 2011

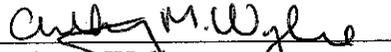
⁷⁸ Isaiah 40:31 Commentary: www.preceptaustin.org/isaiah_4031_commentary.htm (Last viewed June 27, 2011) (Amplified Bible - Lockman)

⁷⁹ See Norton v. Shelby County 118 US 425 (1885)

⁸⁰ Alexander Hamilton, The Farmer Refuted The Works of Alexander Hamilton, ed. John C. Hamilton, (New York: Charles S. Francis, 1851) vol. 2, p. 80.

“reversing the judgment of the court of appeals” and to instead issue a proper order affirming the Eighth District Court of Appeals judgment and order it remanded back to the trial court as set forth and in accordance with J., Pfeiffer’s dissenting opinion, which necessarily brings us to a dismissal on the part of this Court, due to lack of jurisdiction, due to lack of final appealable order...

Respectfully submitted,



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CERTIFICATE OF SERVICE

This certifies that a true file stamped copy of "Father's" Motion for Reconsideration has been sent by Regular U.S. Mail postage prepaid to all parties or their attorneys of record as set forth and listed below on this 5th day of July 2011.

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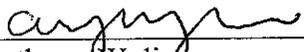
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