

TABLE OF CONTENTS

	<u>Page</u>
EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND CONFLICT OF INTERPRETATION OF COMMON LAW	2
STATEMENT OF THE CASE AND FACTS	4
ARGUMENT IN SUPPORT OF PROPOSITION OF LAW	10
<u>Proposition of Law:</u> A trial court’s denial or grant of a motion to remove a guardian ad litem constitutes a final appealable order pursuant to R.C. 2505.02 because it is rendered in a “special proceeding” and “affects a substantial right” of party and his or her minor children	10
CONCLUSION.....	15
PROOF OF SERVICE.....	16
	<u>Appx. Page</u>
APPENDIX	
Eleventh District Court of Appeals Judgment Entry, March 21, 2011, dismissing Appellant’s Appeal, Case No. 2010-G-2998	A-1
Eleventh District Court of Appeals Judgment Entry, July 5, 2011, denying Appellant’s Motion for Reconsideration, Case No. 2010-G-2998	A-2

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND CONFLICT OF INTERPRETATION OF COMMON LAW

This case involves a use of significant public concern and great general interest. The primary issue presented herein affects the “best interests” of minor children who are subject to guardianships in domestic relations cases. Current Ohio law affords minor children and their parents virtually no protection from unscrupulous guardians ad litem (hereafter GAL) who act contrary to the best interests of the children whom are the subject of the guardianships.¹ The present state of the law in Ohio makes it virtually impossible to expeditiously remove a GAL even when it is established that he has ignored the best interests of the children and presented misleading, false and fraudulent information to the trial court vested with the responsibility of assessing the needs and best interests of minor children who are the innocent victims of the domestic relations court process.²

In most cases, a GAL is appointed by the domestic relations trial court judge or magistrate. There is little room for doubt that the person responsible for the appointment would appoint those persons who the court believes to be competent and qualified to serve the best interests of children. In many instances the court responsible for the appointment of the guardian may lack a certain level of objectivity to fairly assess the improper and/or fraudulent conduct of the GAL subsequent to the appointment. In a case where the GAL’s conduct is at issue, a reviewing court of appeals should have the ability to immediately review the trial court’s analysis so that an expeditious decision can be reached to best serve the interests of the innocent children.

¹ Many Courts of Appeal have held that a GAL has absolute immunity from any civil action which embolden unscrupulous GALS to act in a manner contrary to the best interest of the children.

² In this case, Mr. Orndorff was appointed as GAL in February 2009, more than two and a half (2-1/2) years ago. During this time, he met with the two (2) minor children for a total combined time of less than thirty (30) minutes.

The current state of Ohio law does not allow a Court of Appeals to review a trial court's denial of a Motion to Remove a Guardian ad Litem until the rights and interests of a child have already been prejudiced. In the case *sub judice*, Appellant first filed a Motion to Remove Jeffrey Orndorff as guardian on March 18, 2010 (18 months ago). The undisputed facts set forth in the briefs filed in the Trial and Appellate Courts establish Mr. Orndorff engaged in intentional inappropriate conduct which included, inter alia, making false and fraudulent misrepresentations of fact to the Trial Court.³ The primary function of a GAL is to be a "fact-finder" for the Trial Court and make recommendations to serve the best interests of the child.

The "normal" process followed by a domestic relations court following the appointment of a GAL is to allow the guardian to conduct an "investigation." Thereafter the GAL is responsible for filing a report, outlining the "facts" for the court to consider in analyzing the needs of the children. The minor children are then interviewed by the trial court through an in camera interview process. Subsequently, an evidentiary hearing is scheduled and decision made regarding parental rights and the best interests of the children involved. The catastrophic problem is when a guardian engages in fraudulent misconduct and files a factually inaccurate report with the trial court. The process from that point forward becomes flawed and unnecessary emotional, physical and mental stress is thrust upon the innocent children. By not allowing a court of appeals to immediately review a trial court's decision involving the removal of guardian exposes the children to ongoing stress and unnecessary delay. This delay is an eternity for a ~~child whose best interests are being impaired.~~

³ The Trial Court denied Appellant's Motion to Remove the Guardian Ad Litem. The 11th District Court of Appeals has held that the subject Order is not a final appealable order, and remanded the matter back to the Trial Court for further proceedings.

