

ORIGINAL

IN THE SUPREME COURT OF OHIO

BETH MILLER )  
NKA BETH KNECE )  
Plaintiff-Appellant/Cross-Appellee, )  
vs. )

Case No. 11-1172

NORMAN MILLER )  
Defendant )

On Appeal and Cross Appeal from  
the Delaware

REBECCA S. NELSON-MILLER )  
Administrator of the Estate of Norman )  
Leslie Miller )  
Appellee/Cross-Appellant )

County Court of Appeals,  
Fifth Appellate District  
Court of Appeals Case No.  
10 CAF 09 0074  
2011-Ohio-2649  
(Trial Court No. 04DR A 09 434)

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MERIT BRIEF OF  
APPELLANT/CROSS-APPELLEE BETH KNECE

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## STATEMENT OF FACTS AND STATEMENT OF THE CASE

Plaintiff-Appellant-Cross-Appellee Beth Miller nka Knece (hereinafter referred to as “Appellant”) and Defendant-Appellee-Cross-Appellant Norman Miller<sup>1</sup> (hereinafter referred to as “Appellee”) were married on April 28, 1990. One child was born as issue of said marriage, namely, Marci Miller, born September 9, 1990. On September 29, 2004 Appellant filed a complaint for divorce against Appellee, and Appellee filed an answer and counterclaim. A final hearing was never set in that case. The trial court docket shows the case was set for a settlement conference on December 21, 2004. On December 27, 2004, a very interlineated and hurriedly scribbled Memorandum of Agreement was filed with the Delaware County Clerk of Court.<sup>2</sup> The body of the document is typed but it also contains handwritten interlineations initialed by the parties. The document is signed by the parties and the counsel for the parties. The document contains a signature line for the trial court judge assigned to the case. The signature line shows a signature purporting to be that of the trial court judge with the initials of the magistrate. A Shared Parenting Plan and a guidelines worksheet were also docketed on December 27, 2004. That document also contains the same signature. The parties have stipulated that the Magistrate signed the Judge’s name to all of these documents. Transcript 7-27-09 p. 15.

Almost a year later on October 14, 2005 the magistrate *acting as the trial court* determined that the parties never filed a final decree of divorce and the magistrate *acting as the trial court sua sponte* adopted and incorporated the Memorandum of Agreement into a Judgment Entry Decree of Divorce (hereinafter “Judgment Entry”).<sup>3</sup> The parties

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<sup>1</sup> Throughout this Brief, Appellant will refer to Norman Miller as Appellee.

<sup>2</sup> App. Ex. 1 Memorandum of Agreement [which was converted by “unknown persons” to] Agreed Judgment Entry (Decree of Divorce) 12-27-04.

<sup>3</sup> App. Ex. 2. Judgment Entry Decree of Divorce 10-14-05.

never waived notice of final hearing, never waived the 14 day objection period pursuant to Civ. R. 53, and never submitted an actual Decree of Divorce.

Appellant reopened the case on January 21, 2009 by filing a 60(B) motion for relief from the Judgment Entry.<sup>4</sup> The 60(B) motion was set for trial on April 14, 2009.<sup>5</sup> Appellee filed a Motion to Show Cause claiming that Appellant was in contempt of the Judgment Entry on April 7, 2009. On April 10, 2009, Appellant then filed a motion to stay the 60(B) motion<sup>6</sup> and a motion to vacate the Judgment Entry and to strike the Memorandum of Agreement<sup>7</sup> because, among other reasons, the Judge did not personally sign the Judgment Entry filed on October 14, 2005. Judge Krueger's name was applied to the Judgment Entry and initialed by the then Magistrate Sefcovic. The parties stipulated that the Memorandum of Agreement and the Shared parenting Decree filed on December 27, 2004 and the Court's *sua sponte* Judgment Entry filed on October 14, 2005 were signed with Judge Krueger's name being written by Magistrate Sefcovic. Transcript 7-27-09 p. 15.

Furthermore, Appellant contended in her motion to vacate the Judgment Entry and to strike the Memorandum of Agreement that the Memorandum of Agreement was altered and changed into a different document, an "Agreed Judgment Entry (Decree of Divorce)". Appellant's counsel noticed that while there is a docket entry for the

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<sup>4</sup> Motion of Plaintiff Beth E. Miller (NKA Knece) for Relief from Judgment Entry-Decree of Divorce Filed October 14, 2005, Pursuant to Rule 60(B), to Vacate the Incorporation of the Parties' Memorandum of Agreement, and to Vacate the Terms of the Memorandum of Agreement 1-21-09.

<sup>5</sup> Magistrate's Order 1-26-09.

<sup>6</sup> Motion of Plaintiff Beth E. Miller (nka Knece) to Stay the Civ. R. 60(B) Motion Pending for Cause Shown Herein 4-10-09.

<sup>7</sup> App. Ex. 3. Motion of Plaintiff Beth E Miller (Nka Knece) to Vacate the Judgment Entry Decree of Divorce and to Strike the Agreed Judgment Entry (Decree of Divorce) for Cause Shown Herein 4-10-09.

Memorandum of Agreement, it no longer exists in the court file, because it was altered to purport to be the parties' Agreed Judgment Entry Decree of Divorce. However, the purported Agreed Judgment Entry Decree of Divorce was never filed and docketed, because it was in fact the already filed Memorandum of Agreement, modified many months after the fact so as to appear to be a different document.

This matter came on for a hearing on April 14, 2009 and the new Magistrate (Magistrate Sefcovic had since left) indicated that Appellant's Motion to Stay the 60(B) motion would be overruled.<sup>8</sup> Appellant subsequently withdrew her 60(B) motion.<sup>9</sup> The Magistrate ruled that Appellant's *Motion to Stay* was rendered moot by the withdrawal of her 60(B) motion.<sup>10</sup> The Magistrate set a new trial date for July 27, 2009.<sup>11</sup>

On July 20, 2009 Appellee filed a memorandum contra to Appellant's motion to vacate filed April 10, 2009. On July 20, 2009 Judge Krueger was served with a subpoena to appear as a witness in the trial set for this matter. On July 27, 2009 Judge Krueger filed a *Motion to Quash* the subpoena with an attached signed and notarized affidavit.<sup>12</sup> He also submitted an affidavit with the following statements:

“\* \* \*

“[The magistrate] was duly appointed as Magistrate to conduct all Domestic Relations proceedings;  
“As Domestic Relations' Magistrate, she was given authority only to sign my name to all judgment entries that were agreed to and approved by the parties;  
“**The undersigned has no knowledge of the proceedings in the above-captioned case and has no knowledge of how or why a document was changed after filing.**” (emphasis added).<sup>13</sup>

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<sup>8</sup> Magistrate's Order 4-15-09.

<sup>9</sup> Magistrate's Order 4-15-09.

<sup>10</sup> Magistrate's Order 4-15-09.

<sup>11</sup> Magistrate's Order 4-15-09.

<sup>12</sup> App. Ex. 4. Motion to Quash Subpoena Pursuant to Civil Rule 45 and Affidavit 7-27-09.

<sup>13</sup> Affidavit of Judge Krueger filed 7-27-09.

The trial in this matter occurred on July 27, 2009 pursuant to Appellee's motion filed on April 7, 2009, Appellant's motion filed on April 10, 2009 and Judge Krueger's motion filed on July 27, 2009. On January 26, 2010, the Magistrate rendered a decision regarding the aforementioned motions.<sup>14</sup> The Magistrate dismissed Appellee's motion, denied Appellant's motion and granted Judge Krueger's motion.<sup>15</sup> The Magistrate further held that the Judgment Entry signed by the magistrate was enforceable. Appellant filed objections to the magistrate's decision. A Judgment Entry approving the magistrate's decision was rendered by Judge Krueger – who had testified by affidavit in the case -- and filed on August 19, 2010.<sup>16</sup> Appellant timely appealed to the Fifth District Court of Appeals, 10 CAF 09 0074. On May 25, 2011 the Fifth District Court of Appeals reversed and remanded the Delaware County Common Pleas Court, 2011-Ohio-2649<sup>17</sup>.

On June 7, 2011 the trial court filed a Judgment Entry<sup>18</sup> signed by Judge Krueger on 6-2-11 and file-stamped 6-7-11, which purports to “substitute his original signature” on both an October 14, 2005 “Final Judgment of Divorce”, and the parties' July 31, 2007 post-decree “Judgment Entry”.

Appellee Norman Miller died January 25, 2010.

Appellant contends that the divorce action abated upon the death of Norman Miller.

Appellant timely appealed to both the Fifth District Court of Appeals and this Court regarding the issue of the abatement of the divorce case upon the death of Norman Miller.

Appellee by substitute Rebecca Miller filed an appeal regarding the Fifth District's

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<sup>14</sup> App. Ex. 5. Magistrates Decision 1-26-10

<sup>15</sup> App. Ex. 5. Magistrates Decision 1-26-10

<sup>16</sup> App. Ex. 6. Judgment Entry Approving the Magistrate's Decision on January 26, 2010 Overruling Plaintiff's Objections 8-19-10.

<sup>17</sup> App. Ex. 7 opinion Miller v Miller, 2011-Ohio-2649.

<sup>18</sup> App. Ex. 8 Judgment Entry 6-7-11.

Opinion. This Honorable Court accepted the Appellee's second proposition of law for review.

## ARGUMENT CONTRA

**APPELLEE/CROSS-APPELLANT'S PROPOSITION OF LAW NO. 2:**  
**If the trial court fails to comply with the signature requirement of Civ.R. 58(A) by failing to personally sign the judgment entry, the resulting judgment is voidable, not void, and may be attacked only through a direct appeal. A party is estopped from collaterally attacking the validity of the judgment (State ex rel. Leshner v Kainrad, 65 Ohio St.2d 68, 417 N.E.2d 1382 (1981) followed and extended).**

Originally at issue in this case was the parties' October 14, 2005 Judgment Entry Decree of Divorce, which Appellant sought to vacate for lack of the judge's signature. *Miller v. Miller*, 2011-Ohio-2649. The trial court judge attested that the *magistrate was given authority to sign the judge's name to all judgment entries* that were agreed to and approved by the parties. The underlying December 27, 2004 Memorandum of Agreement giving rise to the October 14, 2005 Judgment Entry Decree of Divorce was an agreed entry, signed by the parties and their counsel. On October 14, 2005, the trial court filed *a sua sponte* Decree of Divorce. A review of that entry shows that the magistrate signed the judge's name to the document and initialed the signature with her initials.

For a judgment to be final and appealable, however, it must satisfy not only the requirements of R.C. 2505.02, and if applicable, Civ. R. 54(B), but also Civ.R. 58. Civ.R. 58(A) states,

{¶31 } "Subject to the provisions of Rule 54(B), upon a general verdict of a jury, upon a decision announced, \* \* \*, the court shall promptly cause the judgment to be prepared and, *the court having signed it*, the clerk shall thereupon enter it upon the journal. A judgment is effective only when entered by the clerk upon the journal." (Emphasis added.) *Miller* 2011-Ohio-2649

The Fifth Appellate District in *Miller v. Miller*, 2011-Ohio-2649, 10 CAF 09 0074,

correctly ruled that the October 14, 2005 entry does not comply with Civ. Rule 58.

"Where a matter is referred to a magistrate, the magistrate and the trial court must conduct the proceedings in conformity with the powers and procedures conferred by Civ.R. 53. Magistrates are neither constitutional nor statutory courts. Magistrates and their powers are wholly creatures of rules of practice and procedure promulgated by the Supreme Court." *Yantek v. Coach Builders Limited, Inc.*, Hamilton App. No. C-060601, 2007-Ohio-5126, ¶9, citing *Quick v. Kwiatkowski*, Montgomery App.No. 18620, 2001-Ohio-1498, citing Sec. 5(B), Art. IV, Ohio Constitution." *Miller* at ¶33.

A trial judge cannot "authorize" a magistrate, clerk, secretary or anyone else to sign a final judgment entry. A trial judge cannot delegate that act. To do so would violate Article IV of the Ohio Constitution, as a magistrate is not "the court."

Under Civil Rule 1(A) the Ohio Supreme Court has made the Civil Rules of Procedure including Rule 58, binding on this Court. Further, Civ. R. 75(A) specifically makes the Civil Rules, with exceptions as noted therein, applicable to actions in the Domestic Relations Court. The signature mandate of Rule 58 is not listed as an exception. See Civ. R. 75, *passim*.

Under the Rules of Superintendence for the Courts of Ohio, specifically Rule 5, the Ohio Supreme Court has given its grace to the adoption of local rules by the State Courts. But it has also restricted that grace in that "... Local rules of practice shall not be inconsistent with rules promulgated by the Supreme Court." See Sup. R. 5(A). Accordingly, the trial Court could not and cannot adopt a rule that contravenes the signature requirement of Civ. R. 58(A).

There are numerous questions about the purported final entry in this matter, and it is incorrect of Appellee to state that the then parties had come to a full agreement. On December 27 2004 a very interlineated and hurriedly scribbled "Memorandum of Agreement" was filed with the Clerk of the Delaware Court. Almost a year later on

October 14, 2005 the Magistrate determined that the parties had never filed a final decree of divorce and *sua sponte*, by separate “Judgment Entry,” adopted and incorporated the “Memorandum of Agreement” as a “Judgment Entry Decree of Divorce”, and someone – perhaps the magistrate, erased the words “Memorandum of Agreement” on the original document in the court file.<sup>19</sup> The parties themselves never submitted an actual decree of divorce. At the 7-27-09 hearing on Appellant-Cross-Appellee’s *Motion to Vacate the Judgment Entry*, the parties stipulated that the “Memorandum of Agreement” and the “Shared Parenting Decree” filed on December 27, 2004 and the “Court’s” *sua sponte* “Judgment Entry” filed on October 14, 2005 were signed with Judge Krueger’s name being written by the Magistrate. On 7-20-09 Appellant served a subpoena on Judge Krueger to testify in the matter. Rather than appear, the Judge filed an affidavit on 7-27-09 which stated in pertinent part, that “The undersigned has no knowledge of the proceedings in the above captioned case and has no knowledge as to how or why a document was changed after filing.” Therefore Judge Krueger never reviewed any of the “Judgment Entries” to which the Magistrate applied his name.

A Final Decree of Divorce, would ordinarily be a judgment because it terminates the case or controversy the parties have submitted to the trial court for resolution. *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 736 N.E.2d 101; *Aguirre v. Sandoval*, Stark App. No. 2010CA00001, 2010-Ohio-6006.

Judgments that determine the merits of the case and make an end to it are generally final, appealable orders. *Harkai*, supra. There is no differentiation between an “agreed judgment” and “judgment” for purposes of finality. Appellate courts are given

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<sup>19</sup> There is a docket entry in 04 DRA 09 434 for the “Memorandum of Agreement” on December 27, 2004, but no document with that name now appears in the file for that date.

the jurisdiction to review the final orders or judgments of lower courts within their appellate districts. Section 3(B)(2), Article IV, Ohio Constitution. For a judgment to be final and appealable, however, it must satisfy not only the requirements of R.C. 2505.02, and if applicable, Civ. R. 54(B), but also Civ.R. 58. Civ.R. 58(A) states,

“Subject to the provisions of Rule 54(B), upon a general verdict of a jury, upon a decision announced, \* \* \*, the court shall promptly cause the judgment to be prepared and, *the court having signed it*, the clerk shall thereupon enter it upon the journal. A judgment is effective only when entered by the clerk upon the journal.” (Emphasis added.)

Civ.R. 53 does not permit magistrates to enter judgments. This is the function of the judge, not the magistrate. *Brown v. Cummins* (1997), 120 Ohio App.3d 554, 555, 698 N.E.2d 501; *In re K.K.*, Summit App. No. 22352, 2005-Ohio-3112, at ¶17; *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 217-218, 736 N.E.2d 101; *Kidd v. Higgins* (Mar. 29, 1996), Lake App. No. 95-L-112.

“...**there can be no judgment unless and until it is signed by the court, that is by the judge personally.** The affixing of the judge’s name by some unknown person who then initials the ‘signature’ cannot meet the requirement by Civ.R. 58 that the court sign the judgment.” *Peters v. Arbaugh*, (1976), 50 Ohio App.2d 30, 361 N.E.2d 531, concurrence. (emphasis added).

*Brackmann Communications, Inc. v. Ritter* (1987), 38 Ohio App.3d 107, 109, 526 N.E.2d 823, stands for the proposition that there are “clear requirements for formal final journal entry or order for appeal purposes.” The court in *Brackmann* held that,

In all civil cases appealed to this court, therefore, a formal final journal entry or order must be prepared which contains the following: 1. the case caption and number; 2. a designation as a decision or judgment entry or both; 3. a clear pronouncement of the court’s judgment and its rationale if the entry is combined with a decision or opinion; 4. **the judge’s signature**; 5. a time stamp indicating the filing of the judgment with the clerk for journalization; and, 6. where applicable, a Civ. R. 54(B) determination and Civ. R. 54(B) language. . . the Ohio Rules of Civil Procedure, including Civ.R. 58, must be followed and obeyed where they are applicable.” 38 Ohio App.3d 107, 109, 526 N.E.2d 823.

Judgments that are not properly journalized do not become “journalized with time,” if not promptly appealed.

