

IN THE SUPREME COURT OF OHIO

JULIE ROSE ROWELL :
Appellant, : Case No. 2011-1053
 :
v. : On Appeal from the Franklin
 : County Court of Appeals,
JULIE ANN SMITH : Tenth Appellate District
Appellee. :
 : Court of Appeals Case Nos.
 : 10AP—675 and 10AP-708

MOTION TO CLARIFY STAY ENTRY

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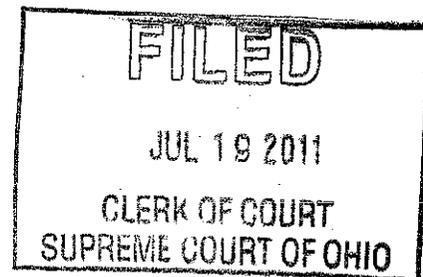
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Guardian ad Litem



MOTION TO CLARIFY STAY ENTRY

Plaintiff / Appellant Julie Rose Rowell (“Ms. Rowell”), through Counsel, moves this Court to clarify and / or amend its Entry granting Appellant’s Motion for Stay of the Court of Appeals’ Decision that terminated the temporary order issued by the trial court and reinstating temporary visitation between Ms. Rowell and the minor child whose custody is at issue in the case at bar pending outcome of the instant appeal. A memorandum in support follows.

MEMORANDUM IN SUPPORT

As has previously been discussed, this case involves the disputed custody of a minor child, now age 7, more specifically a claim that Ms. Rowell should be entitled to share legal custody of the minor child as the result of agreements established between the parties by their words and conduct before and following the birth of the minor child and continuing until Appellee terminated her partnered relationship with Appellant and sought to sever Appellant’s established relationship with the minor child.

Upon Ms. Rowell’s Motion, this Court recently granted a stay of the Tenth District Court of Appeals’ decision that terminated the temporary order of visitation in this matter, and reinstated the terms of the trial court’s temporary order of visitation pending the resolution of this appeal. See Entry, Appendix A.

Following this Court’s stay and reinstatement of the terms of the temporary order, Appellee herein, Julie Smith (“Ms. Smith”) has once again refused to comply with the terms of the reinstated temporary order. In response, Ms. Rowell approached the trial court for enforcement of the previously suspended enforcement order, but the trial court determined that it could not enforce the terms of the temporary order because this Court’s stay was limited to the terms of the temporary order and not to the resulting enforcement thereof that is at issue on this

appeal. See Order, Appendix B. This results in the untenable position that Ms. Smith is ordered to comply with the terms of the reinstated order but would have no consequences for refusing to do so.

This situation is precisely analogous to the situation encountered in the Tenth District Court of Appeals on the appeal that resulted in the current appeal to this Court. When Ms. Smith appealed the Trial Court's Order enforcing the previously ordered jail sentence following the court's finding that Ms. Smith was in contempt of court for her refusal to comply with the temporary order, the Tenth District Court of Appeals initially stayed enforcement of the jail sentence, specifically stating that "the trial court orders in regard to visitation with the minor child are not stayed by virtue of this entry. This court will revisit the matter of this stay in the event appellant continues to violate orders of court." See Journal Entry, Appendix E. Just as is occurring now, Ms. Smith then refused to comply with the visitation orders that were not stayed by the Tenth District, and upon Appellant's follow-up Motion filed August 31, 2010, the Tenth District Court of Appeals vacated its stay of the enforcement of the jail sentence and directed Ms. Rowell to apply to the Trial Court for enforcement.