In the instant matter, Appellant has demonstrated by over whelming evidence that Mr. Orndorff failed to fulfill any of the duties imposed by Ohio Rule of Superintendence 48 and those set forth by Ohio common law. Ohio Revised Code Section 2151.28(D) mandates that if the GAL fails to “*faithfully discharge [his] duties*” the trial court “*shall discharge the guardian ad litem and appoint another[.]*” (Emphasis added) Unfortunately, Mr. Orndorff remains as the Guardian ad litem in this matter. The opportunity is now presented for this most Honorable Court to set the necessary parameters to analyze the conduct of unscrupulous persons appointed to “protect the best interests” of innocent children.

STATEMENT OF THE CASE AND FACTS

The instant matter evolved out of a divorce proceeding involving two minor children, and the subsequent appointment of Jeffrey T. Orndorff as Guardian ad Litem (hereinafter “Orndorff” or “GAL”). Orndorff has proven to be altogether unqualified, unfit and unable to fulfill his official duty to the court thereby prejudicing the children and Appellant Charles V. Longo (hereinafter “Plaintiff” or “Mr. Longo”). Despite evidence indicating Orndorff’s misconduct, the Trial Court denied Mr. Longo’s Motion to Remove Orndorff.

The first Motion to Remove Orndorff as GAL was filed on March 18, 2010 (See: T.p.811.) Appellant filed a Supplemental Motion to Remove Orndorff on August 5, 2010. (See: T.p. 862.) Ultimately, the Trial Court issued its ruling denying both Motions. A timely appeal was instituted to the Eleventh District Court of Appeals. On March 21, 2011, upon motion of Appellee, the Eleventh District Court of Appeals dismissed Appellants’ appeal determining that ~~the Order surrounding the removal of the guardian ad litem did not constitute a final and~~ appealable Order. On July 5, 2011, the Appellate Court denied Appellant’s Application for Reconsideration. Appellant now institutes this appeal.

Mr. Orndorff is a familiar face in the Geauga County court system. In addition to his appointments as GAL, Orndorff is also a contract and employee of Geauga County CSED. He acts as a court hearing officer over matters which involve child support. The Geauga County Court of Common Pleas, which include the Trial Court below review his findings. (See: Orndorff depo., pg. 346-347.)

As GAL, Mr. Orndorff was entrusted to act as the harbor of safety for the Longo children and had the responsibility to ensure that the best interests of the children, Alexandra (age 16) and Lauren (age 9) are met. His duties included: conducting an impartial investigation and recommending to the court what he believes is best for the children. Orndorff's objectivity, however, has been severely compromised by his bias and prejudice exhibited towards Plaintiff-Appellant Charles Longo.

Consistent with the parties' Shared Parenting Agreement and recommendations of the court appointed psychologist, Stephen Neuhaus, Ph.D., Plaintiff's visitation schedule was: alternating weekends from Thursday evening through Tuesday morning. In addition, Appellant was permitted alternating Monday evenings with Lauren and Tuesday evenings with Alexandra. Appellee, through a motion and deposition testimony, has previously requested the lower court for an order eliminating all of Plaintiff's overnight visits. (See: T.p.875, p. 87.)⁴ This draconian request ignores the true facts, demonstrates a lack of appreciation for the best interests of the minor children, and ignores the children's own wishes and desires.

In August, 2009, the GAL filed his report and recommendations with the lower court. ~~Nowhere in the GAL's report is there any recommendation that the current visitation schedule be~~ changed. (See: Guardian Report contained in lower court's file; attached to Plaintiff's Motion to

⁴ Appellee, Joy Borkowski lacks any factual basis for this ridiculous request, and as set forth below her conduct has been brought into question by Stephen Neuhaus, Ph.D., an independent court appointed psychologist.

Remove.) In his report, Mr. Orndorff (hereinafter "Orndorff") recommends the following: (1) "Non-appealable mediation" to resolve any dispute between the parties;⁵ (2) Counseling for the parties and children; (3) Termination of Shared Parenting because of ongoing bitter conflict;⁶ and (4) No split custody agreement.⁷

During his discovery deposition, Orndorff admitted that he relied solely upon unsubstantiated claims made by Mrs. Borkowski, without any regard to Appellant's side or the information provided by the ten (10) witnesses he interviewed. These witnesses included court appointed psychologist, Stephen Neuhaus, Ph.D.

Dr. Neuhaus, the court appointed psychologist who made custody recommendations, has provided valuable deposition testimony which support Appellant's claims. Dr. Neuhaus testified that he spoke with Orndorff on two separate occasions and presented Orndorff with information (which included Dr. Neuhaus' original child custody evaluation report). Some of the information was critical of Appellee Joy Borkowski and placed her in a negative light. None of the information supplied by Dr. Neuhaus was disclosed to the Court by Orndorff. Dr. Neuhaus advised Orndorff that:

(1) Appellee Joy Borkowski had attempted to negatively impact one of the minor children's visits of her father, Appellant herein. (See: Neuhaus depo., pg. 29-30.)

