ORIGINAL

IN THE SUPREME COURT OF OHIO

CRAIG A. JAMES	:	
Plaintiff -Appellee	:	**Supreme Court Case No. 11-1983**
vs.	:	**On Appeal from the Court of Appeals for Delaware County**
	:	**Fifth Appellate District**
K. QWENSANTA LIBERTY VAILE, FKA KRISTEN Q. L. JAMES,	:	**Court of Appeals Case No. 11CAF030027**
Defendant-Appellant	:	

MEMORANDUM IN RESPONSE TO APPELLANT K. QWENSANTA LIBERTY VAILE'S MEMORANDUM IN SUPPORT OF JURISDICTION

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DEC 27 2011
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SUPREME COURT OF OHIO

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STATEMENT OF FACTS

On August 19, 2009, Craig James, the Plaintiff, who is not a party to this action, filed a Motion To Reappoint Celeste Brammer as Guardian ad Litem. No objection was filed by Appellant and the Entry Reappointing Celeste Brammer as Guardian ad Litem was filed on August 25, 2009.

On March 5, 2010, before Magistrate Laughlin, all parties and their counsel were present and entered into a Memorandum of Agreement which was subsequently filed March 8, 2010 to be later memorialized as an Agreed Judgment Entry prepared by Plaintiff's counsel. Guardian ad Litem, and the actual Appellee in this action, submitted an invoice to Plaintiff's counsel for purposes of including an order to pay fees in the Agreed Judgment Entry that he was preparing. The Agreed Judgment Entry containing the terms and conditions of the Memorandum of Agreement along with the addition of the Guardian ad Litem/Appellee fee payment requirement was approved on March 29, 2010 by Guardian ad Litem/Appellee and by Appellant's prior counsel on April 19, 2010, just one day before the actual due date of the fees. Due to that late approval, the Agreed Judgment Entry did not get filed until April 22, 2010.

On October 6, 2010, the Guardian ad Litem/Appellee filed the Motion of Guardian ad Litem For A Show Cause Order Against Defendant, Qwensanta Liberty Vaile. A Summons and Order to Appear was filed on October 13, 2010, and issued to Appellant through her counsel, which set a hearing for December 14, 2010. Appellant filed a response, pro se, to Guardian ad Litem/Appellee's motion on October 28, 2010

and Guardian ad Litem/Appellee filed an objection to that response on November 2, 2010. Although Appellant claims to have not received notification of the December 14, 2010 hearing, Appellant was in the Delaware County Courthouse for another matter and was granted an extension until January 5, 2011.

At the January 5, 2011 hearing, Appellant was represented by counsel, who cross-examined the Guardian ad Litem/Appellee and presented his client's case to the Magistrate in an explanation of Appellant's inability to pay the Guardian ad Litem fees. Counsel did not request that Appellant take the stand to be questioned. A Magistrates Decision was rendered on January 10, 2011 finding that the Appellant be required to pay the Guardian ad Litem/Appellee the amount of fifty dollars per month until the amount is paid in full. No jail sentence was imposed upon the Appellant.

Appellant filed objections to the Magistrates Decision on January 19, 2011 and the Guardian ad Litem/Appellee filed a response on January 26, 2011. The Magistrates Decision was upheld by Judge Krueger in his Judgment Entry Approving The Magistrate's Decision of January 10, 2011 Overruling Defendant's Objections which was filed on February 28, 2011. The Court of Appeals affirmed the lower court's decision and Appellant is now appealing.

EXPLA NATION AS TO WHY THE SUPREME COURT LACKS JURISDICTION TO RULE ON THIS CASE

I. OPPOSITION ARGUMENT I: THE SUPREME COURT LACKS JURISDICTION DUE TO APPELLANT'S FAILURE TO TIMELY FILE

While Appellant has submitted that this case is a case of great public or general interest, Appellant did not timely file her Notice of Appeal or Memorandum in Support as required by the Supreme Court Rules of Practice. Pursuant to S.Ct.Prac.R. 2.2(A)(1), "the appellant shall file a notice of appeal in the Supreme Court within forty-five days from the entry of the judgment being appealed." As the Court can see from the Appellant's attachment, the opinion of the Court of Appeals was issued on October 10, 2011. Forty-five days from that date is November 23, 2011. Pursuant to the posted Holiday Filing Rule issued by the Clerk of Courts, the Court was open on Wednesday, November 23, 2011. Appellant filed her Notice of Appeal on Monday, November 28, 2011, one filing day after the required filing deadline under Rule 2.2. Also, pursuant to this subsection, "failure to file within this time period shall divest the Supreme Court of jurisdiction to hear the appeal." S.Ct.Prac.R. 2.2(A)(1).

In addition, S.Ct.Prac.R. 2.2(A)(3)(b) requires that the Memorandum in Support also be filed within forty-five days from the entry of the court of appeals decision that is being appealed. If appellant does not file the memorandum in support in a timely

fashion, the Supreme Court "will dismiss the appeal." Again, Appellant's Memorandum in Support was not filed until November 28, 2011.

II. OPPOSITION ARGUMENT II: THERE ARE NO SUBSTANTIAL CONSTITUTIONAL QUESTIONS PRESENTED BY THIS CASE

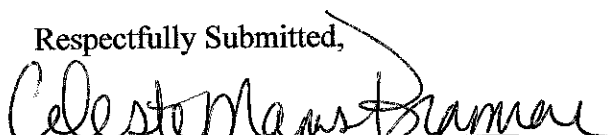
Appellant raises two separate Constitutional arguments. The first is discussed in Appellant's Proposition of Law IV (Memorandum in Support, page 12) where the Appellant is arguing that she was denied due process under the Due Process Clauses of the Ohio and United States Constitutions. Appellant complains that she was denied her due process by not being permitted to testify at the hearing where the Guardian Ad Litem/Appellee was requesting the Court to compel Appellant to pay the court-ordered Guardian ad Litem fees. Those fees in questions were agreed upon by Appellant in an Agreed Entry signed by Appellant's counsel. At the hearing Appellant was granted ample opportunities to present testimony. As the transcript provided by Appellant indicates, Appellant's counsel presented reasons for Appellant's inability to pay Guardian ad Litem fees. The Magistrate indicated that she was going to order Appellant to pay fifty dollars per month to the Guardian ad Litem/Appellee until the amount was paid in full. At that point, rather than request the Court allow him to call Appellant to the stand he merely thanked the Court. He did not attempt to pursue his case any further. (Transcript page 15, lines 2-3). Appellant was not denied her due process merely because counsel failed to properly present her case.

and public interest. The Supreme Court has established protection by enacting Rule 48 of the Rules of Superintendence for the Courts of Ohio which governs and supports Guardian ad Litems across the state in their role as an advocate for the children. Payment for these services is an expected part of the process.

CONCLUSION

Based upon the forgoing, Guardian Ad Litem/Appellee respectfully submits that the Supreme Court of Ohio does not have jurisdiction to hear this matter. There are no constitutional questions presented nor are there any issues of great or public interest submitted in this case and the Appellant did not file timely.

Respectfully Submitted,



Celeste Manns Brammer (0044659)

Guardian ad Litem/Appellee

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CERTIFICATE OF SERVICE

I, Celeste Manns Brammer, Attorney at Law, hereby certify that a true copy of the foregoing response was delivered on December 27, 2011 by regular U.S. mail to the following:

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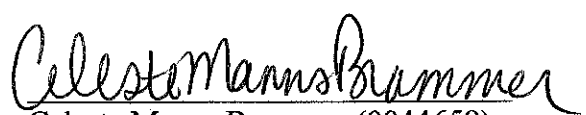

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