Ms. Rowell then approached the trial court to enforce the jail sentence (during the pendency of the Tenth District appeal), but in an attempt to accomplish the requested visitation and give Ms. Smith one final opportunity to avoid the jail sentence, Ms. Rowell offered to permit Ms. Smith to begin to comply with the temporary order and maintain that compliance through the resolution of the appeal. Ms. Smith agreed. See Appendix G. The parties arranged with the trial court to schedule bi-weekly hearings to enforce the jail time already ordered in the event that Appellee filed to do so. See Appendix H; (subsequent continuance entries have continued the bi-weekly hearings through the present time). With this arrangement in place, Ms. Smith

thereafter complied with the terms of the trial court's temporary order and the minor child was afforded visitation with Ms. Rowell regularly until June 9, 2011, the date the Tenth District overturned the order.

Now we are faced with exactly the same situation as was faced by the Tenth District Court of Appeals below. Upon motion of Ms. Rowell, the Appellant herein, this Court has reinstated the terms of the temporary order of the trial court until such time as this appeal is resolved, thereby requiring Ms. Smith to facilitate visitation according to the terms of that order. Upon receiving word of this Court's Stay and reinstatement of the temporary orders, Appellant immediately sought to exercise visitation under the terms of the temporary order, which under the schedule the parties had followed, would have resulted in visitation between the minor child and Ms. Rowell for the week beginning July 8, 2011. Appellee refused.¹ Ms. Rowell approached the trial court to enforce its order of jail time, but without further clarification from this Court, the Trial Court was concerned that it might be without authority to enforce the order. See Appendix B.

As this Court is aware, the order of a court remains enforceable in contempt until such time as the order is set aside. At this juncture, the trial court's order has been reinstated to ensure that the minor child whose custody is at issue continues to have uninterrupted regular contact with Ms. Rowell until such time as the parties' rights and responsibilities are determined in this appeal. There is no point whatsoever in reinstating the terms of the trial court's temporary orders if the trial court is then powerless to enforce the terms of the order during the pendency of this appeal when Ms. Smith, despite the order of this Court, continues to defy the now reinstated temporary visitation orders and refuses to permit any visitation between the minor child and Ms.

¹ Ms. Smith both advised that she would be taking a two week vacation beginning that day and also that she would not be providing visitation under the order at any time.

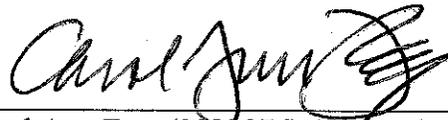
Rowell. We ask that you adopt the same stance followed by the Court of Appeals below, and authorize the enforcement of the jail sentence despite the pendency of this Appeal, because regardless of the outcome of this Appeal, Ms. Smith is not permitted to refuse to comply with the reinstated order. That enforcement would not be an issue, and Ms. Smith would not be facing enforcement action, had Ms. Smith simply complied with the reinstated order.

Accordingly, Ms. Rowell, the Appellant herein, respectfully requests that this Court clarify its Entry of July 7, 2011, by this this Court already stayed the decision of the Tenth District Court of Appeals and reinstated the trial court's temporary orders until resolution of this appeal, to confirm the trial court's ongoing authority to enforce the contempt sanctions already ordered by the trial court, which sanctions have been held in abeyance only by virtue of the Agreement of the parties delaying their implementation conditioned upon Ms. Smith's continued compliance with the terms of the temporary order, all as set forth in Exhibit G.

In the absence of the trial court's ability to enforce the reinstated order, it is clear that Ms. Smith has no intention of providing the ordered visitation, and would prefer to disrupt the minor child's relationship with Ms. Rowell for whatever periods of time possible during this appeal and the ongoing litigation related to this claim.

We thank the Court in advance for its consideration of this request.

Respectfully submitted,



Carol Ann Fey (0022876) (Counsel of Record)
Attorney & Counselor at Law

LeeAnn Massucci (0075916)
Massucci & Kline LLC

Attorneys for Appellant Julie Rose Rowell

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Motion was sent by ordinary U.S. mail to counsel for Appellee, Gary J. Gottfried and Eric M. Brown, 608 Office Parkway, Suite B, Westerville, Ohio 43082, and to Meredith A. Snyder, Guardian ad Litem, 572 East Rich Street, Columbus, Ohio 43215, on July 19, 2011.