*State ex rel. Engelhart v. Russo*, 2011-Ohio-2410 at ¶ 25 reiterated that

“It is axiomatic that a court speaks only through its journal and a judgment entry is effective **only when it has been journalized**. *San Filippo v. San Filippo* (1991), 81 Ohio App.3d 111, 610 N.E.2d 493; *State v. Ellington* (1987), 36 Ohio App.3d 76, 521 N.E.2d 504. Journalization of a judgment entry requires that: (1) the judgment is reduced to writing; (2) **signed by a judge**; and (3) filed with the clerk so that it may become a part of the permanent record of the court. *Id.* at 78.” (emphasis added)

All of these cases emphasize the role of the judge as “the Court,” more clearly stated here:

“Magistrates are neither constitutional nor statutory courts. Magistrates and their powers are wholly creatures of rules of practice and procedure promulgated by the Supreme Court.” *Yantek v. Coach Builders Limited, Inc.*, Hamilton App. No. C-060601, 2007-Ohio-5126, ¶9, citing *Quick v. Kwiatkowski*, Montgomery App.No. 18620, 2001-Ohio-1498, citing Sec. 5(B), Art. IV, Ohio Constitution.

In the instant case the trial Court did not have the power to render judgments without signature – delegating to others, not judges under Article IV, the power to sign judgments by having a magistrate sign the judge’s name on the original judgments.

Ohio Constitution § 4.01 In whom power vested: **The judicial power of the state** is vested in a supreme court, courts of appeals, **courts of common pleas** and divisions thereof, and such other courts inferior to the Supreme Court as may from time to time be established by law.

Ohio Constitution § 4.04 Common pleas court:

(B) The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies **as may be provided by law**. (emphasis added)

Ohio Constitution § 4.05 Other powers of the Supreme Court

(B) The Supreme court shall prescribe rules governing practice and procedure in all courts of the state, **which rules shall not abridge, enlarge, or modify any substantive right**. (emphasis added)

Ohio Constitution § 4.18 Powers and jurisdiction

The several judges of the Supreme Court, of the common pleas, and of such other courts as may be created, shall, respectively, have and exercise such power and jurisdiction, at chambers, or otherwise, as may be directed by law.

There is nothing in the Ohio Constitution that permits a judge to delegate his duties to a non-judge. A non-judge is not the Court, and cannot sign a judgment entry. Therefore, a purported judgment signed by a non-judge is not signed by the Court. It is a violation of the Ohio Constitution to hold that an entry signed by a non-Judge transmogrifies into an entry signed by the Court, if it has not been appealed in 30 days. It is a violation of the Ohio Constitution to hold that an entry signed by a non-Judge transmogrifies into a valid entry signed by the Court, 17 months after the death of one of the parties, when the Judge had never reviewed the matter prior to the death of the party. And it is a violation of the Ohio Constitution to hold that such an entry is “voidable” – as Appellee would have it.

*Cycle Data Systems Inc. v. University of Dayton Law Student Bar*

*Association* 1979 Ohio App. LEXIS 8569 states:

“Nothing in Chapter 1925, Revised Code, makes any exception to Rule 4, Rules of Superintendence for Municipal Court, or to Rule 53 Ohio Rules [\*3] of Civil Procedure. There is nothing in the statute or in the rules which authorizes a referee to sign a judgment entry. Thus, at this stage of the record and proceedings there is no final order or judgment entry from which an appeal may be taken. Accordingly, the appeal must be dismissed without either an affirmance or a reversal. *Id.* (emphasis added)

Only Judges are authorized to exercise judicial power by Article IV of the Ohio State Constitution. If this Court reverses *Miller* on the issue of whether an “unsigned entry” must be appealed within 30 days, then that will permit a Judge to “delegate” his signing duties, provided he isn’t caught within 30 days, and so virtually anyone – a magistrate, a referee, a clerk, a secretary – is a “Judge” with the powers of a Judge,

including the power to sign a Judgment Entry, if a party does not notice or know that the entry must be signed by the **Court**. Overworked and backed-up judges everywhere will leave it to secretaries, law clerks, bailiffs and staff attorneys to read (one would hope they at least read) and sign the Judge's name to original judgment entries.

A Judge cannot delegate his signing powers to a magistrate or anyone else to achieve a final appealable order. Pursuant to Article IV of the Ohio State Constitution, he cannot do this.

In the case of *State ex rel. Leshner v Kainrad*, the referee

“did not prepare a report as required by Civ. R. 53(E)(1). Appellant, therefore, was never given the opportunity to file objections, as is his right under Civ. R. 53(E)(2). Apparently, on the same day of the hearing, Referee Meal prepared a judgment entry, signed it, and had Judge Kainrad sign it with the following notation: ‘The Court upon review finds the Referee's recommendations fair and equitable and hereby adopts same as an order of this Court.’”

This Court found the decree “voidable” and not “void”. But *Leshner* is different, because in *Leshner*, although there is a clear violation of Civ.R.53(E) in the denial of that Appellant's right to a 14-day objection period – the Court actually SIGNED the judgment entry, so there was something to appeal. In *Miller*, not only did the Court NOT SIGN the judgment entry, but worse, the Magistrate herein pretended that the Court had signed the entries, by signing the Judge's name over and over, when in fact, pursuant to the Judge's own affidavit, the Judge had never reviewed any of the file.

“Magistrates are neither constitutional nor statutory courts. Magistrates and their powers are wholly creatures of rules of practice and procedure promulgated by the Supreme Court.” *Yantek v. Coach Builders Limited, Inc.*, Hamilton App. No. C-060601, 2007-Ohio-5126, ¶9, citing *Quick v. Kwiatkowski*, Montgomery App.No. 18620, 2001-Ohio-1498, citing Sec. 5(B), Art. IV, Ohio Constitution.

A magistrate cannot sign a final judgment entry. See *State v. Waselich*, 2005-Ohio-6449. **Magistrates are not constitutional or statutory courts.** *Kwiatkowski v.*

*Kwiatkowski*, 2001-Ohio-1498. The trial court is required to conduct an independent analysis of the issues considered by the magistrate. *Inman v. Inman*, 101 Ohio App.3d 115, 117, 118 655 N.E.2d 199 (Ohio App. 2 Dist. 1995). Before the magistrate's decision becomes effective, the trial court has to review and adopt it. *Yantek v. Coach Builders Ltd., Inc.*, 2007-Ohio-5126. As such, ". . . a magistrate's decision that has not been adopted or modified by the trial court is not a final order" *Yantek v. Coach Builders Ltd., Inc.*, 2007-Ohio-5126; *See Mahlerwein v. Mahlerwein*, 160 Ohio App.3d 564, 572, 2005-Ohio-1835, 828 N.E.2d 153, at ¶20. *See Parma v. Blatnica*, 2005-Ohio 194 (magistrate signed judgment entry on the "line demarcated for the judge's signature". The court held that the judgment entry was not a final appealable order because it was "merely a decision by the . . . magistrate that was never acted upon by the . . . judge."); *State v. Brock*, 2003-Ohio-3199 - a judgment was signed by the magistrate. The judge was unable to be present and had the magistrate preside for the sole purpose of relaying the decision to the parties, however the judge's signature on the journal entry was omitted. The court held that "[t]he failure of the trial judge to sign the judgment results in an improperly journalized judgment of conviction, and thus **there is no conviction at all and no appealable order.**" The civil rules are clear: "A magistrate's decision is not effective unless adopted by the court." Civ.R. 53(D)(4)(a). *Yantek v. Coach Builders Ltd., Inc.*, 2007-Ohio-5126.

The Court in *Yantek* explained:

The majority of Ohio courts of appeal . . . have relied upon the requirement that "[a] magistrate's decision is not effective unless adopted by the court" to conclude that a magistrate's decision that has not been adopted or modified by the trial court is not a final order. Civ. R. 53(D)(4)(a); *See Mahlerwein v. Mahlerwein*, 160 Ohio App.3d 564, 572, 2005-Ohio-1835, 828 N.E.2d 153, at ¶20; see also, *Robinson v. BMV*, 8th Dist. No. 88172, 2007-Ohio-1162, at ¶5, and

*Ingledue v. Premier Siding & Roofing, Inc.*, 5th Dist. No. 2005CAE120088, 2006-Ohio-2698, at ¶11; but, see, *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 221, 736 N.E.2d 101; see, also, *Champion Contracting & Constr. Co. Inc. v. Valley Post No. 5563*, 9th Dist. No. 03CA0092-M, 2004-Ohio-3406, at ¶17-18 (because a trial court's action on a magistrate's decision is not an essential element of a final order or judgment as defined by R.C. 2505.02, and Civ. R. 54 and 58, an appellate court has jurisdiction to render a decision on a journal entry in which the trial court has failed to specifically state that it is adopting or modifying a magistrate's decision). Rather the magistrate's decision remains an interlocutory order: an interim or temporary order that is "tentative, informal, or incomplete," that is subject to change or reconsideration upon the trial court's own motion or that of a party, and that does not determine the action and prevent a judgment, a magistrate's decision remains interlocutory until the trial court reviews the decision, adopts or modifies the decision, and enters a judgment that determines all the claims for relief in the action or determines that there is no just reason for delay. *Cohen v. Beneficial Industrial Loan Corp.* (1949), 337 U.S. 541, 546, 69 S.Ct. 1221; See R.C. 2505.02(B)(1); see, also, *Pitts v. Dept. of Transp.* (1981), 67 Ohio St.2d 378, 423 N.E.2d 1105, fn. 1; See Civ. R. 53(D)(4)(e) ("[a] court that adopts, rejects, or modifies a magistrate's decision shall also enter a judgment or interim order"); see, also, *Mahlerwein v. Mahlerwein*, at ¶20; *Ingledue v. Premier Siding & Roofing, Inc.*, 5th Dist. No. 2005CAE120088, 2006-Ohio-2698, at ¶13. Absent each of these three steps, the rulings of the magistrate and the verdict of the jury over which the magistrate presided are not final and appealable orders. See *McClain v. McClain*, 2nd Dist. No. 02CA04, 2002-Ohio-4971, at ¶19; *Mahlerwein v. Mahlerwein*, 160 Ohio App.3d 564, 572, 2005-Ohio-1835, 828 N.E.2d 153, at ¶20 (4<sup>th</sup> Dist.); *Ingledue v. Premier Siding & Roofing, Inc.*, 5th Dist. No. 2005CAE120088, 2006-Ohio-2698, at ¶13; *Cuyahoga Support Enforcement Agency v. Dickerson*, 8th Dist. No. 86831, 2006-Ohio-2082, at ¶10. . . . While parties may stipulate to the factual findings of a magistrate, there is no provision in the civil rules that permits parties to waive the trial court's obligation to review the magistrate's decision for errors of law and to adopt or modify the decision. . . . See, e.g., *Lesick v. Medgroup Management, Inc.* (Sept. 25, 1998), 1st Dist. Nos. C-970590 and C-970612, and *Cangemi v. Cangemi*, 8th Dist. No. 84678, 2005-Ohio-772, at ¶22. Ohio courts we repeatedly cautioned against rubberstamping-"the practice of adopting [a magistrate's decision] as a matter of course, especially where [the magistrate] has presided over an entire trial," and have "reject[ed] any concept which would suggest that a trial court may in any way abdicate its function as judge over its own acts." *Hartt v. Munobe*, 67 Ohio St.3d 3, 6-7, 1993-Ohio-177, 615 N.E.2d 617; see, also, *Inman v. Inman* (1995), 101 Ohio App.3d 115, 119, 655 N.E.2d 199; *Haag v. Haag* (1983), 9 Ohio App.3d 169, 171-172, 458 N.E.2d 1297.; See *Normandy Place Assoc. v. Beyer*, 2 Ohio St.3d at 105, 443 N.E.2d 161. Even if it was omitted at the behest of the parties, the failure of the trial court in this case to perform its ultimate function to review the magistrate's action in accordance with the civil rules, and to enter a final judgment in accordance with Civ.R. 54 and 58, rendered the June 23 entry an interlocutory

order not ready for appellate review. The civil rules are clear: "A magistrate's decision is not effective unless adopted by the court." Civ.R. 53(D)(4)(a).

In the present case, the Court *sua sponte* issued a Judgment Entry, which was signed with Judge Krueger's name by Magistrate Sefcovic. There is no evidence that the Judge ever saw the magistrate's decision prior to the signing of his name. There is much evidence that he did not. The Judge is supposed to conduct an "independent analysis" of the issues considered by the magistrate. Judges are cautioned against rubberstamping (adopting) a magistrate's decision as a matter of course instead of conducting their own independent analysis. See *Hartt v. Munobe*, 67 Ohio St.3d 3, 6-7, 1993-Ohio-177, 615 N.E.2d 617. The "Judgment Entry" is not an effective order because it was never adopted by the Court and the magistrate does not have the power to sign a final order. The "Agreed Entry-Decree of Divorce" is equally not an effective order for three reasons: because it was never adopted by the Court and the magistrate does not have the power to sign a final order, because it is a fabrication created by the magistrate of a different document, and because it was never journalized in the docket/journal of the court (only the original memorandum is docketed).

**R.C. 3105.10(A) Judgment.** The court of common pleas shall hear any of the causes for divorce or annulment charged in the complaint and may, upon proof to the satisfaction of the court, pronounce the marriage contract dissolved and both of the parties released from their obligations.

The court of common pleas is **the judge, not the magistrate**. In *Crane v. Teague*, 2005-Ohio-5782, the probate magistrates signed numerous documents designated as "Journal Entry" and "Order" on the judge's signature line. These documents were not designated as a "Magistrate's Decision" and were never reviewed by the trial court. The *Crane* court explains:

“¶ 31} Before we address the appealability of specific orders, we should note that the “orders” of the magistrates in this case were ineffective because **magistrates do not have the power to enter orders** – at least not of the type that were issued. See *Brown v. Cummins* (1997), 120 Ohio App.3d 554, 555, 698 N.E.2d 501 (noting that magistrates do not have the power to enter orders or judgments). Under Loc. R. 86.1(A) of the Court of Common Pleas of Montgomery County, Probate Division, probate magistrates have the powers set forth in Civ. R. 53 and as set forth in any order of reference. Subsection (B) of Loc. R. 86.1 goes on to refer to magistrates “all matters, including pretrials, pertaining to guardianships, trusts, adoptions, civil commitments, and name changes.” Subsection (B) also states that the reference includes “all powers of the Court except as restricted by law.”

¶ 32} One such restriction of law is found in Civ. R. 53. Under Civ. R. 53(C)(3)(a), magistrates have very limited power to enter orders without judicial approval. Such orders include pre-trial matters like discovery orders and temporary orders for spousal or child support under Civ. R. 75(N). In these situations, magistrates may enter an “order.” The pretrial order must be identified as a magistrate’s order and must be served on all parties or their attorneys. Civ. R. 53(C)(3)(c). When a pre-trial order is entered, Civil Rule 53 allows an appeal to the trial court though a motion to set aside the order. See Civ. R. 53(C)(3)(b).

¶ 33} Magistrates may also make decisions in referred matters. Civ. R. 53(E) outlines the proper procedures for such situations, including a requirement that *the magistrate prepare, sign, and file a magistrate’s decision. The decision is then to be served by the clerk on all parties or their attorneys.* Civ. R. 53(E)(1) (emphasis added). Parties may object to a magistrate’s decision within fourteen days, and they may also file a request for findings of fact and conclusions of law under Civ. R. 52. In the latter event, objections may be filed after the magistrate files the findings of fact and conclusions of law. Civ. R. 53(E)(2) and (3).

¶ 34} Significantly, Civ. R. 53(E) *does not give magistrates the ability to enter orders or judgments. This is a function of the judge, not the magistrate.* *Brown*, 120 Ohio App.3d at 555. See, also, *In re K.K.*, Summit App. No. 22352, 2005-Ohio-3112, at ¶17 (magistrate lacks authority to enter judgments), and *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 217-218, 736 N.E.2d 101 (Rule 53 allows magistrates to sign and file decisions, not judgments).

¶ 35} As we noted, the entries or orders signed by magistrates were not designated either as “magistrate’s orders” or as magistrate’s decisions. The magistrates’ decisions were also ineffective to the extent that they contained “orders” rather than findings. For example, the “Journal Entry Finding Sale Necessary, Ordering Appraisement & Granting Prayer of Complaint” ordered Crane to sell the real estate belonging to Bige Teague. However, the magistrate did not have the power to order the sale – or to grant “default judgment” on the complaint. The magistrate could make findings, but those findings would be interlocutory and subject to revision by the trial court until such time as the trial court issued its own judgment.

¶ 36} Similarly, the “Journal Entry Confirming Sale & Ordering Deed” ordered and confirmed the sale of the property and ordered distribution of sale proceeds. Again, this entry, signed by a magistrate, is not a final judgment, because the magistrate did not have the power to enter judgment. Only the trial court can do that. The remaining entries in

the file that are signed by magistrates lack finality for the same reason.”

As such the Judgment Entry, the “Agreed Judgment Entry-Decree of Divorce”, and every other entry signed by the Magistrate “as the Judge” are not final appealable orders, do not transmogrify into final appealable orders after 30 days, and are void.

Appellee/Cross-Appellant argues that the Millers had an agreement. Not really.

Settlement agreements are favored by law. However, it is still up to **the court** to determine whether the settlement agreement is contrary to the law. A settlement agreement is not enforceable if it is procured by fraud, duress, overreaching, or undue influence. *Walther v. Walther (1995)*, 102 Ohio App. 3d 378, 383. Appellant testified that she signed the agreement under duress. Transcript 7-27-09 p.48. When asked to define duress Appellant responded:

“He [in reference to Appellee Norman Miller] was in my house, he wouldn’t leave the premises. My lawyer said there was nothing I could do to get him out of my property. He was drinking obsessively, he was very aggressive to me and my daughter, and he threatened my life and my daughter’s. And I don’t want him in the house because I was for her and my safety. And my lawyer said there was nothing I could do to get him out. So, I’d sign anything to get him out.” Tr. 7-27-09 pp.48-9.