(2) Appellee Joy Borkowski was a person that he considered may not be highly introspective or insightful about her own behavior. (See: Neuhaus depo., pg. 27-28.)

(3) Appellee Joy Borkowski was a "fist in a velvet glove", meaning that she has a socially gentle presentation, but "is pretty tough and strident. . . She can stand up for herself and push. . ." (See: Neuhaus depo., pg. 45-46.); and

~~(4) Appellee Joy Borkowski had a "sense of entitlement." (See: Neuhaus depo., pg. 46.)~~

⁵ Ohio law does not recognize "non-appealable mediation." The term mediation contemplates an attempt to resolve, by agreement, conflicts; it cannot be "binding".

⁶ The Guardian's report is fraught with mistakes of fact, misrepresentations of facts, and lacks any credible evidentiary support for Orndorff's conclusion.

⁷ The report fails to identify any support for this recommendation.

This information was included in the notes Orndorff generated contemporaneous with his meeting with Dr. Neuhaus. To prejudice Appellant, Orndorff intentionally omitted this information from his report. None of this information found its way into Orndorff's report. Ironically, in his report, Orndorff erroneously alleges that it was Appellant (Mr. Longo) who had a "sense of entitlement," a concept that was in direct contradiction with Dr. Neuhaus' opinions.

Astonishingly, over the course of the last thirty (30) months (2 ½ years), Orndorff has spoken to the Longo children on only two (2) occasions, the last of which occurred on May 12, 2009. Set forth below are some of the misstatements he made to the Trial Court:

1. Orndorff acknowledged that, as GAL, he is required to interview people familiar with the relationship between the parties and their children. (See: T.p.837, p. 60.) (He interviewed ten (10) such persons prior to submitting to this court his Report.). It is uncontroverted that Orndorff's file notes and deposition testimony establish that he interviewed the following persons: Maria Quinn, Thomas Ackerman, Micki Ackerman, Polly Snavely, Tammy Scalish, Annie Washko, Paige Navritil, Kim Zanetti (high school guidance counselor), Sandy Razzanti (tutor). Some of those persons confirmed that one of the children expressed serious interest in residing with Appellant. Orndorff failed to mention in his report the fact he spoke with these persons, let alone the information these witnesses provided to him;
2. Orndorff admitted he spoke to the children on only two (2) occasions, once at each of their parents' residences – Mrs. Borkowski's residence on February 26, 2009 and Mr. Longo's residence on May 12, 2009. (See: T.p.837, pp. 67-68.);
3. The last time Orndorff spoke to the children was May 12, 2009, approximately twenty (20) months ago. (See: T.p.837, p. 61.) By the time this case is argued, it will be likely that Orndorff will have been detached from the children for more than two (2) years, yet he refuses to resign;
4. By Orndorff's estimate over the course of his appointment he spoke to the Longo children for less than a total of thirty (30) minutes.⁸ (See: T.p.837, p. 67-68);
5. Orndorff testified he did not receive "much information from [Mr. Longo] about things" and that he has no "insights as to the scope of who [Mr. Longo] is as a

⁸ See affidavit, attached to Plaintiff's Motion to Dismiss, of Plaintiff, which sets forth the fact that Orndorff spent less than five (5) minutes with each child when he spoke to the children on May 12, 2009, as well as Orndorff's notes attached as Appellant's Exhibit 25.

person.” (See: T.p.837, p. 13, 72.) As set forth below, notwithstanding his lack of knowing who Mr. Longo is “as a person”, Orndorff make slanderous claims that Mr. Longo is untruthful;

6. Orndorff conceded that most of the sources of information set forth in his report originated from Mrs. Borkowski. (See: T.p.837, pp. 123, 150, 180, 200, 208, 309.)
7. During the deposition, Orndorff made a reckless and unfounded accusation that he believes that Mr. Longo is untruthful. (See: T.p.837, pp. 238, 240.) When pressed to expound on his opinion, Orndorff was unable to do so. Orndorff offered the following testimony: “one example [the only one offered] might be you [Mr. Longo] constantly tell Mrs. Borkowski in your reply e-mails about the fact that she won’t talk to you on the phone. It would be ever so much easier if she would talk to you on the phone.”⁹ (See: T.p.837, p. 139.) The “example” provided is devoid of any possible connection to Mr. Longo’s “credibility, or truthfulness.”
8. Orndorff testified that Mr. Longo is responsible for ninety percent (90%) of the scheduling conflicts from what he “knows” from Bob Schuppel (a person with whom he has not spoken) and Mrs. Borkowski.¹⁰ (See: T.p.837, p. 324.) Amazingly, Orndorff also testified that he never spoke to Mr. Schuppel regarding Schuppel’s involvement in the case. (See: T.p.837, p. 59.) In direct contradiction to trial testimony, Orndorff’s billing statements support the latter, i.e. that he did not speak to Mr. Schuppel prior to his deposition.
9. Orndorff admitted that Maria Quinn (a family friend of Mr. Longo) provided him with “useful information.” (See: T.p.837, p. 115.); however, she is not mentioned in his report, either;¹¹
10. Orndorff acknowledged that he “studied” a report authored by Stephen Neuhaus, Ph.D., the psychologist who conducted psychological testing and evaluations of the parties and who previously made recommendations to the lower court on visitation and custody issues. (See: T.p.837, p. 113.). However, there is no mention of this document in his report;
11. Orndorff considered Dr. Neuhaus to be a well-respected psychologist. (See: T.p.837, p. 30.). He interviewed Dr. Neuhaus by phone for 30 minutes and met with him in person for approximately three (3) hours. (See: Plaintiff’s Exhibit 26 – Orndorff’s billing records dated 2/12/09 and 5/29/09; attached to Plaintiff’s Motion to Remove.);

⁹ That “example” was the only “example” he revealed and confirms that Orndorff is outrageously prejudiced against Mr. Longo and has no basis to conclude Mr. Longo is not truthful.

¹⁰ Bob Schuppel is a family counselor selected unilaterally by the GAL and Appellee.

¹¹ He never mentions in his report the fact that he interviewed Maria Quinn.

12. He acknowledged that the prior “assessment that Dr. Neuhaus performed and the interaction that he had with [Mr. Longo] and Joy provided some insights” and was useful in his evaluation. (See: T.p.837, p. 126.) Orndorff “solicited input from him (Dr. Neuhaus) and was eager to see what insight he could provide.” (See: T.p.837, p. 140.) He further confirmed that he spoke with Dr. Neuhaus because he might have “valuable insights on conflict resolution between [Mr. Longo] and Mrs. Borkowski. (See: T.p.837, p. 167) (Note: He never mentions in his report either the fact that he had contact with Dr. Neuhaus.);
13. He testified that Dr. Neuhaus “confirmed” some of his thoughts and he put those in his report. (See: T.p.837, pp. 312-13.)¹² However, Orndorff’s file notes and Dr. Neuhaus’ deposition testimony reflect that Dr. Neuhaus provided him with information which is in direct conflict with his report;
14. Orndorff agreed that he can no longer function as a Guardian in this case.
Q: You would agree with me, would you not, you can no longer function as the Guardian of the girls because you cannot effectively communicate?
A: Yes, I do.
(See: T.p.837, p. 146.)
15. During his deposition, Orndorff testified that he “suspects” that the girls spend an “inordinate amount of time” playing tennis, rather than interacting with Mr. Longo. (See: T.p.837, p. 302.)¹³ He further testified that he believes the children play tennis to an “excess.” When questioned further, he then admitted not knowing how often the children actually play. (See: T.p.837, pp. 307, 309.)
16. In his report, Orndorff claims that the girls play tennis to please Mr. Longo. However, he admitted he never had any conversation with either child during which tennis was discussed, other than a “passing comment about tennis...” (See: T.p.837, pp. 75-76.);
17. Orndorff never interviewed Mr. Longo regarding most, if not all, of the issues raised in his report which resulted in his “recommendations” to the lower court. (See: Unopposed Affidavit of Plaintiff-Appellant; attached to T.p.811.)

The facts and circumstances involved in this case unquestionably establish that Mr. Orndorff should be removed as GAL. As important, however, is the absolute and immediate need for this Most Honorable Court to set the standards of lower court’s to follow and provide for an immediate, expeditious, judicious and fair resolution to legitimate requests for the removal of an incompetent and dishonest GAL.

¹² He never mentions in his report the fact he spoke to Dr. Neuhaus or that he “studied” Dr. Neuhaus’ report.

¹³ Orndorff has no support for this outrageous allegation, another demonstration of his lack of objectivity.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law: A trial court's denial or a grant of a motion to remove a guardian ad litem constitutes a final appealable order pursuant to R.C. 2505.02 because it is rendered in a "special proceeding" and "affects a substantial right" of party and his or her minor children.