A handwritten signature in cursive script, appearing to read "Carol Ann Fey", written over a horizontal line.

Carol Ann Fey (0022876)

Counsel for Appellant Julie Rose Rowell

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CLERK OF COURT
SUPREME COURT OF OHIO

The Supreme Court of Ohio

Julie Rose Rowell

Case No. 2011-1053

v.

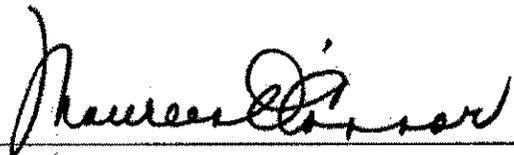
ENTRY

Julie Ann Smith

This cause is pending before the Court as a discretionary appeal.

Upon consideration of appellant's motion for stay of the court of appeals' judgment, it is ordered by the Court that the motion is granted and the terms of the temporary visitation order are reinstated pending resolution of this appeal.

(Franklin County Court of Appeals; Nos. 10AP675 and 10AP708)



Maureen O'Connor
Chief Justice

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
JUVENILE DIVISION

JULIE R. ROWELL,

PLAINTIFF,

-vs-

CASE NO: 08JU-10-13850
JUDGE GILL
MAGISTRATE KNISELY

JULIE A. SMITH,

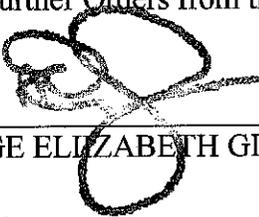
DEFENDANT.

ORDER

This cause came on to be heard on the Motion of the Plaintiff for enforcement of the previously suspended contempt sanctions on Defendant for failure to comply with the temporary orders of the Court. Plaintiff appeared with her counsel, Carol Fey, Esq. and Lee Ann Massuci, Esq. Defendant did not appear. Defendant's counsel, Eric Brown, Esq. appeared as did the Guardian ad Litem, Meredith Snyder, Esq.

This matter is currently on discretionary appeal to the Supreme Court of Ohio. The Ohio Supreme Court has issued a *Stay* of the order/decision of the 10th District Court of Appeals, however, the Stay refers specifically to the *Temporary Orders* of this Court and not the orders regarding Contempt.

Plaintiff's Motion for enforcement of the previously suspended contempt sanctions is DENIED at this time pending further Orders from the Ohio Supreme Court.



JUDGE ELIZABETH GILL

cc:

Carol Fey, Esq.
Lee Ann Massuci, Esq.
Eric Brown, Esq.
Meredith Snyder, Esq.

CLERK OF COURTS

2011 JUL 11 PM 1:16

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS

JULIE R. ROWELL,

PETITIONER,

-vs-

CASE NO: 08JU-10-13850
JUDGE GILL

JULIE A. SMITH,

RESPONDENT.

ORDER

This cause came on to be heard on the Motion of The Petitioner to Enforce the previously ordered jail sentence ordered March 22, 2010 and The Motion of The Respondent for Stay.

Respondent's Motion to Stay is DENIED.

The parties stipulated that the Respondent has not purged her contempt and has not complied with the previously issued Temporary Orders of this Court. Therefore, Petitioner's Motion to Enforce is GRANTED.

Respondent shall commence serving the previously ordered three day jail sentence at 8:30 a.m. on July 30, 2010 through August 2, 2010 at 8:30 a.m. Respondent shall present herself to the Franklin County Women's Jail at 2460 Jackson Pike, Columbus, OH 43207 with a photo ID at 8:30 a.m. on July 30, 2010.

In order to assure that Madison is cared for and effectuate as smooth as transition as possible in the best interest of the minor child, the child shall be exchanged at the offices of the Guardian ad Litem, Meredith Snyder at 3:00 p.m. on July 29, 2010.