When asked if she read the agreement Appellant responded:

“I read it, but I don’t really think I understood it because I was under such duress. I mean, I got – I had to go see a doctor and get on nerve pills because of this man. And I was scared to death.” Tr. 7-27-09 p. 53.

Whether Appellee claims to have relied on the fatally defective documents or not, this assertion does not transmogrify magistrate’s decisions that *pretend to be* Judge’s Orders terminating the case, into Judge’s Orders that terminated the action.

“Various districts, including our own, have held that **a final judgment does not exist where the trial court fails to both adopt the magistrate’s decision and enter judgment stating the relief to be afforded.** *Hennis v. Hennis*, Clark App. No. 2002-CA-

107, 2003-Ohio-5729, at ¶6; *White v. White*, Gallia App. No. 01CA12, 2002-Ohio-6304, at ¶14-15; *Mahlerwein v. Mahlerwein*, 160 Ohio App.3d 564, 2005-Ohio-1835, 828 N.E.2d 153, at ¶20; *Lowe v. Phillips*, Montgomery App. No. 20590, 2005-Ohio-2514, at ¶13; and *Harkai*, 136 Ohio App.3d at 216-18. The reason for this is that orders are not court orders unless certain formalities are met. *Harkai*, 136 Ohio App.3d at 217. In addition, only judges, not magistrates, may terminate claims or actions by entering judgment. *Id.* at 218. See, also, *Brown*, 120 Ohio App.3d at 555.” *Crane v. Teague*, 2005-Ohio-5782 at ¶ 39. (emphasis added).

There is a tacit acknowledgement by Appellee that this practice of the Judge was wrong, and even violated the Constitution, but is yet a plea to the Ohio Supreme Court that for “practical considerations” this Court should overturn the Fifth District in a desire to avoid the perceived disruptive effects of the *Miller* holding. While it is appropriate to give some consideration to the potential issues that may arise regarding the effect of the *Miller* ruling on others who have magistrate-signed judge’s names on entries and orders, without judge’s review, these potential issues should not dictate the outcome of this case, particularly given that this case does not involve other people’s issues and this court has not had the benefit of adequate briefing on them. Furthermore, matters of convenience should not dictate this court’s substantive decisions. We cannot conclude that acknowledgment of the continuing error in practice will result in chaos or that concerns regarding perceived chaos should prevent this Court holding that the actions of the trial court in this matter were clearly wrong and violated the Ohio Constitution.

Appellee offers *State ex. Rel Leshner v. Kainrad* (1981), 65 Ohio St.2d 68, 71, 417 N.E.2d 1382 as an example of a court rendering a judgment “voidable,” not void, due to failure to adhere to a Civil Rule. In that particular case, the Civil Rule in question was Civ. R. 53, not Civ. R. 58, and Appellee admits this plainly. Appellee claims that, despite this difference, “the Court’s reasoning in *Leshner* applies,” and openly ignores the inherent

difference between the two Civil Rules and how they apply to judgments. In *Lesher*, all other rules of the Court were followed except for Civ.R. 53, which required at that time that the referee overseeing the case must prepare a report, file it with the clerk of court, and mail copies to the parties so that they would have a 14-day “objection period”. In other words, all of the in-court proceedings occurred as required by law.

The same cannot be said for a failure to comply with Civ. R. 58. If the judge, alternatively known as “the trial court,” was not required to officially sign an order and therefore render it valid, then legal proceedings could take place in any setting, with any “decider” of the parties’ choice. The only person qualified to apply the law and give judgment was not present at the adoption of the relevant parties’ “Judgment Entry Decree of Divorce,” which constitutes an entirely different problem from a failure to follow procedure after the decisions were said and done. In *Miller*, not only was the judge absent, but the parties themselves never submitted an actual decree of divorce. The magistrate (or another party), erased the handwritten title of “Memorandum of Agreement” and incorporated the document into a “Judgment Entry Decree of Divorce,” which she then signed with Judge Krueger’s name. Judge Krueger has testified via affidavit that he had no knowledge of the case proceedings or the altered document. Accordingly, the judge’s name on the purported entry is completely disconnected from the will of the judge.

Therefore, *State ex rel. Lesher v Kainrad* is inapposite to the instant case. A Magistrate cannot transmogrify into a constitutional or statutory court 30 days after signing the Judge’s name to an Order, as suggested in Appellee/Cross-Appellant’s Proposition of Law No. 2. Pursuant to Article IV of the Ohio State Constitution, a

Magistrate cannot become the Court.

A Magistrate's Decision or Magistrate's Order may not be used to dispose of the claims of a party. Civ.R. 53(D)(2)(a)(i), *In re Estate of Persing*, 2010-Ohio-2687, at ¶33 and ¶34. In *Persing*, the domestic relations court never approved the magistrate's order. "...pursuant to Civ.R. 53(D)(2)(a)(i), such orders do require trial court approval if they dispose of a party's claims. See, also, *Crane v. Teague*, 2d Dist. No. 20684, 2005- Ohio- 5782, at ¶32 & 39."

In the instant case, the October 14, 2005 Judgment Entry decree of divorce was no more, at best, than a "Magistrate's Decision" or "Magistrate's Order", if even that. The trial court had not and did not independently adjudicate the facts concerning a division of property, or anything else, until, perhaps, June 7, 2011, if then. Norman Miller was deceased before the trial court "independently adjudicated the facts". Therefore, the trial court lost jurisdiction to sign a Decree, or sign a Judgment Entry saying that the Entry acted as the signature on the decree.

Defendant Norman L. Miller died January 25, 2010. Defendant's counsel did not file a Suggestion of Death 14 days after the death of Defendant, pursuant to Civil Rule 25 (E), but waited until 5-31-11. Appellant then filed a motion to vacate the Judgment entry of July 7, 2011.

On May 26, 2011, the Fifth District Court of Appeals sustained Plaintiff's contentions that the October 14, 2005 Judgment Entry decree of divorce was not a final appealable order in that it violated both Civil Rule 58 and Civil Rule 53.

Only a Judge can sign a judgment. See *Brown v. Cummins*, (1997) 120 Ohio App.3d 554, 555 *et al.*, Order is void because the "...magistrate has no power to enter

such orders ..." citing *Barker v. Barker*, (1997) 118 Ohio App.3d 706; See also *Peters v. Arbaugh* (1976) 50 Ohio App.2d 30, 36 (Whiteside, J., Concurring Opinion). ("... [T]here can be no judgment unless and until it is signed by the court, that is by the judge personally. The affixing of the judge's name by some unknown person who then initials the "signature" cannot meet the requirement by Civ. R. 58 that the court sign the judgment."); *Harkai v. Scherba Industries, Inc.*, 136 Ohio App.3d 211, 218-219 (2000) "...only a judge-not a magistrate-may terminate a claim or action by entering judgment.") In the absence of compliance with the signature element of Civil Rule 58, the supposed judgment in question is one "...[t]hough possessing the character of potentiality, it lacks the character of actuality, and hence is without probative force." *Horner v. Toledo Hosp.* (1993), 94 Ohio App.3d 282, 289, quoting *Coe v. Erb* (1898), 59 Ohio St. 259, 263; Citing cases (Construing Rule 53); *Flores V. Porter*, (5<sup>th</sup> Dist) 2007-Ohio-481, rubber stamp not accepted in lieu of Judge's signature, does not comply with Civ. R. 58, *Id.* at paragraphs 5-15 (cases cited) (attached).

In the absence of Judge Krueger's personal signature, upon the Judgment Entry Decree of Divorce as mandated by Civ. R. 58(A) **there had never been a final appealable order.** See *Brackmann Communications, Inc. v. Ritter* (1987), 38 Ohio App.3d 107, 109 (outlining clear requirements for formal final journal entry or order for appeal purposes, including designation as decision or judgment entry or both, judge's signature, time-stamp, and where applicable, Civ. R. 54(B) determination and Civ. R. 54(B) language).

Another way of looking at this issue is:

To be valid and enforceable, a judgment must be supported by three elements:

- (1) the court must have jurisdiction of the parties;
- (2) the court must have jurisdiction of the subject matter; and
- (3) the court or tribunal must have the power of authority to render the particular judgment.

The magistrate did not have the power or authority to render judgment or to pretend that she was the judge.

Any judgment rendered by a court which lacks jurisdiction, either of the subject matter of the parties, or **lacks inherent power to enter the particular judgment**, can be attacked at any time, either directly or collaterally. *Long v. Shorebank Development Corp.*, 182 F.3d 548 ( C.A. 7 Ill. 1999).

Such a judgment is **void** from its inception, incapable of confirmation or ratification, and can never have any legal effect.

The passage of time, however great, does not affect the validity of a judgment and cannot render a void judgment valid. See *State ex rel. Smith v. Sixth Judicial Dist. Court*, 63 Nev 249, 167 P.2d 648 (ovrld in part on other grounds by *Poirier v. Board of Dental Examiners*, 81 Nev 384, 404 P.2d 1); *Monroe v. Niven*, 221 NC 362, 20 S.E.2d 311.

The limitations inherent in the requirements of due process of law extend to judicial, as well as political, branches of the government<sup>20</sup>, so that a judgment may not be rendered in violation of those constitutional limitations and guaranties.<sup>21</sup>

A court may not render a judgment which transcends the limits of its authority,<sup>22</sup> and a judgment is void if it is beyond the powers granted to the court by the

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<sup>20</sup> As to persons and agencies bound by due process, see 16A Am.Jur.2d, Constitutional Law §§ 742, 821-824.

<sup>21</sup> See *Hanson v. Denckla*, 357 US 235, 2 L.Ed.2d 1283, 78 S.Ct. 1228, reh den 358 US 858, 3 L.Ed.2d 92, 79 S.Ct. 10; *Ladner v. Siegel*, 298 Pa 487, 148 A 699, 68 ALR 1172

<sup>22</sup> See *Royal Indem. Co. v. Mayor, etc., of Savannah*, 209 Ga 383, 73 S.E.2d 205; *Spencer v. Franks*, 173 Md 73, 195 A 306, 114 ALR 263; *Road Material & Equipment Co. v.*

law of its organization, even where the court has jurisdiction over the parties and the subject matter.<sup>23</sup>

For these reasons, *State ex rel Leshner v. Kainrad* is inapplicable to the instant case. The Millers' divorce decree is void.<sup>24</sup>

Moreover, this problem "decree" cannot be corrected with an entry *nunc pro tunc* because such an entry can only be issued by "the trial court," to correct judgments made "by the court." When a judge is absent from either end of this process, the point becomes inapplicable. *Nunc pro tunc* entries are designed to correct errors in text, such as misspellings or inaccuracies when compared with the court record of the judge's oral decisions. They are not intended as a method of retroactively supplying an omitted action by the judge who was not part of this process to begin with, or of circumventing the longer process required to address such a fundamental error. See *State v.*

*Hawk* (1992), 81 Ohio App. 3d 296, 300 -- A *nunc pro tunc* order cannot be used to supply omitted action, or to indicate what the court might or should have decided, or

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*McGowan*, 229 Miss 611, 91 So.2d 554, motion dismd 229 Miss 630, 92 So.2d 245; *Howle v. Twin States Express, Inc.*, 237 NC 667, 75 S.E.2d 732; *Fitzsimmons v. Oklahoma City*, 192 Okla 248, 135 P.2d 340; *Robertson v. Commonwealth*, 181 Va 520, 25 S.E.2d 352, 146 ALR 966; *Reburg v. Lang*, 239 Wis 381, 1 N.W.2d 759. The courts of a state may render only such judgments as they are authorized to do under the laws of the state. *Mosely v. Empire Gas & Fuel Co.*, 313 Mo 225, 281 SW 762, 45 ALR 1223.

<sup>23</sup> See *People ex rel. Arkansas Valley Sugar Beet & Irrigated Land Co. v. Burke*, 72 Colo 486, 212 P. 837, 30 ALR 1085; *People v. Wade*, 116 Ill 2d 1, 107 Ill Dec 63, 506 N.E.2d 954; *Gray v. Clement*, 296 Mo 497, 246 SW 940; *Ex parte Solberg*, 52 ND 518, 203 NW 898; *Russell v. Fourth Nat'l Bank* (Ohio) 102 Ohio St 248, 131 NE 726; *Hough v. Hough* (Okla) 772 P.2d 920; *Farmers' Nat'l Bank v. Daggett* (Tex Com App) 2 S.W.2d 834; *State v. Turner*, 98 Wash.2d 731, 658 P.2d 658; *Shopper Advertiser, Inc. v. Wisconsin Dep't of Revenue*, 117 Wis 2d 223, 344 N.W.2d 115.

<sup>24</sup> Moreover, for these reasons, the trial Court could not, after the death of Mr. Miller, put on an order divorcing the parties. The divorce abated upon his death. *State ex rel. Litty v. Leskovyansky* (1996), 77 Ohio St.3d 97

what the trial court intended to decide. Also see *State v. Greulich* (1988), 66 Ohio App. 3d 22, 25; *Webb v. W. Reserve Bond & Share Co.*, (1926), 115 Ohio St. 247. See also *McKay v. McKay* (1985), 24 Ohio App. 3d 74, 75: "The purpose of a *nunc pro tunc* order is to have the judgment of the court reflect its true action. The power to enter a judgment *nunc pro tunc* is restricted to placing upon the record evidence of judicial action **which has actually been taken. \*\*\* It does not extend beyond the power to make the journal entry speak the truth \*\*\*** It is not made to show what the court might or should have decided, or intended to decide, but what it actually did decide." Adopted and followed, *State v. Pocius* (1995), 104 Ohio App. 3d 18, 21.

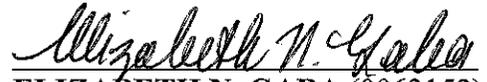
*Nunc pro tunc* entries may only be used to correct action that actually occurred. *State v. Hopkins* 2008-Ohio-2611 at par. 13; *In re RMAA Real Estate Holdings, LLC*, (Nov. 15 2010 E.D. Va.), Case No. 10-16505-RGM, 2010 BANKR. LEXIS 4102 at \*5.

The crucial point here is that obtaining the judge's signature renders an order or entry final and appealable. *Nunc pro tunc* entries which add a judge's signature that was never there to begin with are invalid. The signature "makes the difference between a document that is a final appealable order, that can confer subject-matter jurisdiction onto a court of appeals, and a document that cannot." *State ex rel. Rose v. McGinty*, --- Ohio St.3d ---, 2011-Ohio-761, ¶2. *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163 ¶18.

**CONCLUSION AND REQUEST FOR RELIEF**

WHEREFORE Appellant, based upon the foregoing facts and law stated herein, does respectfully request that this Court dismiss the Appellee/Cross-Appellant's appeal and hold it for naught. Appellant further prays for such other relief that she may be entitled to by law and/or equity.

Respectfully submitted,

  
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Attorney for Appellant  
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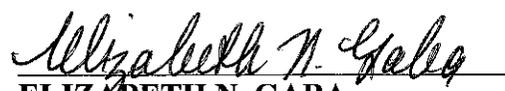
**CERTIFICATE OF SERVICE**

This is to certify that a true and accurate copy of the foregoing document was served upon Appellee/Cross-Appellant through her Attorneys of record,

**DOUGLAS W. WARNOCK (0010795)**  
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mwarnock@bricker.com

via U.S. ordinary mail, postage prepaid, and/or email on this the 30th day of January 2012.

  
**ELIZABETH N. GABA**  
Attorney at Law

IN THE SUPREME COURT OF OHIO

<b>BETH MILLER</b>	)	
<b>NKA BETH KNECE</b>	)	Case No. 11-1172
Plaintiff-Appellant/Cross-Appellee,	)	
<b>vs.</b>	)	
<b>NORMAN MILLER</b>	)	On Appeal and Cross Appeal from
Defendant	)	the Delaware
	)	County Court of Appeals,
<b>REBECCA S. NELSON-MILLER</b>	)	Fifth Appellate District
Administrator of the Estate of Norman	)	Court of Appeals Case No.
Leslie Miller	)	10 CAF 09 0074
Appellee/Cross-Appellant	)	2011-Ohio-2649
	)	(Trial Court No. 04DR A 09 434)

\*\*\*\*\*

**APPENDIX TO MERIT BRIEF OF  
APPELLANT/CROSS-APPELLEE BETH KNECE**

\*\*\*\*\*

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

BETH E. MILLER

Plaintiff,

-vs-

NORMAN L. MILLER

Defendant.

Case No. 04DRA-09-434

Judge Everett H. Krueger

Magistrate Lianne L. Sefcovic

JAM ANTONOPLOS  
CLERK

2004 DEC 27 AM 9:59

COMMON PLEAS COURT  
DELAWARE COUNTY, OHIO  
FILED

*W. S. Sefcovic*  
AGREED JUDGMENT ENTRY  
: (DECREE OF DIVORCE)

This 21st day of December 2004 this matter came to be heard upon the complaint of the Plaintiff seeking a divorce from the Defendant. The Court finds that service of the complaint and summons was made upon the Defendant and that service upon the Defendant of the complaint and summons was in compliance with the laws of the State of Ohio.