Section 3(B)(2), Article IV of the Ohio Constitution; R.C. 2501.02. A "final order" is one which, *inter alia*, ***affects a substantial right*** and either determines the action or is ***made in a special proceeding***. R.C. 2505.02 (emphasis added). This Honorable Court has determined that divorce is a "special statutory proceeding" and, therefore, all ancillary issues, including "claims for custody," must be analyzed as a "special proceeding" under R.C. 2505.02. *State ex rel. Papp v. James* (1994), 69 Ohio St.3d 373, 379. Since custody of the parties' minor children is no doubt an "ancillary issue" in a divorce proceeding, then the order of the trial court below must be considered final and appealable if it can be said to affect a "substantial right." *Id.* The sole issue for determination by this Honorable Court is whether the trial court's orders denying Plaintiff's Motion to Remove the GAL "affects a substantial right," and if so, that order is final and appealable.

A "[s]ubstantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." R.C. 2505.02(A)(1). A substantial right involves the idea of a legal right which is enforced and protected by law. *Noble v. Colwell* (1989), 44 Ohio St.3d 92, 94; *North v. Smith* (1906), 73 Ohio St. 247, 249. "An order affects a substantial right if, in the absence of an immediate appeal, one of the parties would be foreclosed from appropriate relief in the future" or the order prejudices one of the parties involved. *Bell v. Mt. Sinai Med. Ctr.* (1993), 67 Ohio St.3d 60, 63; *Cincinnati v. Pub. Util. Comm.* (1992), 63 Ohio St.3d 366, 368. "The entire concept of 'final orders' is based upon the rationale that the court making an order which is not

final is thereby retaining jurisdiction for further proceedings.” *Noble*, 44 Ohio St.3d at 94. “A final order, therefore, is one disposing of the whole case or some separate and distinct branch thereof.” *Id.*

This Honorable Court has consistently held “[c]ustody proceedings affect substantial rights” and are subject to appellate review. *State ex rel. Papp*, 69 Ohio St.3d at 378-379. In addition, the parties’ minor children have an expressed right, created by statute, to have a guardian ad litem appointed in matters concerning custody to act in their best interests. Specifically, if the trial court intends on conducting an in camera interview of the children, the trial court “shall appoint a guardian ad litem for the child” pursuant to R.C. 3109.04(B)(2)(a). Since the right to a GAL for the minor children is one conferred by statute it constitutes a “substantial right” subject to immediate appellate review. *See e.g. Jackson v. Herron*, 11th Dist. No. 2004-L-045, 2005 Ohio 4039 (“The right to have guardian fees taxed as costs is one conferred by the Rules of Civil Procedure and, thus, constitutes a substantial right.”).

It is well established that an order refusing to remove a guardian affected a substantial right and constituted a final appealable order. *North v. Smith*, 73 Ohio St. 247, 76 N.E. 619 (1906). In *Re. Guardianship of Irvine* (5th Dist. 1943), 72 Ohio App. 329, the Knox County Court of Appeals relying on the Ohio Supreme Court holding in *North* stated “The term substantial right involves the idea of a legal right and is one which the law will protect and enforce. Speaking of an order removing a guardian, the rights involved in this type of order seem to come easily within that definition of substantial right.” *Irvine*, supra at 329, citing *North*, supra. In *Jackson*, the Eleventh District Court of Appeals held that a trial court order directing a party pay GAL fees was a final order. *Jackson*, 2005 Ohio 4039. The Eleventh District Court concluded that the right to have guardian ad litem fees taxed as costs constituted a

“substantial right” which it defined as a “right that *a statute* or rule of procedure entitles a person to enforce[.]” *Id.* (“The right to have guardian ad litem fees taxed as costs is one conferred by the Ohio Rules of Civil Procedure and, thus, constitutes a substantial right.”). The appointment and removal of a guardian ad litem is predicated upon a statute(s), therefore, implicate a “substantial right.”

The overriding concern behind modifying a child support order or custody / visitation arrangements necessarily requires a determination by this Court of what is “in the best interest of children.” *See* R.C. 3109.04(B)(2), R.C. 3119.02. “The function of a guardian ad litem is ‘to protect the best interest of the child, including, but not limited to, investigation, medication, monitoring the court proceedings, . . . and shall file any motions and other court papers that are in the best interest of the child.’” R.C. 2151.281(I); *Yoel v. Yoel*, 11th Dist. No. 2008-L-006, 2008 Ohio 4766. Further, Rule 48 of the Rules of Superintendence provides further support that the orders which are the subject of this appeal are final and appealable. The rule requires a GAL to do, inter alia, the following:

- (1) represent the best interests of the children;
- (2) maintain objectivity, independence and fairness;
- (3) act as an officer of the court;
- (4) where a conflict exists between the child’s best interests and her wishes, he should request the court resolve the issue;
- (5) ascertain wishes of the children;
- (6) perform all necessary investigation to make an informed recommendation regarding the best interest of the child;
- (7) prepare a report which includes:
 - (a) persons interviewed;
 - (b) documents reviewed;
 - (c) experts consulted;
 - (d) ~~all relevant information considered by the guardian in reaching his~~ recommendations and in accomplishing the duties required by statute.

(Sup.R. 48(D) and (F)). The evidence produced in the Trial Court which included Mr. Orndorff’s deposition testimony established that *he failed to perform any of the duties stated*

above. More importantly, R.C. 2151.28(D) mandates that if a GAL does not “faithfully discharge [his] duties” the trial court “*shall discharge the guardian ad litem and appoint another guardian ad litem.*” (Emphasis added). Similar to the children’s right to the appointment of a GAL, the parties have a statutorily protected right to have an appointment guardian ad litem who will faithfully discharge his duties and this statutory rights requires the trial court to remove the GAL for failure to do so. Because this right is statutorily conferred, it constitutes a “substantial right” and subject to appellate review. *See e.g. Jackson*, 2005 Ohio 4039.

There is no doubt that the Trial Court’s refusal to remove the GAL when confronted with a plethora of evidence demonstrating not only fraud, bias, prejudice and ill will towards Plaintiff, but also establishing a complete failure to fulfill his duties as the GAL affects a substantial right Plaintiff, and the parties’ minor children. Undoubtedly, if a GAL demonstrates bias, hatred, and/or ruthless animosity towards a parent or if he fails to fulfill his duties diligently, the minor children are left without an advocate and the children’s best interests are ignored in favor of a personal vendetta. When a GAL ignores the interests of the children, their rights are substantially affected.

Despite his well defined duty the GAL in this instant case completely ignored his duty by failing to conduct a thorough investigation and by fraudulently misrepresenting his findings to the trial court in his initial report. A “parent's right of visitation with his children is a natural right and should be denied only under extraordinary circumstances[.]” *In Re B.J.*, 11th Dist. No. 2009-G-2933, 2010 Ohio 2284 (citing *Petry v. Petry* (8th Dist. 1984), 20 Ohio App.3d 350). It is the parties’ minor children, however, who are most affected by Orndorff’s personal vendetta against Plaintiff and his utter failure to fully investigate all aspects surrounding custody. More specifically, Orndorff has recommended terminating the shared parenting agreement thereby

impeding Appellant's rights. Equally important is that Orndorff's recommendation is wholly adverse to the children's wishes as Alexandra has seriously considered moving in with Plaintiff, a fact he learned from a number of persons he interviewed and a fact he omitted from his report. Similarly, without any factual basis and in contradiction to his investigation, Orndorff has also testified at his deposition that the children should not be allowed overnight visits because of his unsubstantiated "belief" that it impacts the children's grades. Ignoring the children's wishes due to his animosity towards Plaintiff does not advance the children's best interests and impacts a substantial right of the children.

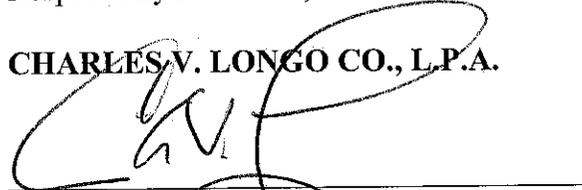
Finally, a determination that the instant order appealed is final and appealable does not invite piecemeal appeals and does not open the door for "any disgruntled litigant in a custody proceeding to tie up the proceedings indefinitely." Appellant is not a disgruntled litigant. He is nothing more or less than a father attempting to preserve his rights and best interests of his children. To the contrary; resolution of this instant before the Trial Court conducts a lengthy custody proceeding expedites the issues and prevents the possibility of multiple protracted hearings on the same matters. Most, if not all appeals stem from a litigant who is not pleased with the trial court's rulings or the jury's verdict. However, whether an appeal stems from an unhappy litigant or whether it will delay the ultimate resolution of a case does not dictate whether an order is subject to immediate review by an appellate court. Instead, an order is final and appealable if it satisfies the statutory requirements found in R.C. 2505.02 and Civ.R. 54(B), if applicable. As the trial court's order denying Appellant's properly supported Motion to Remove the GAL is a final appealable order because it was rendered in a "special proceeding" and "affects a substantial right" of Appellant and the minor children.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest. The Appellant respectfully requests that this Court accept jurisdiction of this case thereby clarifying the jurisprudence on final appealable orders as it relates to the removal of a guardian ad litem in divorce proceedings involving minor children.

Respectfully submitted,

CHARLES V. LONGO CO., L.P.A.

A handwritten signature in black ink, appearing to read 'CV Longo', is written over a horizontal line. The signature is stylized and partially overlaps the text below.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail on this 11 day of August, 2011, as follows:

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A handwritten signature in black ink, appearing to read 'C.V. Longo', written over a horizontal line.

CHARLES V. LONGO (0029490)
Pro Se

STATE OF OHIO)
) SS.
COUNTY OF GEAUGA)

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

CHARLES V. LONGO,

FILED

JUDGMENT ENTRY

Plaintiff-Appellant,

IN COURT OF APPEALS

MAR 21 2011

CASE NO. 2010-G-2998

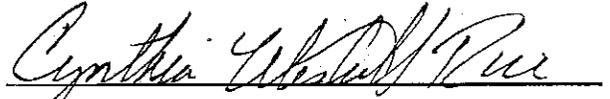
- vs -

JOY E. LONGO,

DENISE M. KAMINSKI
CLERK OF COURTS
GEAUGA COUNTY

Defendant-Appellee.

For the reasons stated in the memorandum opinion of this court, it is ordered that appellee's motion to dismiss is granted, and this appeal is dismissed for lack of a final appealable order.



JUDGE CYNTHIA WESTCOTT RICE
FOR THE COURT

13 / 1334

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO

CHARLES V. LONGO,

Plaintiff-Appellant,

- VS -

JOY E. LONGO,

Defendant-Appellee.

FILED

IN COURT OF APPEALS

MAR 21 2011

DENISE M. KAMINSKI
CLERK OF COURTS
GEAUGA COUNTY

MEMORANDUM OPINION

CASE NO. 2010-G-2998

Civil Appeal from the Court of Common Pleas, Case No. 01 DC 000861.

Judgment: Appeal dismissed.

Charles V. Longo, pro se, Charles V. Longo Co., L.P.A., 25550 Chagrin Boulevard, #320, Beachwood, OH 44122 (Plaintiff-Appellant).

Gary S. Okin, Dworken & Bernstein Co., L.P.A., 60 South Park Place, Painesville, OH 44077 (For Defendant-Appellee).

Jeffrey T. Orndorff, Jeffrey T. Orndorff Co., L.P.A., 117 South Street, #110, P.O. Box 1137, Chardon, OH 44024-5137 (Guardian ad litem).

CYNTHIA WESTCOTT RICE, J.

{¶1} On November 8, 2010, appellant, Charles V. Longo, filed a notice of appeal from three separate October 15, 2010 entries of the Geauga County Court of Common Pleas.

{¶2} The docket in this matter reveals that on March 18, 2010, appellant filed a motion to remove the guardian ad litem, Jeffrey T. Orndorff. On May 21, 2010, the magistrate issued his decision denying appellant's motion to remove the guardian ad

litem. On May 28, 2010, appellant filed objections to the magistrate's decision. Thereafter, on August 5, 2010, appellant filed a supplemental motion to remove the guardian ad litem. On October 15, 2010, the trial court denied the supplemental motion to remove guardian filed by appellant. In a second entry dated October 15, 2010, the trial court overruled appellant's objections to the May 21, 2010 magistrate's decision. Lastly, in a third entry, also dated October 15, 2010, the trial court denied for mootness, appellant's request for a ruling on his objections to the magistrate's denial of the motion to remove the guardian ad litem.

{¶3} On December 16, 2010, appellee, Joy E. Longo, filed a "Motion to Dismiss Appeal." In her motion, appellee asserts that the orders appealed from are not final and appealable. Appellee argues that the denial of a request to remove a guardian ad litem does not affect a substantial right and is not a final appealable order.

{¶4} Appellant filed a brief in opposition to the motion to dismiss on January 3, 2011, in which he posits that the entries appealed from affect the substantial rights of the parties and their children. Appellant therefore argues that the entries appealed from are final and appealable.

{¶5} We must determine whether the denial of a motion to remove a guardian ad litem is a final appealable order. According to Section 3(B)(2), Article IV of the Ohio Constitution, a judgment of a trial court can be immediately reviewed by an appellate court only if it constitutes a "final order" in the action. *Germ v. Fuerst*, 11th Dist. No. 2003-L-116, 2003-Ohio-6241, ¶3. If a lower court's order is not final, then an appellate court does not have jurisdiction to review the matter and the matter must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20.

{¶6} Pursuant to R.C. 2505.02(B), there are seven categories of a “final order,” and if a trial court’s judgment satisfies any of them, it will be considered a “final order” which can be immediately appealed and reviewed by a court of appeals.

{¶7} R.C. 2505.02(B) states that:

{¶8} “An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

{¶9} “(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶10} “(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

{¶11} “(3) An order that vacates or sets aside a judgment or grants a new trial;

{¶12} “(4) An order that grants or denies a provisional remedy and to which both of the following apply:

{¶13} “(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

{¶14} “(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

{¶15} “(5) An order that determines that an action may or may not be maintained as a class action;

{¶16} “(6) An order determining the constitutionality of any changes to the Revised Code ***;

{¶17} “(7) An order in an appropriation proceeding ***.”

{¶18} In the case at hand, the denial of appellant's motion to remove the guardian ad litem does not fall under any of the categories for being a final order pursuant to R.C. 2505.02(B). The Tenth District Court of Appeals has stated that "[a] motion to remove the guardian ad litem, and the trial court's decision denying it, are not final appealable orders as they also do not fit within any of the definitions of a final appealable order set forth in R.C. 2505.02(B)." *Davis v. Lewis* (Dec. 12, 2000), 10th Dist. No. 99AP-814, 2000 Ohio App. LEXIS 5747, at *8. See, also, *Lisboa v. Lisboa*, 8th Dist. No. 92636, 2009-Ohio-5565, at ¶7, fn.1.

{¶19} Here, appellant is attempting to appeal the denial of his motion to remove the guardian ad litem even though there are still other issues pending before the trial court. Therefore, the orders appealed from are not final and appealable.

{¶20} Accordingly, appellee's motion to dismiss is granted, and this appeal is hereby dismissed for lack of a final appealable order.

{¶21} Appeal dismissed.

TIMOTHY P. CANNON, P.J.,

MARY JANE TRAPP, J.,

concur.

STATE OF OHIO
COUNTY OF GEAUGA

FILED
IN COURT OF APPEALS
JUL 05 2011
DENISE M. KAMINSKI
CLERK OF COURTS
GEAUGA COUNTY

IN THE COURT OF APPEALS
ELEVENTH DISTRICT

CHARLES V. LONGO,

JUDGMENT ENTRY

Plaintiff-Appellant,

CASE NO. 2010-G-2998

- vs -

JOY E. LONGO,

Defendant-Appellee.

On March 28, 2011, appellant, Charles V. Longo, filed an application for reconsideration requesting this court to reconsider our March 21, 2011 decision in *Longo v. Longo*, 11th Dist. No. 2010-G-2998, 2011-Ohio-1297. No brief or memorandum in opposition has been filed.

App.R. 26 does not provide specific guidelines to be used by an appellate court when determining whether a prior decision should be reconsidered or modified. *State v. Owens* (1996), 112 Ohio App.3d 334, 335. However, *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, has been generally accepted as the standard to be employed in this situation. In *Matthews*, the court stated that "the test generally applied is whether the motion for reconsideration calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not considered at all or was not fully considered by us when it should have been." *Id.* at 143.

Importantly, an application for reconsideration is not designed to be used in situations where a party simply disagrees with the logic employed or the

13 / 1394

conclusions reached by an appellate court. *Owens*, 112 Ohio App.3d at 336. Instead, App.R. 26 is meant to provide "a mechanism by which a party may prevent miscarriages of justice that could arise when an appellate court makes an obvious error" or renders a decision that is not supported by the law. *Id.*

In his application, appellant seeks reconsideration of this court's memorandum opinion, in which his appeal was dismissed for lack of a final appealable order. According to appellant, "**** this matter appears to be at odds with its prior decision in [*Jackson v. Herron*, 11th Dist. No. 2004-L-045, 2005-Ohio-4039].

As appellant notes, the *Jackson* matter dealt with an appeal from an entry in which the trial court ordered a party to pay guardian ad litem fees. In *Jackson*, we analyzed the issue of whether an entry ordering parties to pay guardian ad litem fees constitutes a final appealable order, and concluded that the entry was a final order. On the other hand, the instant appeal dealt with the removal of a guardian ad litem. Additionally, in the present case, there were other issues pending before the trial court.

Since appellant has not called any obvious or prejudicial errors to the attention of this court or raised an issue that was not fully considered in our memorandum opinion, his application for reconsideration has no merit. Accordingly, the motion for reconsideration is hereby overruled.


JUDGE CYNTHIA WESTCOTT RICE

TIMOTHY P. CANNON, P.J.,
MARY JANE TRAPP, J.,
concur.