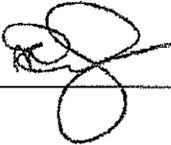
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CLERK OF COURTS

Petitioner Rowell shall have continuous time with the child from 3:00 p.m. on July 29, 2010 through 6:00 p.m. on August 6, 2010. (This being considered her alternate week summer visitation). Thereafter, visitation shall proceed pursuant to the temporary orders of this Court issued February 18, 2010.

Respondent shall pay \$2,500 to the Petitioner on or before July 30, 2010.

Any award of make-up time with the child shall be determined as in her best interest at final hearing in this matter.

IT IS SO ORDERED!



JUDGE GILL

cc:

Julie Rowell
Carol Fey, Esq.
Lee Ann Massucci, Esq.
Julie Smith
Gary Gottfried, Esq.
Meredith Snyder, GAL

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH

IN RE: MADISON SMITH, Minor Child,

Julie R. Rowell

Petitioner,

Case No. 08 JU-10-13850

v.

Judge Gill

Julie A. Smith

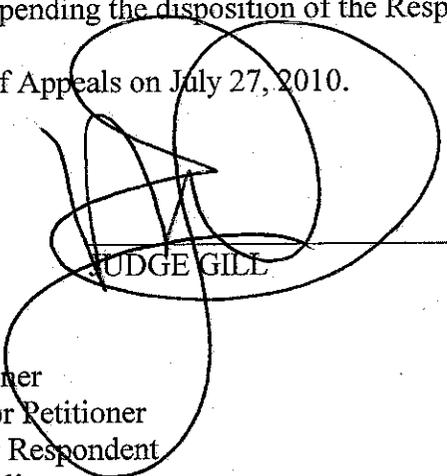
Magistrate Hosafros

Respondent.

JUDGMENT ENTRY

This 28th day of July 2010, this matter came before the Court upon the motion of Respondent requesting that the Court stay the *Order* of July 27, 2010, which enforced a term of incarceration against the Respondent, pending disposition of the Respondent's appeal to said Order filed on July 27, 2010. The Court, having reviewed the evidence, finds the motion ~~well taken~~ / not well taken and hereby ~~sustains~~ / overrules the same.

It is therefore **ORDERED, ADJUDGED** and **DECREED** that the *Order* of July 27, 2010 is hereby ~~stayed~~ / not stayed pending the disposition of the Respondent's appeal filed before the Tenth District Court of Appeals on July 27, 2010.



JUDGE GILL

cc: Carol Fey, Attorney for Petitioner
LeeAnn Massucci, Attorney for Petitioner
Gary J. Gottfried, Attorney for Respondent
Meredith Snyder, Guardian ad litem

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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FRANKLIN CO. OHIO

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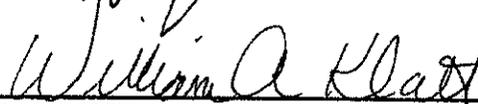
Julie Rose Rowell,	:	
	:	
Petitioner-Appellee,	:	
	:	
v.	:	Nos. 10AP-675
	:	and 10AP-708
Julie Ann Smith,	:	
	:	(ACCELERATED CALENDAR)
Respondent-Appellant.	:	

JOURNAL ENTRY

Appellant's July 27, 2010 motion for stay of the trial court's June 30, 2010 judgment and the trial court's July 27, 2010 order is granted, but only to the extent that the three (3) day jail sentence and Guardian *ad Litem* exchange are stayed pending determination of these appeals. The trial court orders in regard to visitation with the minor child are not stayed by virtue of this entry. This court will revisit the matter of this stay in the event appellant continues to violate orders of court.



 Judge Peggy Bryant



 Judge William A. Klatt



 Judge Lisa L. Sadler



20714 - B4

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

10

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COLUMBUS, OHIO

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CLERK OF COURTS

Julie Rose Rowell, :

Petitioner-Appellee, :

v. :

Julie Ann Smith, :

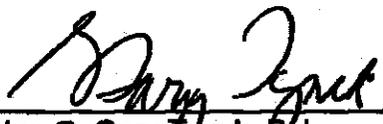
Respondent-Appellant. .