The Court finds that the Plaintiff at the time of the filing of the complaint for divorce had been a resident of the State of Ohio and the County of Delaware for more than six (6) months immediately preceding the filing of the complaint for divorce. The Court also finds that the Plaintiff and the Defendant were married on the 28th day of April 1990 and there is one (1) child born issue of this marriage, Marci, born September 9, 1990.

The Court further finds that the duration of the parties' marriage was from the 28<sup>th</sup> day of April 1990 until the 21<sup>st</sup> day of December 2004.

The Court further finds that upon the evidence adduced the Plaintiff and the Defendant are incompatible and that incompatibility has not been denied and by reason thereof the Plaintiff is entitled to a divorce from the Defendant as demanded in his complaint.

TERMINATION CODE

6

0041



APP. 1

It is therefore, ORDERED, ADJUDGED AND DECREED that the marriage contract heretofore existing between the Plaintiff Beth E. Miller and the Defendant Norman L. Miller is hereby terminated and the Plaintiff and the Defendant are released from the obligations of their marriage contract.

The Court further finds that the Plaintiff and the Defendant have entered into an agreement, which forever settles and resolves all issues of spousal support, division of property, and all rights arising by reason of their marriage to each other. The Plaintiff and Defendant in entering into this agreement have done so only after consulting with their respective counsel and reviewing all of their rights and responsibilities arising from their marriage. The parties have each been advised by their respective Counsel regarding their understanding of the terms of the agreement, and the Court finds that each of the parties desires the terms of their agreement be adopted and made the Order of the Court.

The parties have each been advised by their respective Counsel and understand the terms of the agreement; the agreement is a fair division of the assets and liabilities of the parties, and, therefore, the Court adopts the agreement as the Order of the Court.

The Court further finds that the Plaintiff and Defendant have each been advised by their respective Counsel that they each have the right to have the Court value each item of property, whether that property be personal or real property, in order for the Court to arrive at an equal and/or equitable division of the property acquired by the parties during the duration of their marriage. The Plaintiff and Defendant having been advised of their right to a valuation of property and waive their right to have the Court value each and every item of property. The Plaintiff and Defendant further acknowledge that the distribution of their property as set forth in

this decree of divorce, while if not precisely equal, is equitable and in accordance with their agreement.

The Court, having reviewed the agreement of the Plaintiff and the Defendant and their waiver of the valuation of property, adopts their agreement as the Order of this Court.

The Court having adopted the agreement of the parties as the Order of the Court makes the following Orders:

I. Real Property

1. The parties' own real property consisting of a house, garage, barn and approximately 30 acres located at 2882 S.R. 229, Delaware, Ohio 43003 with an appraised fair market value of approximately \$300,000.00. The property is encumbered by a mortgage lien in the approximate amount of \$132,000.00.

2. The parties agree that on the date of the signing of this decree the property shall be divided with Wife having immediate possession and exclusive control of approximately 14.7 acres along with the house, garage, barn and small paddock. Husband shall have immediate interest to the property to wife w/30 days, wife shall sign a promissory note to Husband for \$40,000 due and payable when the property is sold or 8 years from the date of this Decree, whichever is earlier. Husband shall have a security interest in wife's property for this amount. Husband's attorney shall prepare the quit claim deed and wife's attorney shall prepare the promissory note. The parties shall cooperate and share equally in the costs of such survey and legal division of the property. Husband shall be entitled to use the stalls in the barn for as long as wife owns the property.

3. The parties shall remain jointly liable on the mortgage with the husband paying 40% of the monthly payment, \$420.00 per month and wife paying 60% of the monthly payment, \$628.00 per month, until paid in full. Husband shall pay his portion directly to wife by the 15<sup>th</sup> of each month and wife shall send the payment to the mortgage company. Wife shall have a

NM  
BM

security interest in an amount equal to the Husband's share of the outstanding balance of the mortgage in Husband's property until his share of the mortgage is paid in full. Either party shall have the right to pay off the entire mortgage balance, however, such payment shall not excuse the other party's obligation. Should either party pay off the mortgage, the other party shall be liable for the amount due for his/her share at the time the mortgage is paid in full and shall continue to make monthly payments to the party that has paid off the mortgage equal to the amount he/she was paying prior to the mortgage being paid off. Should either party be successful in court to enforce the other party's obligations under this provision, the court shall have full authority to enforce the obligations herein, including ordering the sale of either of the properties herein and shall award all costs of such action, including the award of reasonable attorney fees to the prevailing party.

## II. Personal Property and Household Goods and Furnishings

1. Wife shall retain the 2000 Dodge Durango. Wife shall retain the Bison 2-Horse Trailer.
2. Husband shall retain the 2001 Dodge Ram Pick-Up. Husband shall retain the Corvette.

3. ~~Wife~~ <sup>Husband</sup> shall retain tractor, ~~tools~~, bush hog, post hole digger. ~~Wife may use these~~ <sup>WIFE MAY USE # PRIOR ITEMS</sup>
4. <sup>NM</sup> Each party shall retain as their own property, their clothing, jewelry and items of personalty, free and clear of any claim of the other.

5. Though the parties have not conducted an inventory of their personal property, they have agreed in general as to the value and the division of their personal effects, household goods, furnishings and furniture, and neither party shall make any claim to any of the items remaining in

the other's possession or control as of the date of the final hearing. While this division of property may not be exactly equal, it is equitable and the parties waive further findings with regard to their property.

### III. Financial and Investment Accounts

1. Wife shall retain, free and clear of any claim by Husband, all right title and interest in all checking accounts, savings accounts, retirement accounts including IRA accounts in her individual name.
2. All joint accounts shall be closed and the remaining funds, if any, divided between the parties.
2. Husband shall retain, free and clear of any claim by Wife, all right and interest in all remaining checking accounts, savings accounts, and retirement accounts including 401K in his individual name.
3. Wife shall pay to Husband \$10,000 within <sup>two</sup> thirty (2) days of the signing of the Final ~~Divorce Decree~~. *THE* ~~Should wife receive money from her father's estate through an inheritance, Husband shall receive 1/2 of such money or \$40,000 whichever is less, (In no event shall Husband receive more than \$40,000.00) at the time of Wife's receipt of such inheritance from her father's estate.~~ *shall pay the husband the sum of \$40,000 - additional to the husband within 4 years of the divorce or sooner if wife* NM  
BM

### IV. Spousal Support

Neither party shall pay spousal support to the other party. This provision shall be non-modifiable, and the Court does not retain subject matter jurisdiction over the matter of spousal support.

V. Debts of the Marriage

1. Wife shall assume the Equity Line of Credit and shall hold Husband harmless thereon.
2. Husband shall be responsible for his credit card(s) in his individual name.
3. Save and except for the debts referred to herein, each party warrants to the other that no other debts have been incurred by one party on the credit of the other; each party shall be responsible for debts incurred by him or her on or after the signing of this agreement; each party shall hold the other party harmless from any liability thereon. Neither party will henceforth incur any obligation or incur any indebtedness upon the credit of the other.

VII. Income Taxes

The parties will file <sup>separately</sup> jointly for 2004 income tax returns, and ~~any tax refund shall be~~ <sup>each will be liable for</sup> ~~equally divided between the parties.~~ <sup>any tax defering in their own return and shall be credit to my Return</sup> However, in the event that any tax adjustments must <sup>associated with their own return. The husband RECEIVES deduction</sup> hereafter be made for prior years' taxes incurred while married, the parties shall share equally in <sup>OWN INTEREST</sup> any such adjustment. NM  
BM  
PROPERTY  
FOR 2004,  
THEREAFTER  
WIFE'S

VIII. Attorney Fees and Expenses

The parties shall each be responsible for the payment of their separate legal expenses incurred in this action and neither party shall be responsible for the payment of legal fees to their spouse.

IX. Full Understanding And Full Disclosure.

Both parties warrant they have made full disclosure of all debts or liabilities incurred upon the obligation of the other.

Both Wife and Husband expressly certify that they have entered into this agreement upon mature consideration and that consent to the execution of this agreement has not been obtained

by duress, fraud or undue influence by any person; that this agreement represents the entire agreement and understanding of the parties and is entered into without reliance upon any representation of fact or intention by either party except as herein expressly set forth; that the rights and duties of neither party hereto shall be enlarged nor diminished by reason of his or her acquiescence in any failure of the other to comply with the terms of this agreement or by reason of the assumption by either of any responsibilities, duties or expenses not expressly imposed upon such parties by the terms herein. Each of the parties has fully disclosed to the other all assets, liabilities and sources of income that he has or she has.

#### Releases

Except as provided in this agreement, the parties do further release and relinquish each unto the other, his or her heirs, executors, administrators and assigns, any and all rights or claims by way of dower, inheritance and descent or otherwise, in and to any property, real or personal, earnings or gains which either now owns or may hereafter acquire, including claims to a distributive share of his or her personal estate now owned or hereafter required, and all right and claims as an heir, distributee, survivor or next of kin in and to the estate of the other party, and whether now owned or hereafter acquired, and all other rights and claims of any kind or nature arising out of said marriage relationship, whether the same were conferred by contract, by laws of the State of Ohio, any other state, or the United States, and which are now or which may hereafter be in effect.

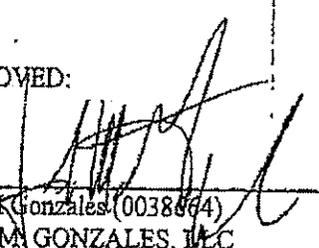
It is further agreed by the parties that each hereby forever releases and discharges the other, his or her heirs, executors, administrators and assigns, from any and all claims, demands, liabilities, causes of action of every kind and description, save and except as provided by the terms of this agreement, and that neither shall hereafter have or hold any claims, demands or

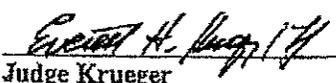
causes of action whatsoever nature against the other, except the cause of action for dissolution of marriage or divorce and such others as are specifically provided herein.

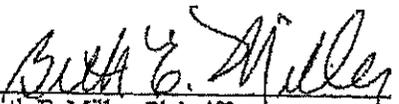
Costs paid.

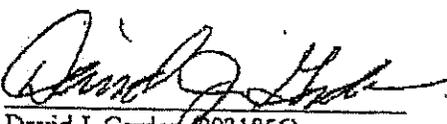
ALL UNTIL FURTHER ORDER OF THIS COURT.

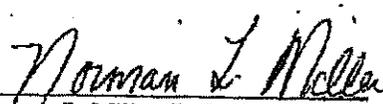
APPROVED:

  
~~John M. Gonzales (0038894)~~  
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140 Commerce Park Drive  
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Attorney for Plaintiff

  
Judge Krueger

  
Beth E. Miller, Plaintiff

  
David J. Gordon (0031856)  
40 N. Sandusky Street, Suite 300  
Delaware, Ohio 43015  
Attorney for Defendant

  
Norman L. Miller, Defendant

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

BETH E. MILLER, :  
 :  
 Plaintiff, :  
 :  
 Vs. : Case No. 04DR-A-09-434  
 :  
 NORMAN L. MILLER, : Judge Everett Krueger  
 :  
 Defendant. : Magistrate Lianne Sefcovic

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COMMON PLEAS COURT  
DELAWARE COUNTY OHIO  
F.H.F.S.

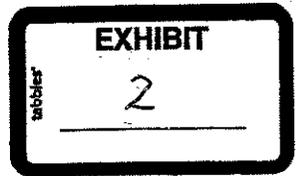
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JUDGMENT ENTRY DECREE OF DIVORCE

The Court, sua sponte hereby adopts and incorporates the document filed  
December 27, 2004 titled, "Memorandum of Agreement" as an Agreed Judgment Entry  
(Decree of Divorce) as a final Journal Entry, Decree of Divorce.

*Everett H. Krueger*  
EVERETT H. KRUEGER, JUDGE

cc: John M. Gonzales, Attorney for the Plaintiff, 140 Commerce Park Dr., Westerville,  
Ohio 43082  
David J. Gordon, Attorney for the Defendant, 40 N. Sandusky St., Suite 300,  
Delaware, Ohio 43015  
Beth E. Miller, 2882 S.R. 229, Delaware, Ohio 43015  
Norman L. Miller, C/O Cardington Yutaka Tech, 575 W. Main St., Cardington, Ohio  
43315



0040

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

BETH E. MILLER (NKA KNECE)

Case No. 04DRA-09-434

Plaintiff

Judge Everett H. Krueger

-Vs-

Magistrate David J. Laughlin

NORMAN L. MILLER

2009 APR 10 PM 3:52  
CLERK

COMMON PLEAS COURT  
DELAWARE COUNTY, OHIO  
FILED

MOTION OF PLAINTIFF BETH E. MILLER (NKA KNECE) TO VACATE THE  
"JUDGMENT ENTRY DECREE OF DIVORCE "AND TO STRIKE THE  
"AGREED JUDGMENT ENTRY (DECREE OF DIVORCE)" FOR CAUSE  
SHOWN HEREIN.

Now comes Plaintiff, by and through undersigned Counsel, and respectfully moves this Court to vacate and hold for naught the "Judgment Entry Decree of Divorce" filed in this Court on October 14, 2005 and to strike from the files of this Court the "Agreed Judgment Entry (Decree of Divorce)" supposedly filed on December 27, 2004 for cause shown.

The "Judgment Entry Decree of Divorce" filed in this case on October 14, 2005 was not signed by Judge Krueger. Judge Krueger's name was applied to the Entry, and initialed by the then Magistrate Sefcovic. As such that document is not a judgment in accord with Civ. R. 58 and hence, is without probative force and further is as a matter of law - void.

In consideration of the document titled, "Agreed Judgment Entry (Decree of Divorce)," according to the Docket of this case, that document has never been filed with this Court, and further also lacks a true signature of either the Magistrate or the Judge. Furthermore, that document, as will be shown, is an alteration of a document previously filed rendering the filed document spurious. The actual document that was filed due to

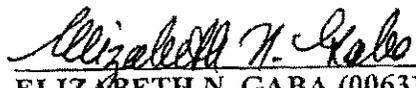
EXHIBIT 3

Case 1:09-cv-00001-UNA Document 1-1 Filed 01/26/09

that alteration hence, no longer appears in this Court's file. Accordingly a Document never filed with this Court was never and is not presently before the Court for its consideration. Such a document must be stricken from the record.

Plaintiff's evidence, law, and legal argument that supports and unequivocally sustains the cause of this Motion are more fully articulated in the following Memorandum and attached Exhibits.

Respectfully submitted,

  
ELIZABETH N. GABA (0063152)  
Attorney for Plaintiff  
1231 East Broad Street  
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Telephone (614) 586-1586  
Facsimile (614) 586-0064

**MEMORANDUM IN SUPPORT**

**I.**

**FACTS UNDERLYING THIS MOTION.**

Plaintiff in this case filed an action under Civ. R. 60(B) on January 21, 2009. Defendant has failed to plead and or answer the causes as set forth in the said motion. However, the current magistrate in this case, has scheduled the said Motion for an oral hearing through an Order filed on January 26, 2009. The hearing in that matter is scheduled for April 14, 2009. Within that Order the Magistrate requested that trial briefs be filed within seven days prior to trial.

While preparing the trial brief in furtherance of the Civ. R. 60(B) Motion, on or about April 5, 2009 undersigned counsel noticed for the first time that the presiding Judge's signature on the "Judgment Entry Decree of Divorce" (filed on October 14,

2005) was followed by a “/” and an initial that can only be discerned as an “L.” Upon a further review of a copy of the complete court file in this matter, it was then discovered that each and every signature of Judge Krueger was in the same manner, followed by a “/” and the initial “L.” This situation then generated an exhausting and extensive investigation of this case. In furtherance of that investigation there was obtained, courtesy of the imaging feature as contained in the “on-line” docket of this Court, what is believed to be the true signature of the Honorable Judge, Everett Krueger. In comparing the actual signature of the said Judge with the signature as is contained throughout the Court file of this case when compared to the signature of the then Magistrate Lianne Sefcovic a reasonable inference was formed. The reasonable inference goes to the fact that the initial “L” is that of then Magistrate Lianne Sefcovic. In short, the Magistrate apparently took the liberty of signing the Honorable Judge Everett Krueger’s name to each and every Order and Judgment rendered in this case, including the Decree of Divorce. In that vein, undersigned Counsel is unsure if in fact, said Judge has ever even reviewed this case, much less knew of the Magistrate’s apparent actions.

In any event, undersigned Counsel, in furtherance of the mandates of Civ. R. 11, prior to the formation of this motion, then searched for authority that would allow the Magistrate to apply the signature of the Judge to a final “Judgment Entry Decree of Divorce.” Undersigned Counsel states that through an extensive search, of this atypical set of facts, the quorum of sparse authority indicates that not only is the Decree of Divorce void, (See Brown v. Cummins, (1997) 120 Ohio App.3d 554; Barker v. Barker, (1997) 118 Ohio App.3d 706 ) but also other documents in this case come into question. Specifically, through the investigation, it has also been determined that the file of this

Submitted: 11/25/05 TO: 14:34:05

case, as held by the Clerk of this Court has been tampered with through an alteration of a document now titled "Agreed Judgment Entry Decree of Divorce" supposedly filed on December 27, 2004 at 9:59 AM. That alteration goes to the fact that the actual document filed on said date and time was titled a Memorandum of Agreement. That document too was signed by not the Judge but rather the Magistrate as evidenced by the "/" and following initial "L". In any event, the document titled Memorandum of Agreement no longer exists in the file of this Court. Further, there is absent from the Docket of this Court any notation that a document titled "Agreed Judgment Entry (Decree of Divorce)" was ever filed.

## II. RELEVANT PROCEDURAL FACTS.

According to the "on-line" docket of this case there exists an entry dated November 12, 2004, indicating that there was a "settlement conference" scheduled in this matter for December 21, 2004. A true copy of said document is attached hereto and referenced as "plaintiff's Exhibit 1."

Again according to said docket there exists another entry indicating that on December 27, 2004 there was filed in this Court a document that was titled "Memorandum of Agreement." See Plaintiff's Exhibit 1.

Also garnered from that docket we are informed that ten months later on October 14, 2005, there was filed a document labeled "Judgment Entry Decree of Divorce." See Plaintiff's Exhibit 1. <sup>1</sup>

---

<sup>1</sup> A judgment must be filed within 30 days See *Cleveland v. Trzebuckowski*, 85 Ohio St.3d 524, 527 (1999)... it is incumbent upon the part of the judiciary to comply with the mandate of Sup.R. 7. Without official journalization within thirty days, nothing that the trial court did in the case was final and all orders could potentially be reversed at any time."

III.

**DOCUMENTS THAT ARE CONTAINED IN AND ABSENT FROM THE COURT  
FILE AS HELD BY THE CLERK OF THIS COURT.**

When we examine the docket entry of November 11, 2004, it is ambiguous as to if the "settlement conference" was to be held before the Magistrate or the trial Judge in this matter. See Plaintiff's Exhibit 1. However, what falls from the Court file is that said matter was set for a "settlement conference" by Magistrate Lianne L. Santellani Sefcovic ("Magistrate"). Said Magistrate's Order is by this reference Incorporated and attached as Plaintiff's Exhibit 2.

When we further physically examine the Court file, there is an absence of any document titled "*Memorandum of Agreement*." The said file is readily available to this Court.

However, what we do find in said file is a document purportedly labeled as "*Agreed Judgment Entry (Decree of Divorce)*." A true copy of that document is incorporated herein by this reference and labeled as Plaintiff's Exhibit 3. According to said Exhibit it was filed on December 27, 2004 at "9:59 AM." When we examine the Docket (Plaintiff's Exhibit 1) there is an absence of any filing of any document titled as such. If the document was presented for filing, as an "*Agreed Judgment Entry (Decree of Divorce)*," the Clerk of this Court would no doubt have followed the mandates of this Court's Local Rule 3.01 and, *inter alia*, made the appropriate entry in the docket.<sup>2</sup>

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<sup>2</sup> Local Rule 3.01 states: "The Clerk of the Court of Common Pleas of Delaware County, Ohio, shall file and carefully preserve all documents delivered to the Clerk's office in every action or proceeding. The Clerk promptly shall file all documents in chronological order and make the appropriate entry in the docket." (Emphasis added).

2025 RELEASE UNDER E.O. 14176

Absent that entry, the obvious spurious document titled "*Agreed Judgment Entry (Decree of Divorce)*," was in fact never filed with this Court.

Regardless, Plaintiff in this matter has in her possession a true copy of the document titled "*Memorandum of Agreement*." Plaintiff incorporates the same by reference as Plaintiff's Exhibit 4. There is readily ascertainable from Plaintiff's Exhibit 4 that it was in fact filed December 27, 2004 at "9:59 AM." When we compare Plaintiff's Exhibit 3 and Plaintiff's Exhibit 4 we find that the filing date and exact time that each document was filed is the same. When we examine page 1 of Plaintiff's Exhibit 4 and compare it to page 1 of the so termed "*Agreed Judgment Entry (Decree of Divorce)*" Plaintiff's Exhibit 3, there is but one inference. The inference is that an unknown perpetrator has apparently entered the Court file, as held by the Clerk of this Court and altered the "*Memorandum of Agreement*" by partially hiding the title "*Memorandum of Agreement*," thereby presenting it as the "*Agreed Judgment Entry (Decree of Divorce)*."

Also from the file of this case, there protrudes a document titled "*Judgment Entry Decree of Divorce*." Plaintiff by this reference attaches the same as Plaintiff's Exhibit 5.

When we examine page 8 of the so-called "*Agreed Judgment Entry (Decree of Divorce)*" Plaintiff's Exhibit 3, with page 8 of the "*Memorandum of Agreement*" Plaintiff's Exhibit 4, and compare it to page 1 of the "*Judgment Entry Decree of Divorce*." (Plaintiff's Exhibit 5) we must further find that at the signature line of the presiding Judge in this case, the Honorable Everett Krueger, there is a supposed signature of said Judge followed by a "/" and the initial "L". See Plaintiff's Exhibit 3, 4 and 5.

Judge Everett Krueger, as is general knowledge, has a very distinct signature. Through the grace of the imaging feature, as obtained from the on-line docket of this

Document ID: 1105010141150000

Court, Plaintiff presents the actual signature of said Judge. Plaintiff incorporates said evidence by this reference and labels the same as Plaintiff's Exhibits 6 and 7.

When we compare the Judge's signature line on page 8 of Plaintiff's Exhibits 3, and 4, page 1 of Plaintiff's Exhibit 5, with page 1 of Plaintiff's Exhibit 6 and 7 we must sustain that the supposed signatures of Judge Krueger as contained on Exhibits 3, 4 and 5 is in fact not his signature.

Succinctly put, Judge Everett Krueger has never signed either the Memorandum of Agreement, or the altered Memorandum of Agreement ("*Agreed Judgment Entry (Decree of Divorce)*") or even the so titled "*Judgment Entry Decree of Divorce.*"

However, when we examine the signature of the Magistrate as contained on page 4 (Section VII.) of the Magistrate's Status Conference Order filed on November 12, 2004 (Plaintiff's Exhibit 2), and compare the same to the initial "L" that is attached to the supposed signature of the Honorable Judge Everett Krueger, as contained on Plaintiff's Exhibits 3, 4 and 5, we draw one reasonable inference. That inference is that the initial "L" as contained upon Plaintiff's Exhibit 3, 4 and 5 is the same as to style and slant as the "L" as is contained in the first name ("Lianne") signature of the Magistrate. Further, that inference is bolstered by the fact that the Magistrate is the only person who had access and the ability through circumstances of her position to apply the signature of the Judge to the Plaintiff's Exhibits.

Based upon the overall evidentiary facts, in conclusion, some unknown person has apparently altered the Court file as it pertains to the "Memorandum of Agreement" and further it appears that the Magistrate has curiously chosen to exert the discretion and decision making authority of Judge Krueger through the use of supposed signatures of

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502541 01 0511 014107079

that Judicial Officer and thereby has presented to the Plaintiff, unfortunately, a sham, *inter alia*, "Judgment Entry Decree of Divorce."

On the other hand, an initial or initials apparently follow the falsified signature of the Judge. As such, an argument could possibly be made that such signature followed by an initial or initial constitutes the signature of Judge Krueger. Such argument would fail under the procedural and case law of this State.

### III.

#### LAW AND ARGUMENT.

##### A.

**The supposed Degree of Divorce is not a Judgment, is void and therefore is not enforceable and furthermore, it is not a final appealable order.**

Succinctly put, when a judgment entry has been signed by a Magistrate such entry is void because only a Judge can sign a judgment. See *Brown v. Cummins*, (1997) 120 Ohio App.3d 554, 555 *et al.*, Order is void because the "...magistrate has no power to enter such orders ..." citing *Barker v. Barker*, (1997) 118 Ohio App.3d 706; See also *Peters v. Arbaugh* (1976) 50 Ohio App.2d 30, 36 (Whiteside, J., Concurring Opinion). ("... [T]here can be no judgment unless and until it is signed by the court, that is by the judge personally. The affixing of the judge's name by some unknown person who then initials the "signature" cannot meet the requirement by Civ. R. 58 that the court sign the judgment."); *Harkai v. Scherba Industries, Inc.*, 136 Ohio App.3d 211, 218-219 (2000) "...only a judge-not a magistrate-may terminate a claim or action by entering judgment.")

In the absence of compliance with the signature element of Civil Rule 58, the supposed judgment in question is one "...[t]hough possessing the character of potentiality, it lacks the character of actuality, and hence is without probative force."

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Horner v. Toledo Hosp. (1993), 94 Ohio App.3d 282, 289, quoting Coe v. Erb (1898), 59 Ohio St. 259, 263; Citing cases (Construing Rule 53); Flores V. Porter, (5<sup>th</sup> Dist) 2007-Ohio-481, rubber stamp not accepted in lieu of Judge's signature, does not comply with Civ. R. 58, Id. at paragraphs 5-15 (cases cited) (attached).

Lastly, in the absence of Judge Krueger's personal signature, upon the Judgment Entry Decree of Divorce as mandated by Civ. R. 58(A) there is not now and has never been a final appealable order. See Brackmann Communications, Inc. v. Ritter (1987), 38 Ohio App.3d 107, 109 (outlining clear requirements for formal final journal entry or order for appeal purposes, including designation as decision or judgment entry or both, judge's signature, time-stamp, and where applicable, Civ. R. 54(B) determination and Civ. R. 54(B) language).

Accordingly this Court must find that said Judgment Entry if not a Judgment, is not a final appealable order and is void and hence without probative force.

B.

**A document never filed with this Court, cannot be considered by this Court and must be stricken from the file as held by the Clerk of this Court.**

Furthermore, the "Memorandum of Agreement." as provided by the Plaintiff, attached as Plaintiff's Exhibit 4, is no longer contained in this Court's file, because it was altered and changed into an "Agreed Judgment Entry (Decree of Divorce)." The said "Agreed Judgment Entry (Decree of Divorce)" is a document that, as the Docket sustains, was never filed with the Court. See Plaintiff's Exhibit 1, Docket.

As is generally known, the Court cannot consider a document never filed with the Court. Accordingly, this Court must strike the "Agreed Judgment Entry (Decree of Divorce)" from the file as held by the Clerk of this Court.

Document ID: 115010 11:50:05

WHEREFORE, Plaintiff, Beth E. Miller, now known as Beth E. Knece, asks this

Court to find her motion to be well taken, and that the same be sustained.

Respectfully submitted,

*Elizabeth N. Gaba*  
ELIZABETH N. GABA (0063152)  
Attorney for Plaintiff  
1231 East Broad Street  
Columbus, Ohio 43205  
Telephone (614) 586-1586  
Facsimile (614) 586-0064

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing document was served upon the Defendant Norman Miller, by serving his attorney of record, David Gordon, at 40 North Sandusky Street, Suite 300, Delaware, Ohio 43015, via First Class U.S. mail, postage prepaid, and through facsimile transmission to (740) 369-7810 on this the 10th day of April, 2009.

*Elizabeth N. Gaba*  
ELIZABETH N. GABA (0063152)  
Attorney at Law

AMERICAN OVERSIGHT

### General Inquiry



New Search...

Dockets

### Docket Search

04 DR A 09 0434 MILLER, BETH E and MILLER, NORMAN L EHK

Docket Desc. ALL

Begin Date

Sort

End Date

Ascending  
Descending

Search

Search Results 62 Docket(s) found matching search criteria.

Date	Description	Amount	Balance
08/23/2007	ONBASE / SCANNED / UPDATED	0.00	0.00
08/03/2007	COST PAID - RECORD	0.00	0.00
08/03/2007	REFUND OF DEPOSIT TO.....GORDON LAW OFFICE	22.00	0.00
08/02/2007	COURT FEES PAGE RECORD Receipt: 42037 Date: 08/03/2007	25.00	0.00
08/01/2007	ACKNOWLEDGMENT OF RECEIPT OF AGREED JUDGMENT ENTRY BY DCCSEA	0.00	0.00
07/31/2007	AGREED JUDGMENT ENTRY - UPON AGREEMENT OF THE PARTIES IT IS ORDERED THE SHARED PARENTING PLAN FILED DECEMBER 27 2004 IS HEREBY AMENDED AS OUTLINED HEREIN SEE ENTRY VOL 419 PGS 363-368 Receipt: 42037 Date: 08/03/2007	12.00	0.00
06/21/2007	MOTION FOR CONTINUANCE Attorney: HEALD, ANTHONY M (002095)		0.00
06/21/2007	NOTICE OF HEARING - THE HEARING SCHEDULED FOR JUNE 21 2007 ON MODIFICATION OF PARENTAL RIGHTS IS CONTINUED AND RESCHEDULED FOR JULY 30		0.00

PLAINTIFF'S EXHIBIT 1

Document ID: 2013-01-14-000005

	2007 AT 3:30 PM		
05/07/2007	NOTICE OF RELOCATION OF DEFENDANT	0.00	0.00
05/01/2007	MAGISTRATES ORDER - THIS CASE IS SCHEDULED FOR HEARING ON JUNE 21 2007 AT 1:00 PM ON DEFENDANTS MOTION FOR REALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES SEE ENTRY VOL 406 PG 248 Receipt: 42037 Date: 08/03/2007	2.00	0.00
05/01/2007	AGREED MAGISTRATES ORDER - IT IS ORDERED THE DEFENDANTS CHILD SUPPORT OBLIGATION SHALL TERMINATE EFFECTIVE MARCH 27 2007 ALL CHILD SUPPORT PAYMENTS CURRENTLY BEING HELD BY DCCSEA SHALL BE RETURNED TO THE DEFENDANT FORTHWITH SEE ENTRY VOL 406 PGS 246-247 Receipt: 42037 Date: 08/03/2007	4.00	0.00
04/06/2007	RETURN CERTIFIED MAIL UPON: Method : CERTIFIED MAIL Issued : 03/29/2007 Service : MAILER ONLY Served : 04/04/2007 Return : 04/06/2007 On : MILLER, BETH E Signed By : BETH E MILLER Reason : CERT MAIL / SERVICE COMPLETE Comment : Tracking # : WA7160390198495397944 Receipt: 42037 Date: 08/03/2007	6.00	0.00
03/29/2007	Issue Date: 03/29/2007 Service: MAILER ONLY Method: CERTIFIED MAIL Cost Per: \$ MILLER, BETH E 2882 S R 229 ASHLEY, OH 43003 Tracking No: WA7160390198495397944	0.00	0.00
03/29/2007	MAGISTRATES ORDER - UPON MOTION OF THE DEFENDANT IT IS ORDERED THE DCCSEA SHALL ESCROW DEFENDANTS CHILD SUPPORT PAYMENTS SEE ENTRY VOL 403 PG 75 Receipt: 42037 Date: 08/03/2007	2.00	0.00
03/29/2007	MAGISTRATES ORDER - THIS MATTER IS SCHEDULED FOR HEARING ON APRIL 25 2007 AT 10:00 AM ON DEFENDANTS MOTION TO AMEND SHARED PARENTING PLAN AND RECALCULATE CHILD SUPPORT SEE ENTRY VOL 403 PG 74 Receipt: 42037 Date: 08/03/2007	2.00	0.00
03/27/2007	INSTRUCTIONS FOR SERVICE	0.00	0.00
03/27/2007	CUSTODY AFFIDAVIT RC 3109.27	0.00	0.00
03/27/2007	MOTION TO ESCROW CHILD	0.00	0.00

11/13/09 11:55:09  
 2007-11-13 11:55:09

SUPPORT Attorney: GORDON, DAVID  
J (031856)

03/27/2007	MOTION TO AMEND SHARED PARENTING PLAN AND TO RECALCULATE CHILD SUPPORT WITH MEMORANDUM IN SUPPORT Attorney: GORDON, DAVID J (031856) Receipt: 42037 Date: 08/03/2007	15.00	0.00
03/27/2007	DEPOSIT ON REACTIVATION OF CASE Receipt: 35555 Date: 03/27/2007	125.00	0.00
03/27/2007	REACTIVATION OF CASE	0.00	0.00
01/19/2006	ONBASE - SCANNED	0.00	0.00
10/26/2005	COST PAID - RECORD	0.00	0.00
10/26/2005	REFUND OF DEPOSIT TO.....JOHN M GONZALES	56.02	0.00
10/14/2005	COURT FEES RECORD CHARGES Receipt: 12393 Date: 10/26/2005	94.00	0.00
10/14/2005	COURT FEES FROM PREVIOUS COURT COMPUTER SYSTEM Receipt: 12393 Date: 10/26/2005	100.37	0.00
10/14/2005	VITAL STATISTICS Receipt: 12393 Date: 10/26/2005	5.50	0.00
10/14/2005	POSTAGE FEE ENVELOPE Sent on: 10/14/2005 11:22:29 Receipt: 12393 Date: 10/26/2005	1.11	0.00
10/14/2005	VITAL STATISTICS FORM VITAL STATICS WIFE I PARTY Sent on: 10/14/2005 11:16:24 Receipt: 12393 Date: 10/26/2005	2.00	0.00
10/14/2005	CERTIFIED COPY Receipt: 12393 Date: 10/26/2005	2.00	0.00
10/14/2005	JUDGMENT ENTRY DECREE OF DIVORCE - THE COURT SUA SPONTE HEREBY ADOPTS AND INCORPORATES THE DOCUMENT FILED DECEMBER 27 2004 TITLED MEMORANDUM OF AGREEMENT AS AN AGREED JUDGMENT ENTRY DECREE OF DIVORCE AS FILED AND JOURNAL ENTRY SEE ENTRY VOL 338 PGS 358-366 Receipt: 12393 Date: 10/26/2005	18.00	0.00
12/27/2004	SHARED PARENTING DECREE - IT IS ORDERED THE SHARED PARENTING PLAN IS IN THE BEST INTEREST OF THE MINOR CHILD AND IS APPROVES AND INCORPORATES THE PLAN INTO THIS DECREE SEE ENTRY VOL 304 PGS 248-258		0.00
12/27/2004	MEMORANDUM OF AGREEMENT SEE ENTRY VOL 304 PGS 240-247		0.00
11/12/2004	MAGISTRATES TEMPORARY ORDERS - THE PARTIES ARE		0.00

GRANTED SHARED PARENTING AS  
PARTIES STILL LIVING TOGETHER  
SEE ENTRY FOR COMPLETE  
DETAILS VOL 298 PGS 279-280

11/12/2004 MAGISTRATES STATUS 0.00  
CONFERENCE ORDER - THE  
PARTIES ARE IN AGREEMENT AS TO  
TEMPORARY ORDERS THIS MATTER  
IS SCHEDULED FOR SETTLEMENT  
CONFERENCE ON DECEMBER 21  
2004 AT 1:30 PM SEE ENTRY VOL 298  
PGS 282-285

11/02/2004 RETURN CTF MAIL NATIONAL CITY 0.00  
BANK RECORDS DEPT SIGNED FOR  
ON 10/29/04 BY NOREEN HUSTAK  
(SUBPOENA)

10/28/2004 \*\*\*\*\* CONVERTED OPEN ITEMS AS 100.00 0.00  
OF 05/01/05 \*\*\*\*\* \$100.00 Party  
from DAVID J GORDON

10/28/2004 MAGISTRATES RESTRAINING 0.00  
ORDER - UPON MOTION OF  
DEFENDANT IT IS ORDERED THAT  
PLAINTIFF IS HEREBY RESTRAINED  
AS SET FORTH SEE ENTRY VOL 297  
PGS 109-110

10/28/2004 SUBPOENA ISSUED BY CERTIFIED 0.00  
MAIL UPON RECORDS DEPT  
NATIONAL CITY BANK ON 10/28/04

10/28/2004 FORM 1 AFFIDAVIT IN SUPPORT 0.00  
TEMPORARY ORDERS PRETRIAL  
STMT OF DEFENDANT

10/28/2004 MOTION FOR TEMPORARY 0.00  
RESTRAINING ORDER WITH  
AFFIDAVIT IN SUPPORT

10/28/2004 FATHERS SHARED PARENTING 0.00  
PLAN

10/28/2004 ANSWER AND COUNTERCLAIM 0.00

10/15/2004 CERTIFICATE OF ATTENDANCE TO 0.00  
SEMINAR FOR DIVORCING  
PARENTS OF NORMAN MILLER AND  
BETH MILLER

10/05/2004 RETURN OF SERVICE UPON 0.00  
NORMAN MILLER ON 10/5/04 BY  
SPECIAL PROCESS SERVER

09/30/2004 SUMMONS & CTF COPY OF 0.00  
COMPLAINT TO NORMAN L. MILLER  
BY PROCESS SERVER.

09/30/2004 MAGISTRATES ORDER FOR 0.00  
MEDIATION - THE PARTIES ARE  
ORDERED TO PARTICIPATE IN  
MEDIATION WITH DAVID  
HASSELBACK THE PARTIES ARE TO  
CONTACT THE MEDIATOR WITHIN  
15 DAYS TO ARRANGE MEDIATION

Document ID: 135010 14:50:13

	SEE ENTRY VOL 293 PG 362	
09/30/2004	MAGISTRATES ORDER SCHEDULING ORAL HEARING - THIS CASE IS SCHEDULED FOR TEMPORARY ORDERS STATUS CONFERENCE ON NOVEMBER 10 2004 AT 8:30 AM SEE ENTRY VOL 293 PG 361	0.00
09/30/2004	MAGISTRATES RESTRAINING ORDER - UPON MOTION IT IS ORDERED THE DEFENDANT IS HEREBY RESTRAINED AS SET FORTH SEE ENTRY VOL 293 PGS 359- 360	0.00
09/29/2004	***** CONVERTED OPEN ITEMS AS OF 05/01/05 ***** \$179.00 Party from JOHN M GONZALES	179.00 0.00
09/29/2004	INSTRUCTIONS FOR SERVICE	0.00
09/29/2004	FORM 1 AFFIDAVIT IN SUPPORT TEMPORARY ORDERS PRETRIAL STMT	0.00
09/29/2004	MOTION OF PLAINTIFF FOR TEMPORARY ORDERS PURSUANT TO CIVIL RULE 75 (N) WITH AFFIDAVIT IN SUPPORT	0.00
09/29/2004	MOTION OF PLAINTIFF, BETH E MILLER FOR A RESTRAINING ORDER AGAINST THE DEFENDANT FROM REMAINING IN THE MARITAL HOME WITH AFFIDAVIT IN SUPPORT	0.00
09/29/2004	MOTION OF PLAINTIFF FOR AN ORDER REQUESTING A RESTRAINING ORDER AGAINST THE DEFENDANT WITH AFFIDAVIT IN SUPPORT	0.00
09/29/2004	COMPLAINT	0.00
01/01/1900	A14078 32.00 20040929 1 DV DIVORCE WITH CHILDREN	0.00
01/01/1900	A14078 10.00 20040929 1 CC DIVORCE WITH CHILDREN	0.00
01/01/1900	A14078 10.67 20040929 1 CA DIVORCE WITH CHILDREN	0.00
01/01/1900	A14078 .33 20040929 1 CT DIVORCE WITH CHILDREN	0.00
01/01/1900	A14078 3.00 20040929 1 CP DIVORCE WITH CHILDREN	0.00
01/01/1900	A14078 179.00 20040929 1 DR DIVORCE WITH CHILDREN A14078 179.00 20040929 1 DR DIVORCE WITH CHILDREN	0.00

1/14/2009 11:50:10 AM

16

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

Beth E. Miller  
Plaintiff/Petitioner

398 / 252-255

: Case No. 04 DRA 09-434

VS

Norman L. Miller  
Defendant/Petitioner

: Judge Everett H. Krueger

: Magistrate Santellani

JAN ANTONOPLOS  
CLERK

2004 NOV 12 AM 9:39

COMMON PLEAS COURT  
DELAWARE COUNTY OHIO  
FILED

MAGISTRATE'S STATUS CONFERENCE ORDER

The Court issues the following Orders reflecting the status of this matter:

I. Temporary Orders

- A.  Temporary Orders are not requested in this case.
- B.  The parties are in agreement regarding (some/all) Temporary Orders.  
See TO form
- C.  Parties are not in agreement. It is hereby ORDERED that Affidavits, Supplemental Affidavits, and/or all necessary forms are due 7 days from the date of the status conference, unless otherwise ordered as follows: \_\_\_ days.

II. Discovery Schedule

- A. Status of Depositions: \_\_\_\_\_
- B. The parties agree and it is hereby ORDERED that they shall exchange releases regarding: \_\_\_\_\_ By (date) \_\_\_\_\_
- C. The parties agree and it is hereby ORDERED that they shall produce the following items by (date) \_\_\_\_\_ without the necessity of a formal discovery request. Items: \_\_\_\_\_

D. Experts

Experts are not required.  Experts will be selected at a later date.

Agreed Experts \_\_\_\_\_

III. Parent/Child Issues

- A. Local Rule 26 Parenting Seminar (does not apply if there are no minor children).

\_\_\_\_\_ Wife has attended \_\_\_\_\_ Husband has attended

PLAINTIFF'S EXHIBIT 2

Additional orders regarding the Parenting Seminar are not required.

It is hereby ORDERED that any party who has not attended the Parenting Seminar shall attend no later than 45 days from the date of the status conference.

B. Status Mediation: \_\_\_\_\_  
(See separate orders, if any.)

- C. Contested Issues:
- Parentage \_\_\_\_\_
  - Possession Times \_\_\_\_\_
  - Parent Work Schedule/Other Schedule Concerns \_\_\_\_\_
  - Child Support \_\_\_\_\_
  - Tax Deduction \_\_\_\_\_
  - Medical Insurance \_\_\_\_\_
  - Uncovered Medical Expenses (Ordinary & Extraordinary) \_\_\_\_\_
  - Shared Parenting \_\_\_\_\_
  - Motion/Proposed plan to be filed by \_\_\_\_\_  
within \_\_\_\_ days.
  - Decision Making \_\_\_\_\_
  - School Placement \_\_\_\_\_
  - Extracurricular Activities \_\_\_\_\_
  - Medical Treatment \_\_\_\_\_
  - Religion \_\_\_\_\_
  - Other (Specify) \_\_\_\_\_

D. Appointment of Guardian ad Litem  Yes  No. If yes, see GAL entry.

E. Necessity of family counseling  Yes  No.

It is hereby ORDERED that the parties/child(ren) are to attend counseling with \_\_\_\_\_, Frequency of attendance and duration to be determined by the counselor.

Allocations of costs: P \_\_\_\_\_% D \_\_\_\_\_%

F. Psychological Evaluations, pursuant to R.C. 3109.04 (C), shall be performed by: \_\_\_\_\_ (date): \_\_\_\_\_

Allocations of costs: P \_\_\_\_\_% D \_\_\_\_\_%. These payments are in the nature of child support and are non-dischargeable in bankruptcy.

G. Necessity of investigation by Protective Services.  Yes, separate Magistrate's Order filed  No.

IV. Temporary Spousal Support Issues

A. Contested?  Yes \_\_\_\_\_  No \_\_\_\_\_

B. Attorney's Fee/Expense Money contested?  Yes \_\_\_\_\_  No \_\_\_\_\_

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C. Division of debt contested? ( ) Yes \_\_\_ ( ) No \_\_\_

V. Other Issues

- ( ) Pleading revisions required \_\_\_\_\_
- ( ) Grounds \_\_\_\_\_
- ( ) Property Division \_\_\_\_\_
- ( ) Other Specify \_\_\_\_\_

VI. Information Exchanged

The Magistrate finds that the Plaintiff/Defendant has not properly completed

Child Support Worksheet	_____	_____
TO Financial Affidavit	_____	_____
Rule 17 Financial Affidavit	_____	_____
Health Insurance Disclosure	_____	_____
- Affidavit	_____	_____
Custody/Affidavit	_____	_____
Wage Withholding Notice	_____	_____
Instructions for Service	_____	_____
IV-D Application	_____	_____
Other	_____	_____

and ORDERS that party to file said form within 7 days of the date of the status conference.

VII. Settlement

Pursuant to the parties agreement, the Magistrate ORDERS the parties to participate in the following settlement conferences regarding temporary and/or final orders:

*Settlement*  
 Date Dec 21, 2014 Time 1:30 pm Location \_\_\_\_\_  
 Date \_\_\_\_\_ Time \_\_\_\_\_ Location \_\_\_\_\_  
 Date \_\_\_\_\_ Time \_\_\_\_\_ Location \_\_\_\_\_  
 Date \_\_\_\_\_ Time \_\_\_\_\_ Location \_\_\_\_\_

Both parties and their counsel shall attend the settlement conference(s).



12

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

BETH E. MILLER

Plaintiff,

-vs-

NORMAN L. MILLER

Defendant.

304 :  
240 : 247

Case No. 04DRA-09-434

Judge Everett H. Krueger

Magistrate Lianne L. Sefcovic

JAN ANTONIOPLOS  
CLERK

2004 DEC 27 AM 9:59

COMMON PLEAS COURT  
DELAWARE COUNTY, OHIO  
FILED

AGREED JUDGMENT ENTRY  
(DECREE OF DIVORCE)

This 21st day of December 2004 this matter came to be heard upon the complaint of the Plaintiff seeking a divorce from the Defendant. The Court finds that service of the complaint and summons was made upon the Defendant and that service upon the Defendant of the complaint and summons was in compliance with the laws of the State of Ohio.

The Court finds that the Plaintiff at the time of the filing of the complaint for divorce had been a resident of the State of Ohio and the County of Delaware for more than six (6) months immediately preceding the filing of the complaint for divorce. The Court also finds that the Plaintiff and the Defendant were married on the 28th day of April 1990 and there is one (1) child born issue of this marriage, Marci, born September 9, 1990.

The Court further finds that the duration of the parties' marriage was from the 28<sup>th</sup> day of April 1990 until the 21<sup>st</sup> day of December 2004.

The Court further finds that upon the evidence adduced the Plaintiff and the Defendant are incompatible and that incompatibility has not been denied and by reason thereof the Plaintiff is entitled to a divorce from the Defendant as demanded in his complaint.

This document sent to each attorney/party by:

ordinary mail

fax

attorney mailbox

certified mail

Date: 12/27/04 By: [Signature]

TERMINATION CODE 6

PLAINTIFF'S EXHIBIT 3

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It is therefore, **ORDERED, ADJUDGED AND DECREED** that the marriage contract heretofore existing between the Plaintiff Beth E. Miller and the Defendant Norman L. Miller is hereby terminated and the Plaintiff and the Defendant are released from the obligations of their marriage contract.

The Court further finds that the Plaintiff and the Defendant have entered into an agreement, which forever settles and resolves all issues of spousal support, division of property, and all rights arising by reason of their marriage to each other. The Plaintiff and Defendant in entering into this agreement have done so only after consulting with their respective counsel and reviewing all of their rights and responsibilities arising from their marriage. The parties have each been advised by their respective Counsel regarding their understanding of the terms of the agreement, and the Court finds that each of the parties desires the terms of their agreement be adopted and made the Order of the Court.

The parties have each been advised by their respective Counsel and understand the terms of the agreement; the agreement is a fair division of the assets and liabilities of the parties, and, therefore, the Court adopts the agreement as the Order of the Court.

The Court further finds that the Plaintiff and Defendant have each been advised by their respective Counsel that they each have the right to have the Court value each item of property, whether that property be personal or real property, in order for the Court to arrive at an equal and/or equitable division of the property acquired by the parties during the duration of their marriage. The Plaintiff and Defendant having been advised of their right to a valuation of property and waive their right to have the Court value each and every item of property. The Plaintiff and Defendant further acknowledge that the distribution of their property as set forth in

this decree of divorce, while if not precisely equal, is equitable and in accordance with their agreement.

The Court, having reviewed the agreement of the Plaintiff and the Defendant and their waiver of the valuation of property, adopts their agreement as the Order of this Court.

The Court having adopted the agreement of the parties as the Order of the Court makes the following Orders:

I. Real Property

1. The parties' own real property consisting of a house, garage, barn and approximately 30 acres located at 2882 S.R. 229, Delaware, Ohio 43003 with an appraised fair market value of approximately \$300,000.00. The property is encumbered by a mortgage lien in the approximate amount of \$132,000.00.

2. The parties agree that on the date of the signing of this decree the property shall be divided with Wife <sup>shall</sup> having immediate possession and exclusive control of <sup>the property</sup> approximately 14.7 acres along with the house, garage, barn and small paddock. Husband shall <sup>quit claim his</sup> have immediate interest to the property to wife w/30 days, wife shall sign a promissory note possession and control of the approximately 15 acres that are remaining. The division of the property shall be as generally depicted in the attached exhibit A and more precisely divided 8 years from the date of this Decree, whichever is earlier. Husband pursuant to a survey and legal separation of the property. The parties shall cooperate and share <sup>shall have a security interest in wife's property for this amount.</sup> equally in the costs of such survey and legal division of the property. Husband shall be entitled to use the stalls in the barn for as long as wife owns the property. <sup>Husband's attorney shall prepare the quit claim deed and wife's atty shall prepare the promissory note.</sup>

NM  
BM

3. The parties shall remain jointly liable on the mortgage with the husband paying 40% <sup>and shall bill husband</sup> of the monthly payment, <sup>wife</sup> wife shall be <sup>repay</sup> repaying the property within 12 months of ~~the~~ <sup>to 50000</sup> \$628.00 per month, until paid in full. Husband shall pay his portion directly to wife by the 15<sup>th</sup> of each month and wife shall send the payment to the mortgage company. Wife shall have a

Document ID: 1103101410011

security interest in an amount equal to the Husband's share of the outstanding balance of the mortgage in Husband's property until his share of the mortgage is paid in full. Either party shall have the right to pay off the entire mortgage balance, however, such payment shall not excuse the other party's obligation. Should either party pay off the mortgage, the other party shall be liable for the amount due for his/her share at the time the mortgage is paid in full and shall continue to make monthly payments to the party that has paid off the mortgage equal to the amount he/she was paying prior to the mortgage being paid off. Should either party be successful in court to enforce the other party's obligations under this provision, the court shall have full authority to enforce the obligations herein, including ordering the sale of either of the properties herein and shall award all costs of such action, including the award of reasonable attorney fees to the prevailing party.

II. Personal Property and Household Goods and Furnishings

1. Wife shall retain the 2000 Dodge Durango. Wife shall retain the Bison 2-Horse Trailer.

2. Husband shall retain the 2001 Dodge Ram Pick-Up. Husband shall retain the Corvette.

NM ~~Wife~~ Husband Husband shall have his tools.  
 3. Husband shall retain tractor, ~~tools~~, bush hog, post hole digger. ~~Wife may use these~~  
 WIFE MAY USE A PRIOR ITEMS

BM with Husband's permission.  
 WITH HUSBAND'S PERMISSION

4. Each party shall retain as their own property, their clothing, jewelry and items of personalty, free and clear of any claim of the other.

5. Though the parties have not conducted an inventory of their personal property, they have agreed in general as to the value and the division of their personal effects, household goods, furnishings and furniture, and neither party shall make any claim to any of the items remaining in

the other's possession or control as of the date of the final hearing. While this division of property may not be exactly equal, it is equitable and the parties waive further findings with regard to their property.

III. Financial and Investment Accounts

1. Wife shall retain, free and clear of any claim by Husband, all right title and interest in all checking accounts, savings accounts, retirement accounts including IRA accounts in her individual name.

2. All joint accounts shall be closed and the remaining funds, if any, divided between the parties.

2. Husband shall retain, free and clear of any claim by Wife, all right and interest in all remaining checking accounts, savings accounts, and retirement accounts including 401K in his individual name.

3. Wife shall pay to Husband \$10,000 within <sup>two</sup> thirty (2) days of the signing of the Final Divorce Decree. ~~Should wife receive money from her father's estate through an inheritance, to the husband within 4 years of the divorce or sooner if wife Husband shall receive 1/2 of such money or \$40,000 whichever is less, (In no event shall Husband receive more than \$80,000.00) at the time of Wife's receipt of such inheritance from her father's estate.~~ *THE shall pay the husband the sum of \$40,000. - added*

NM  
BM

IV. Spousal Support

Neither party shall pay spousal support to the other party. This provision shall be non-modifiable, and the Court does not retain subject matter jurisdiction over the matter of spousal support.

V. Debts of the Marriage

1. Wife shall assume the Equity Line of Credit and shall hold Husband harmless thereon.
2. Husband shall be responsible for his credit card(s) in his individual name.
3. Save and except for the debts referred to herein, each party warrants to the other that no other debts have been incurred by one party on the credit of the other; each party shall be responsible for debts incurred by him or her on or after the signing of this agreement; each party shall hold the other party harmless from any liability thereon. Neither party will henceforth incur any obligation or incur any indebtedness upon the credit of the other.

VII. Income Taxes

The parties will file <sup>separately</sup> jointly for 2004 income tax returns, and ~~any tax refund shall be~~ <sup>will be made to</sup> ~~equally divided between the parties.~~ <sup>NM</sup> However, in the event that any tax adjustments must ~~associated with their own return,~~ <sup>BM</sup> ~~hereafter be made for prior years' taxes incurred while married,~~ <sup>THE HUSBAND RECEIVES DEDUCTION</sup> the parties shall share equally in ~~any such adjustment.~~ <sup>ON INTEREST ON PROPERTY FOR 2004. THEREAFTER WIFE'S,</sup>

VIII. Attorney Fees and Expenses

The parties shall each be responsible for the payment of their separate legal expenses incurred in this action and neither party shall be responsible for the payment of legal fees to their spouse.

IX. Full Understanding And Full Disclosure.

Both parties warrant they have made full disclosure of all debts or liabilities incurred upon the obligation of the other.

Both Wife and Husband expressly certify that they have entered into this agreement upon mature consideration and that consent to the execution of this agreement has not been obtained

POOR COPY

by duress, fraud or undue influence by any person; that this agreement represents the entire agreement and understanding of the parties and is entered into without reliance upon any representation of fact or intention by either party except as herein expressly set forth; that the rights and duties of neither party hereto shall be enlarged nor diminished by reason of his or her acquiescence in any failure of the other to comply with the terms of this agreement or by reason of the assumption by either of any responsibilities, duties or expenses not expressly imposed upon such parties by the terms herein. Each of the parties has fully disclosed to the other all assets, liabilities and sources of income that he has or she has.

Releases

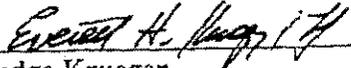
Except as provided in this agreement, the parties do further release and relinquish each unto the other, his or her heirs, executors, administrators and assigns, any and all rights or claims by way of dower, inheritance and descent or otherwise, in and to any property, real or personal, earnings or gains which either now owns or may hereafter acquire, including claims to a distributive share of his or her personal estate now owned or hereafter required, and all right and claims as an heir, distributee, survivor or next of kin in and to the estate of the other party, and whether now owned or hereafter acquired, and all other rights and claims of any kind or nature arising out of said marriage relationship, whether the same were conferred by contract, by laws of the State of Ohio, any other state, or the United States, and which are now or which may hereafter be in effect.

It is further agreed by the parties that each hereby forever releases and discharges the other, his or her heirs, executors, administrators and assigns, from any and all claims, demands, liabilities, causes of action of every kind and description, save and except as provided by the terms of this agreement, and that neither shall hereafter have or hold any claims, demands or

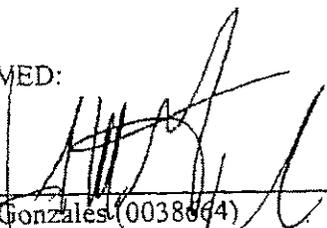
causes of action whatsoever nature against the other, except the cause of action for dissolution of marriage or divorce and such others as are specifically provided herein.

Costs paid.

ALL UNTIL FURTHER ORDER OF THIS COURT.

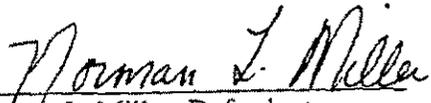
  
\_\_\_\_\_  
Judge Krueger

APPROVED:

  
\_\_\_\_\_  
John M. Gonzales (00388664)  
JOHN M. GONZALES, LLC  
140 Commerce Park Drive  
Westerville, Ohio 43082  
Attorney for Plaintiff

  
\_\_\_\_\_  
Beth E. Miller, Plaintiff

  
\_\_\_\_\_  
David J. Gordon (0031856)  
40 N. Sandusky Street, Suite 300  
Delaware, Ohio 43015  
Attorney for Defendant

  
\_\_\_\_\_  
Norman L. Miller, Defendant

Case No. 04DRA-09-434

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

BETH E. MILLER :

Plaintiff, :

-vs- :

NORMAN L. MILLER :

Defendant. :

Case No. 04DRA-09-434

Judge Everett H. Krueger

Magistrate Lianne L. Sefcovic

JAM ANTONIOPLOS  
CLERK

2004 DEC 27 AM 9:59

COMMON PLEAS COURT  
DELAWARE COUNTY, OHIO  
FILED

*Memorandum of Agreement*  
AGREED JUDGMENT ENTRY  
(DECREE OF DIVORCE)

This 21st day of December 2004 this matter came to be heard upon the complaint of the Plaintiff seeking a divorce from the Defendant. The Court finds that service of the complaint and summons was made upon the Defendant and that service upon the Defendant of the complaint and summons was in compliance with the laws of the State of Ohio.

The Court finds that the Plaintiff at the time of the filing of the complaint for divorce had been a resident of the State of Ohio and the County of Delaware for more than six (6) months immediately preceding the filing of the complaint for divorce. The Court also finds that the Plaintiff and the Defendant were married on the 28th day of April 1990 and there is one (1) child born issue of this marriage, Marci, born September 9, 1990.

The Court further finds that the duration of the parties' marriage was from the 28<sup>th</sup> day of April 1990 until the 21<sup>st</sup> day of December 2004.

The Court further finds that upon the evidence adduced the Plaintiff and the Defendant are incompatible and that incompatibility has not been denied and by reason thereof the Plaintiff is entitled to a divorce from the Defendant as demanded in his complaint.

TERMINATION CODE 6

PLAINTIFF'S EXHIBIT 4

It is therefore, ORDERED, ADJUDGED AND DECREED that the marriage contract heretofore existing between the Plaintiff Beth E. Miller and the Defendant Norman L. Miller is hereby terminated and the Plaintiff and the Defendant are released from the obligations of their marriage contract.

The Court further finds that the Plaintiff and the Defendant have entered into an agreement, which forever settles and resolves all issues of spousal support, division of property, and all rights arising by reason of their marriage to each other. The Plaintiff and Defendant in entering into this agreement have done so only after consulting with their respective counsel and reviewing all of their rights and responsibilities arising from their marriage. The parties have each been advised by their respective Counsel regarding their understanding of the terms of the agreement, and the Court finds that each of the parties desires the terms of their agreement be adopted and made the Order of the Court.

The parties have each been advised by their respective Counsel and understand the terms of the agreement: the agreement is a fair division of the assets and liabilities of the parties, and, therefore, the Court adopts the agreement as the Order of the Court.

The Court further finds that the Plaintiff and Defendant have each been advised by their respective Counsel that they each have the right to have the Court value each item of property, whether that property be personal or real property, in order for the Court to arrive at an equal and/or equitable division of the property acquired by the parties during the duration of their marriage. The Plaintiff and Defendant having been advised of their right to a valuation of property and waive their right to have the Court value each and every item of property. The Plaintiff and Defendant further acknowledge that the distribution of their property as set forth in

Document ID: 110500010441100000

this decree of divorce, while if not precisely equal, is equitable and in accordance with their agreement.

The Court, having reviewed the agreement of the Plaintiff and the Defendant and their waiver of the valuation of property, adopts their agreement as the Order of this Court.

The Court having adopted the agreement of the parties as the Order of the Court makes the following Orders:

I. Real Property

1. The parties' own real property consisting of a house, garage, barn and approximately 30 acres located at 2882 S.R. 229, Delaware, Ohio 43003 with an appraised fair market value of approximately \$300,000.00. The property is encumbered by a mortgage lien in the approximate amount of \$132,000.00.

2. The parties agree that on the date of the signing of this decree the property shall be divided with Wife having <sup>shall</sup> immediate possession and exclusive control of <sup>the property</sup> approximately 11.7 acres along with the house, garage, barn and small paddock. Husband shall <sup>quit claim his</sup> have immediate interest to the property to wife w/30 days. Wife shall sign a promissory note to Husband for \$40,000 due and payable when the property is sold or property shall be as generally depicted in the attached exhibit A and more precisely divided 8 years from the date of this Decree, whichever is earlier. Husband shall have a ~~promissory~~ security interest in wife's property for this amount. equally in the costs of such survey and legal division of the property. Husband shall be entitled to use the stalls in the barn for as long as wife owns the property. Husband's attorney shall prepare the quit claim deed and wife's atty shall prepare the promissory note. NM  
Bill

3. The parties shall remain jointly liable on the mortgage with the husband paying 40% of the monthly payment, <sup>Wife</sup> wife shall <sup>be</sup> refinance the property within 12 months at \$628.00 per month, until paid in full. Husband shall pay his portion directly to wife by the 15<sup>th</sup> of each month and wife shall send the payment to the mortgage company. Wife shall have a

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security interest in an amount equal to the Husband's share of the outstanding balance of the mortgage in Husband's property until his share of the mortgage is paid in full. Either party shall have the right to pay off the entire mortgage balance, however, such payment shall not excuse the other party's obligation. Should either party pay off the mortgage, the other party shall be liable for the amount due for his/hers share at the time the mortgage is paid in full and shall continue to make monthly payments to the party that has paid off the mortgage equal to the amount he/she was paying prior to the mortgage being paid off. Should either party be successful in court to enforce the other party's obligations under this provision, the court shall have full authority to enforce the obligations herein, including ordering the sale of either of the properties herein and shall award all costs of such action, including the award of reasonable attorney fees to the prevailing party.

II. Personal Property and Household Goods and Furnishings

1. Wife shall retain the 2000 Dodge Durango. Wife shall retain the Bison 2-Horse Trailer.

2. Husband shall retain the 2001 Dodge Ram Pick-Up. Husband shall retain the Corvette.

NM ~~Wife~~ Husband Husband shall have his tools, NM ~~Wife shall retain tractor, tools, bush hog, post hole digger.~~ ~~Wife may use these~~ WIFE MAY USE A PRIOR ITEMS

DM with Husband's permission, with Husband's permission

4. Each party shall retain as their own property, their clothing, jewelry and items of personalty, free and clear of any claim of the other.

5. Though the parties have not conducted an inventory of their personal property, they have agreed in general as to the value and the division of their personal effects, household goods, furnishings and furniture, and neither party shall make any claim to any of the items remaining in

the other's possession or control as of the date of the final hearing. While this division of property may not be exactly equal, it is equitable and the parties waive further findings with regard to their property.

III. Financial and Investment Accounts

1. Wife shall retain, free and clear of any claim by Husband, all right title and interest in all checking accounts, savings accounts, retirement accounts including IRA accounts in her individual name.

2. All joint accounts shall be closed and the remaining funds, if any, divided between the parties.

2. Husband shall retain, free and clear of any claim by Wife, all right and interest in all remaining checking accounts, savings accounts, and retirement accounts including 401K in his individual name.

3. Wife shall pay to Husband \$10,000 within <sup>two</sup> thirty (3) days of the signing of the Final Divorce Decree. *THE shall pay the husband the sum of \$40,000 - additional to the husband within 4 years of the divorce or sooner if wife* Should wife receive money from her father's estate through an inheritance, Husband shall receive  $\frac{1}{2}$  of such money or \$40,000 whichever is less, (In no event shall Husband receive <sup>s</sup> more than \$40,000.00) at the time of Wife's receipt of such inheritance from her father's estate.

NM  
BM

IV. Spousal Support

Neither party shall pay spousal support to the other party. This provision shall be non-modifiable, and the Court does not retain subject matter jurisdiction over the matter of spousal support.







23

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

COMMON PLEAS COURT  
DELAWARE COUNTY OHIO  
FILED

2005 OCT 14 AM 9:34

JAN ANTONIOPLOS  
CLERK

338  
358-366

BETH E. MILLER,

Plaintiff,

Vs.

: Case No. 04DR-A-09-434

NORMAN L. MILLER,

: Judge Everett Krueger

Defendant.

: Magistrate Lianne Sefcovic

\*\*\*\*\*

JUDGMENT ENTRY DECREE OF DIVORCE

The Court, sua sponte hereby adopts and incorporates the document filed December 27, 2004 titled, "Memorandum of Agreement" as an Agreed Judgment Entry (Decree of Divorce) as a final Journal Entry, Decree of Divorce.

*Everett H. Krueger, Jr.*  
EVERETT H. KRUEGER, JUDGE

cc: John M. Gonzales, Attorney for the Plaintiff, 140 Commerce Park Dr., Westerville, Ohio 43082  
David J. Gordon, Attorney for the Defendant, 40 N. Sandusky St., Suite 300, Delaware, Ohio 43015  
Beth E. Miller, 2882 S.R. 229, Delaware, Ohio 43015  
Norman L. Miller, C/O Cardington Yutaka Tech, 575 W. Main St., Cardington, Ohio 43315

PLAINTIFF'S EXHIBIT 5

This document sent to each attorney/party by:	
<input checked="" type="checkbox"/>	ordinary mail
<input type="checkbox"/>	fax
<input checked="" type="checkbox"/>	attorney mailbox
<input type="checkbox"/>	certified mail
Date:	10/14/05 By: <i>(wb)</i>

IN THE COURT OF COMMON PLEAS, DELAWARE COUNTY, OHIO

THE STATE OF OHIO,  
Plaintiff,

VS

ANTONIO R WILLIAMS,  
Defendant.

Case No. 08 CR I 10 0493

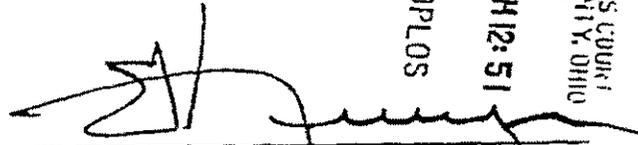
EVERETT H. KRUEGER, JUDGE

432  
367

JUDGMENT ENTRY DENYING MOTION TO CONTINUE

The Defendant filed a Motion For Continuance Of Sentencing Hearing on March 19, 2009. Motion DENIED.

Dated: March 24, 2009

  
EVERETT H. KRUEGER, JUDGE

COMMON PLEAS COURT  
DELAWARE COUNTY, OHIO  
FILED  
2009 MAR 25 PM 12:51  
JAN ANTONOPLOS  
CLERK

I have served a copy of this Judgment Entry upon all counsel by electronic mail.  
  
3-25-09

Cc: CAROL HAMILTON O'BRIEN, ASSISTANT PROSECUTING ATTORNEY  
JEFFREY P UHRICH, ATTORNEY FOR DEFENDANT

CR-26  
SC



08 CR I 10  
0493  
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JDEN

PLAINTIFF'S EXHIBIT 6

Submitted: 11:50:10 11/15/09

BETH E MILLER, :  
 Plaintiff, : Case No. 04 DR A 09 0434  
 VS. :  
 NORMAN L MILLER, : EVERETT H KRUEGER, JUDGE  
 Defendant. : MAGISTRATE LAUGHLIN

MOTION TO QUASH SUBPOENA PURSUANT TO CIVIL RULE 45

The undersigned was subpoenaed for a hearing in this matter, scheduled for July 27, 2009 at 10:00 a.m.

The undersigned will be out of the State. Flight arrangements were made months ago.

- 1). The subpoena failed to allow reasonable time to reply;
- 2). Undue burden;
- 3). Judicial privilege;
- 4). Movant has been available for deposition;
- 5). Movant has prepared an Affidavit.

  
 EVERETT H. KRUEGER, JUDGE

The Clerk of this Court is hereby Ordered to serve a copy of this Judgment Entry upon the following by  Regular Mail,  Mailbox at the Delaware County Courthouse,  Facsimile transmission

cc: DAVID SPENCER, ESQ.  
 DAVID GORDON, ESQ.

JAN ANTONOPLOS  
 CLERK

2009 JUL 27 AM 9:34

DELAWARE COUNTY COURT  
 DELAWARE COUNTY, OHIO  
 FILED

EXHIBIT 4

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IN THE COURT OF COMMON PLEAS, DELAWARE COUNTY, OHIO

BETH E MILLER,	:	
Plaintiff,	:	Case No. 04 DR A 09 0434
VS.	:	
NORMAN L MILLER,	:	EVERETT H KRUEGER, JUDGE
Defendant.	:	MAGISTRATE LAUGHLIN

AFFIDAVIT

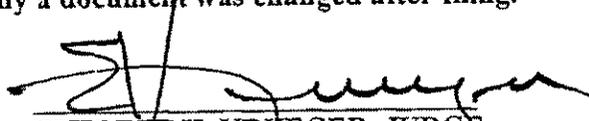
The undersigned, being duly sworn, submits the following:

The Affiant is a Judge of the Delaware County Common Pleas Court, General Division and Domestic Relations Division;

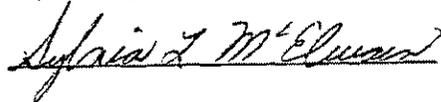
Lianne Santellani-Sefcovic was duly appointed as Magistrate to conduct all Domestic Relations proceedings;

As Domestic Relations' Magistrate, she was given authority only to sign my name to all judgment entries that were agreed to and approved by the parties;

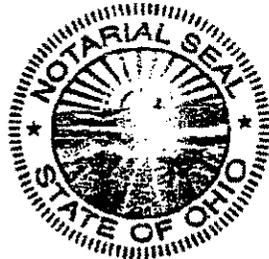
The undersigned has no knowledge of the proceedings in the above captioned case and has no knowledge of how or why a document was changed after filing.

  
 EVERETT H. KRUEGER, JUDGE

Sworn to before a Notary Public this 21<sup>st</sup> day of July, 2009.

  
 \_\_\_\_\_

DATED: July 21, 2009



SYLVIA L. McELWAIN  
 Notary Public, State of Ohio  
 My Commission Expires  
4-13-10

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

Beth E. Miller  
Plaintiff  
VS.  
Norman L. Miller  
Defendant

550  
324-335

JUDGE EVERETT H. KRUEGER  
CASE NO. 04 DR A 09 434  
Magistrate David J. Laughlin

2009 JUN 26 AM 9:56  
CLERK  
DELAWARE COUNTY, OHIO

MAGISTRATE'S DECISION

This matter came on for hearing on July 27, 2009 before the Magistrate. Present for the hearing was the Plaintiff nka Beth Knece, represented by attorney Elizabeth Gaba, and Defendant represented by attorney David Gordon. The matter was set for hearing based upon post decree motions set forth as follows :

- 4/7/2009 Motion to Show Cause-- filed by husband
- 4/10/2009 Motion "To Vacate the Judgment Entry Decree of Divorce and to Strike the Agreed Judgment Entry(Decree of Divorce) For Cause Shown Herein" --filed by wife
- 7/27/2009 Motion to Quash filed by the Hon. Everett H Krueger

**The Magistrate makes the following findings of fact and conclusions of law:**

The case was actually re-opened on January 21, 2009 with the filing by the Plaintiff of a Motion "For Relief From Judgment Entry- Decree of Divorce Filed October 14, 2005, Pursuant to Rule 60 (B), To Vacate the Incorporation of the Parties Memorandum of Agreement and to Vacate the terms of the Memorandum of Agreement. The 60(B) Motion was set for trial on April 14, 2009. On April 10, 2009 the Plaintiff filed a Motion to " Stay the Civ. R. 60(B) Motion For Cause Shown Herein". The Motion and memorandum speaks for itself.

The Magistrate indicated from the bench on April 14, 2009 that the Motion to Stay the Civ. R. 60(B) would be Overruled ( "The Plaintiff cannot stay the prosecution of her original motion, so as to proceed under an alternative theory first."). The Plaintiff withdrew her 1/21/2009 Motion and "elected to proceed under her April 14, 2009 Motion. The Magistrate ruled that Plaintiff's 4/7/2009 Motion to Stay was then rendered moot by the withdrawal of the 60(B) Motion. The findings in the Magistrate's Order filed on April 15, 2009 are incorporated herein as if rewritten.

At issue is the validity of the underlying entries regarding the final divorce hearing I December 2004 and the filing of the Decree on October 14, 2005. . The Court Docket for this case indicates the following timeline :

The parties were married on April 28, 1990. Plaintiff's Complaint was filed on September 29, 2004. Plaintiff's counsel was John Gonzales. The parties have a daughter Marci, who was still a minor at the time of filing (d.o.b.9/9/90). The wife filed for a temporary order seeking to have the husband vacate the marital residence. The wife's affidavits were filed and/or



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EXHIBIT 5

attached to the motion, and she averred—in summation—that husband drank and was verbally abusive and threatened her. Notably she “waited this long to file for a divorce so Marci could see for herself how he treated me and we both came up with the decision to divorce being in our best interests.” Plaintiff’s supplemental affidavit also makes averments as to the nature of the property down payment, the mortgage debt, and regarding the lack of a relationship between the father and daughter. The wife’s financial affidavit was also filed, further outlining the existence of the nature of the mortgage encumbrance, the existence and value of various bank accounts and retirement assets.

The court did not Order the parties to separate. The Court instead, by Magistrate’s order of September 30, 2004, set the case for a temporary orders hearing for November 10, 2009. The parties were ordered to mediate. The Court signed wife’s restraining order regarding assets.

The husband was served on October 5, 2004. Husband filed his answer and counterclaim and affidavit on October 28, 2004. Husband also filed a proposed shared parenting plan. The Court signed husband’s proposed restraining order effectively issuing reciprocal restraining orders on each party regarding property.

The parties agreed to temporary orders as indicated by the filings of 11/12/2004. Neither party moved to set aside the orders. The court set a settlement conference for 12/21/2004.

The file record does not show a specific procedural outline of that conference. The record does indicate that on 12/27/2004 a Memorandum of Agreement was filed and docketed. At the same time a Shared Parenting Decree, a Shared Parenting Plan and a guidelines worksheet was also docketed. The docket indicates that these were all filed together (Vol 304pgs 240-258 of the official record). This Magistrate also has the file record before the Court indicating the original documents. The Magistrate is able to view the original interlineations in the “memorandum of agreement” in the shared parenting plan, and the original signatures. It appears from the ink colors that most probably the black interlineations would have been written by Attorney Gonzales; the blue interlineations written by attorney Gordon. The interlineations are consistent with the “copies” proffered as the exhibits herein. The initials of the parties regarding each interlineation were in blue. Obviously one of the attorneys prepared the documents before the conference and proffered them for negotiation and approval. The interlineations as to the realty (Item I par.2 on page 3) and as to the financial and investment accounts (Item III par. 3 page 5) are noteworthy. These are the foundation of the underlying dispute before this magistrate.

The first page of the original document that is presently in the file is captioned in type similar to:

**AGREED JUDGMENT ENTRY**  
**(DECREE OF DIVORCE)**

Directly above the words “Agreed Judgment Entry” the document contains a streak of WhiteOut covering up the words “Memorandum of Agreement”. The magistrate finds that the writing underneath the WhiteOut on the original is decipherable. (Moreover the evidence is clear that the parties have copies of that same front page sans the whiteout.) The document was time stamped as having been filed on December 27, 2004. The document is also signed under Judge Krueger’s name by “proxy”( /s/ or what appears to be “LS”)— what this magistrate now recognizes to be by former magistrate Lianne Sefcovic. The “Shared Parenting Decree” also bears a time stamp of 12/27/2004. The signature lines of this document more readily indicate that the document bears the signature of Judge Krueger with the same “proxy” of a /s/ or /LS/.

The file record shows that on October 14, 2005 the Court issued an Entry, captioned "Judgment Entry Decree of Divorce", *sua sponte*. The Entry provides that : "The Court *sua sponte* hereby adopts and incorporates the document filed December 27, 2004 titled "Memorandum of Agreement" as an Agreed Judgment Entry (Decree of Divorce) as a final Journal Entry, Decree of Divorce". The document is also signed under Judge Krueger's name by "proxy" ( /s/ or what appears to be "LS") The Entry shows that it was sent to both of the attorneys of record, and also directly to the parties.

There was no testimony or exhibit introduced at this instant hearing that gave any probative evidence or explanation to the circumstances of the change of the document . The wife subpoenaed the Delaware County Clerk of Court Jan Antonopolis, and subpoenaed the Hon. Everett H. Krueger. Judge Krueger filed an affidavit and motion to quash the subpoena.

The motion to Quash was granted by the magistrate. The Judge's affidavit remains in the record. Ms Antonopolis testified that she had no direct knowledge of any specific circumstances regarding an alteration to the document originally time stamped on December 27, 2004. She opined that based on the docket, the document in the file was changed after the original filing of docketing it in as a memorandum. She noted in her testimony that the *original* in the file clearly shows the existence of whiteout and the writing underneath was apparent. She feels her staff did not white out the term "Memorandum of Agreement" . She noted that the file is public record and literally anyone has access to the original. The docket does show and reflect a "Judgment Entry of Divorce."

Judge Krueger's affidavit states that he gave the authority and direction to Magistrate Sefcovic to sign Agreed entries on his behalf.

It is noted that the litigants stipulated that a) the 12/27/2004 "memorandum" / Agreed Judgment Entry of Divorce"; b) the 12/27/2004 Shared Parenting Decree; c) the 10/14/2005 *sua sponte* order; and d) the 7/31/2007 Agreed Judgment Entry are all signed with Judge Krueger's name by proxy ; and they were signed by Lianne Sefcovic on his behalf.

As stated above, the Clerk and Judge Krueger were subpoenaed to testify regarding these circumstances; Lianne Sefcovic was not. The parties' stipulation established that she signed these . Judge Krueger's affidavit indicates that he gave permission and direction to do just that on "agreed matters". Other than these facts --especially without the testimony of the Magistrate that presided over each of these matters, the rest of the circumstances require this Magistrate to assume and speculate.

However the evidence before the Court now allows the drawing of a reasonable conclusion:

Each of these documents evidences in some form the litigants' agreements. (Wife argues that she did not agree to a Decree of Divorce however her signature and initials are affixed to the 12/27/2004 "agreement". The law is so well settled that this magistrate need not recite the multitude of appellate precedent that establishes that in court memorandums and agreements are binding; the court having the power to journalize the terms without the subsequent "approval" of the parties on the decree itself). The record shows the existence of the very agreement labeled as a memorandum but later signed as the "agreed entry". The record is devoid of any pleading before the court seeking to revoke the agreement(-present motion excepted).

The testimony and the document itself indicates that the litigants had some indication of the hearing on 12/21/2004 being a resolution of the case. Someone showed up with a proposed decree and a proposed shared parenting plan and decree ( it appears to be more likely from the nature of the writings and the significant differences in style from the husband's shared parenting plan that it was the wife who had the paperwork at hand ( however, who it was bears only a little relevance).

The present testimony from both parties --and also again a corroboration from the nature of the filed documents themselves--that indicated that the parties entered into significant and protracted negotiations on two floors of the courthouse with the wife "upstairs" and the husband "downstairs"(as the wife testified "we went back and forth and back and forth and back and forth...")

There were significant modifications made to the written terms, some written in blue (ostensibly by attorney Gordon) and some written in black, (ostensibly by attorney Gonzales). Eventually a full agreement was reached but because the terms of the negotiated agreement being so dissimilar to the typing, instead of proffering the "doctored up" document as their final Decree, the parties initialed each one of the changes and signed the documents. The parties went before the magistrate, were placed under oath and testified as to the terms of the divorce and, as husband testified before this magistrate, were *each* queried whether, "[you] agree to the document" and "agree on shared parenting." Each affirmed. Husband's recollection was that [they] "didn't say anything about her not making her Magistrate's Report at that time"

This magistrate notes that contrary to the assertion of wife's counsel, Civil Rule 53, does not necessarily mandate the requirement of the filing of a magistrate's decision in every case [CivR 53(D)(3)(a)(i)]. No one presented at trial the terms of the former magistrate's "relevant reference" that could have given her discretion by order *not to have to prepare and file a decision in a case such as this* having a written signed sworn/affirmed agreement and awaiting an Entry "cleaning up the messy memo" that would contain the waiver boilerplate, including that of the objection period as well.

Nor is there a requirement of having to always wait for a 14 day period -- Different magistrates and different courts across the state utilize different procedures, especially with a proffered

memorandum of agreement and the promise or expectation of a prepared decree to be submitted by counsel often having the waiver language *in the decree* rather than requiring a separate waiver.

The "memorandum" stayed in the file from December 2004, until October 2005. There was no action on the part of the wife—or by the husband indicating any objection to or discontent with the to the proceedings before magistrate Sefcovic. There is no evidence before this magistrate verifying which attorney was to complete the final paperwork in typed form, but the evidence appears uncontroverted that the court never received the "clean copy" of the document.

Judging by the time line of the next action on the file it can be assumed that the follow through on the file "slipped through the cracks" and was probably "caught" at the time of the annual physical inventory that takes place by 10/1/ of each year. It was at this time—the next fall that the memorandum was signed by the magistrate as a Agreed Entry ( pursuant to Judge Krueger's directive-- but not a new copy of the memo. The signing was the original Memo.)

There was testimony that, attorney Gordon did prepare the mortgage deed regarding the realty clause of the agreement, and the deed was signed by wife and recorded in the spring of 2005.

The file reflects that the parties entered into litigation in 2007 and used the "Decree" as the basis for modification. The magistrate also finds that both of the litigants believed in the validity of the decree—as long as that sought their individual purposes; to wit each used the "Memo/Decree" to request and obtain a marriage license and ultimately get re-married.

The wife testified on cross exam as part of husband's case in chief (husband's motion was first in time and he proceeded first at the hearing) that she did sign the memorandum of agreement and initialed it various places on the document. According to her testimony before this magistrate she stated she was under duress as "he threatened me." The magistrate finds that her testimony repeated this statement several times. There was no corroboration of any manifestation of the "duress" or fear. She repeated on several occasions that "I was scared to death because he was threatening me" There was no specific probative factual testimony as to what exactly the threats were and at what time they allegedly took place. She stated that she was coerced in obtaining her signature because of "living with [my] husband." The later testimony about the parties' separation and initial filings, as well as the testimony regarding the change of custody from her to the husband, is contradictory to the general statements she repeated.

She also testified that she gave away "the whole file to apply for her marriage license" so she did not have certain documents (including her copy of the Decree she used to get the license). She received the license on August 6, 2007 and she stated that she saw the decree at that time. (this was also approximately during the time of the court litigation regarding the change of the parenting orders.)

She understood the terms of the 2004 memorandum as that she was required to pay \$40,000 if she sold the farm and she does not understand the terms of the agreement. She stated that "no, my dad's not dead and I don't know if they want it before or after he's dead ." She stated that she does not have the money at the present time to pay under the terms of the decree. All of her money was used to pay the bills that she stated that the husband did not pay and she also used the money to take care of her daughter and to buy a vehicle.

Ms. Knece stated that she did sign the mortgage deed in March of 2005 but does not recall the document. When queried whether she was under duress at this time also, her answer was "if he is still around , yes." She stated that she signed the deed on March 23, 2005 and she believed she did so under duress then as well because "if I didn't, he'd do something." She does not remember where she signed it.

The issue of the divorce came up again in 2007. She does not remember much of that time and cannot remember the attorney's name that she employed at that time--- she thinks it may have been "Heald". She was also asked whether she was under duress when she entered into that Agreed Judgment Entry regarding the allocation of parental rights (also signed under the same directive) and she stated "I was not pleased,..... oh yeah! , I was ....because I was scared." She did state that the lawyer did not force her to sign the document, but she does not remember whether the attorney discussed the validity of the underlying divorce with her--- i.e. the signature of the Judge on the agreed entry.

On cross-examination the witness stated that as to her past-due mortgage bill she was "paying what's owed on it tomorrow" I have to bring it up current. She believes that the mortgage and her obligation to her former husband as outlines in the decree is unfair -- she got stuck with paying for everything and he just wants his money. She is currently employed at the Home Depot in Westerville.

Norman Miller testified on direct and on cross examination that the money for the purchase of the home that his former wife now resides in came from two sources \$60,000 from her grandmother which was an inheritance and \$70,000 from her father. He paid the house payments and he believed that there were improvements were made in the barn and paddocks --- in fact there were 12 stalls and the parties boarded other horses besides their own.

Mr. Miller recalls the day of the negotiated agreement at the Courthouse. This was on December 21, 2004 where he was downstairs and Beth Knece was upstairs. He denies that there was any contact between the parties nor were any threats made to Ms. Knece. He admitted that there were guns in the house as stated by wife, but when he was served the guns went to a friend's house ;she moved all of his stuff out before he got home that day and the guns were part of the material that she sent to his friends house. He was served with the papers and he stayed at that friend's house during the course of the case.

Like Beth Knece, he got remarried subsequent to the divorce trial. It was his understanding that he and Beth were divorced on December 21, 2004. He did state that he understood that there was something said on the day of the hearing before the magistrate about a "14 day judgment" but he

can't recall the exact words. He did testify that he remembers going in front of the magistrate -- was put under oath--- and named his name and address and testified regarding agreeing to the documents and the shared parenting. The copy that is used as exhibit B herein was the same document he used to get his marriage license as well. The date of his marriage was October 31, 2008.

This witness is indicating that Ms. Knece has not paid the monies owed to him regarding the real estate under the two separate paragraphs of the decision. The first paragraph at issue is on page 3 at I(2) refers to \$40,000. The second clause is on page 5 paragraph 3. The wife paid him the initial \$10'000 and not the later due \$40,000 .

He testified that they did have conversations after the divorce regarding the money and Ms. Knece told him that "you're not going to see any of the money." This was a couple of months after the divorce. After the divorce they also took their daughter to counseling together and it was Ms. Knece that also helped paint the apartment that he resided in

This witness denies threatening Ms. