

IN THE SUPREME COURT OF OHIO

SARAH WYATT MACKOWIAK,

*

CASE NO. 11 – 1299

Plaintiff/Mother–Appellant,

*

Appeal from 12th Appellate District
Fayette County

v.

*

BRADY LEE MACKOWIAK,

*

APPELLEE’S MEMO CONTRA

to

Defendant/Father–Appellee

*

Appellant’s “Motion to Stay”

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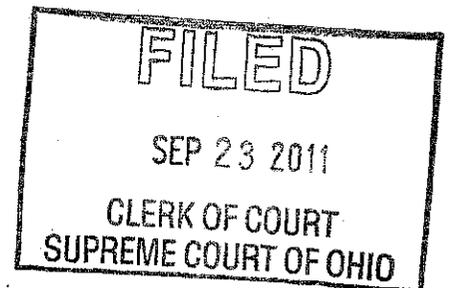
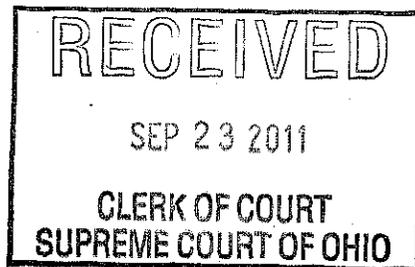
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"Motion to Stay of Appellant Sarah Wyatt Mackowiak" (filed herein Sept. 20, 2011) should be overruled for these reasons:

1. Appellant's Motion *violates* **S.Ct. Practice Rule 2.2 (A) (3)** which requires:

"(3) (a) In a claimed appeal of right or a discretionary appeal, if the appellant intends to seek from the Supreme Court an immediate stay of the court of appeals judgment that is being appealed, the appellant may file a notice of appeal in the Supreme Court without an accompanying memorandum in support of jurisdiction, provided both of the following conditions are satisfied:

- (i) **A motion for stay of the court of appeals judgment shall accompany the notice of appeal.**
- (ii) A copy of the court of appeals opinion and judgment entry being appealed shall be attached to the motion for stay."

Appellant filed Notice of Appeal herein Aug. 1, 2011 *without* any motion for stay.

2. Appellant's Motion cited yet *violated* **Ohio App. Proc. Rule 7** which requires:

"(A) Application for a stay of the judgment or order of a trial court pending appeal... must ordinarily be made in the first instance in the trial court.

A motion for such relief ... during the pendency of an appeal may be made to the court of appeals or to a judge thereof, but, except in cases of injunction pending appeal, the motion shall show that application to the trial court for the relief sought is not practicable, or that the trial court has, by journal entry, denied an application or failed to afford the relief which the applicant requested. ..."

Appellant did *not* file a Motion for Stay in the trial court

3. Appellant's "Motion to Stay" (filed herein) asserts:

"The trial court has recently scheduled this matter for a pretrial."

In reality, upon learning of this case, the trial court cancelled that pretrial.

4. The parties' only child: Matthew Mackowiak will be age 13 this December. Since age 9, Matthew has lived in Idaho, in the custody of Defendant/Father-Appellee, with his sisters and step-mother, in accord with the recommendation of the child's 1st Guardian *ad litem*: Attorney Renae Zabloudil appointed 2/6/ 2007.

While their child was in custody of Plf/Mother-Appellant, Appellant testified & her exhibits showed: he was often ill and hospitalized, treated by several specialists, on daily medications, unable to sleep well and, obese for years.

Matthew *dramatically* improved after placed in custody of Defendant/Father-Appellee. He is *no longer* "morbidly obese," *nor* on *any* medications. The child is *finally* "very healthy" "active and playful" "thriving." [8/18/2009 Trial Depositions of Dr. Bringer pp.11, 18, 22-27 and, the child's counselor J. English pp. 15-19].

5. Appellee's Reply to other *misrepresentations* by Appellant's "Motion to Stay" are contained in Appellee's Memo in Response (filed herein August 30, 2011).

Wherefore, Appellant's "Motion to Stay" should be overruled.

Respectfully submitted,



Diane Kappeler DePascale #0016654
Attorney for Defendant/Father-Appellee

Certificate of Service

I certify that this document was mailed to Plaintiff-Appellant's counsel and Attorney Renae Zabloudil on September 22, 2011.



Diane Kappeler DePascale #0016654
Attorney for Defendant-Appellee