Nos. 10AP-675
and 10AP-708

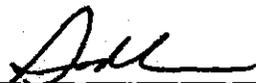
(ACCELERATED CALENDAR)

JOURNAL ENTRY

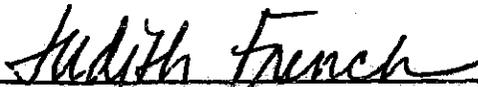
Appellee's August 31, 2010 motion to vacate this court's July 29, 2010 stay order is hereby granted. This court's July 29, 2010 entry is hereby vacated. Appellee shall apply to the trial court for enforcement orders.



Judge G. Gary Tyack, P.J.



Judge Lisa L. Sadler



Judge Judith L. French

cc: Clerk, Court of Appeals
Clerk, Juvenile Division

[Handwritten mark]

Agreed Visitation Dates under Magistrate's Order of 2/18/2010:

1. Beginning 9/20/10, and continuing until further Court order that specifically modifies this agreement, Ms. Smith will cooperate with all scheduling provisions of the Magistrate's Order issued 2/18/10, which for purposes of enforcement are agreed to be as follows:

A. Ms. Smith will permit Ms. Rowell to pick up Maddie from school at 3:00 or such earlier time as school may dismiss for Maddie on any given date as detailed herein, and to drop off Maddie to school as detailed herein.

B. Ms. Rowell shall be permitted to exercise alternating weekend visitation with Maddie on alternate weekends on the following weekends: Friday 10/1/10 - Monday 10/4/10; Friday 10/15/10 - Monday 10/18/10; Friday 10/29/10 - Monday 11/1/10; Friday 11/12/10 - Monday 11/15/10; and thereafter on an alternating weekend basis until further court order, except as otherwise assigned for holiday visitation schedules herein.

C. Ms. Rowell shall be permitted to exercise midweek ~~weekend~~ visitation with Maddie by picking up Maddie from Clintonville Academy after school at 3:00 p.m. or such earlier time as school may dismiss for Maddie on every Wednesday beginning Wednesday, 9/22/10 and every Wednesday thereafter until further court order, except as otherwise assigned for holiday visitation schedules herein.

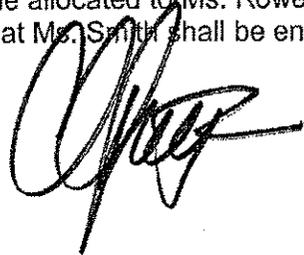
D. Ms. Smith shall not fail to deliver the child to school or remove the child from school on days that Ms. Rowell is entitled to visitation after school. In the event of Maddie's illness or any other reason that Maddie might otherwise be excused from school on a day that Ms. Rowell is entitled to visitation, Ms. Smith shall offer compensatory time to Ms. Rowell.

E. Ms. Smith shall be entitled to have Maddie for Thanksgiving from Wednesday at 6:00 pm (following Ms. Rowell's Wednesday visitation).

F. Ms. Rowell shall be entitled to have Maddie for the first half of her Winter Break, from 6:00 p.m. on the last school day before the break until 1:00 p.m. on December 25, 2010, pursuant to Rule 22.

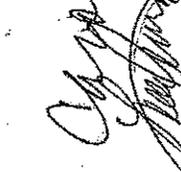
G. Holiday schedule for 2011 shall continue pursuant to Rule 22 with Ms. Smith to have the schedule allocated to mothers and Ms. Rowell to have the schedule provided for fathers.

H. No birthdays, holidays, vacations, or out of town travel shall interrupt any visitation time allocated to Ms. Rowell or Ms. Smith pursuant to the list herein, with the exception that Ms. Smith shall be entitled to her two weeks of summertime per Local Rule 22.



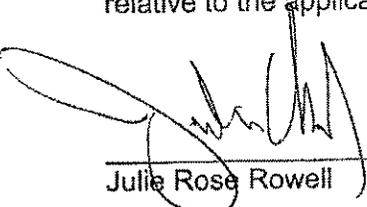


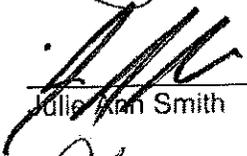
2. Telephone contact between the child and Ms. Rowell / Ms. Smith shall occur per local Rule 22, i.e., 3 times per week for not less than 15 minutes each.

3. This agreement shall not be deemed to waive Ms. Smith's objections to the Court's jurisdiction.

4. This agreement may be submitted to the Court in any enforcement hearing relative to the applicable Magistrate's Order.



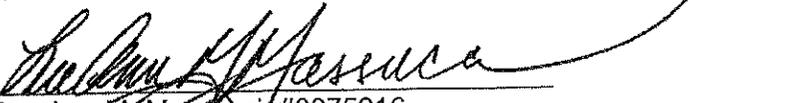
Julie Rose Rowell



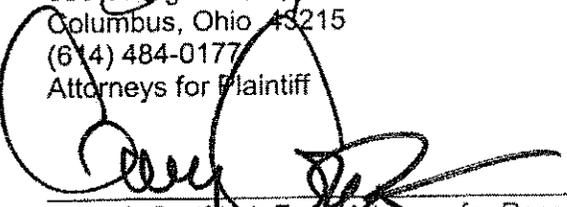
Julie Ann Smith



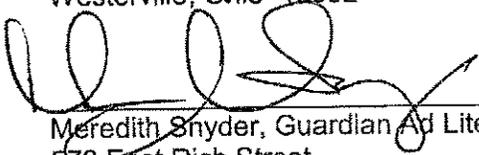
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Attorneys for Plaintiff



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Meredith Snyder, Guardian Ad Litem
572 East Rich Street
Columbus, Ohio 43215



IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH

Jane Powell Case Number 2012-0150
Plaintiff / Petitioner

Judge ONE

JANE SMITH Magistrate HUSKINS
Defendant / Petitioner

MOTION FOR CONTINUANCE

On 1-20 2012 JANE SMITH requests a
continuance of the hearing set for 1-20 2012 for the following reason(s)

- 1 () Engaged Counsel (verification attached)(H006)
- 2 () Witness / Party Unavailable (H007)
- 3 () Illness (H008)
- 4 () Vacation (H009)
- 5 () To Obtain Additional Information (H012)
- 6 () To Obtain Counsel (H015)
- 7 (X) Other ACCIDENTAL CONTINUANCE DURING SERVICE PERIOD (H010)
- 8 () To Complete Discovery (H013)
- 9 () To Perfect Service (H011)

Date complaint/petition/motion filed _____ Number of previous continuances 0

Plaintiff/Petitioner _____ Defendant/Respondent _____

Attorney for Plaintiff/Petitioner _____ Sup. Ct. No. _____
Attorney for Defendant/Respondent _____ Sup. Ct. No. _____

Prosecuting Attorney/CSEA _____ Sup. Ct. No. _____
Guardian Ad Litem _____ Sup. Ct. No. _____

ENTRY / MAGISTRATE'S ORDER

() Decision Prior to Hearing () Decision at Time of Hearing

It is therefore ORDERED:

The Court, being fully advised in the premises, and for good cause shown hereby continues the within
action, including the order(s) to appear and show cause, if any, to a date and time certain.

1/20/12 11:30 AM M. 373 South High Street/
399 South Front Street, in Courtroom 23 Columbus, Ohio 1210. PUL @ 9:00 AM

() The motion for continuance is overruled. (1224)

JUDGE / MAGISTRATE [Signature]

INSTRUCTIONS TO ASSIGNMENT

Schedule hearing within _____ days. Schedule hearing on next available date.
Hearing Type Code _____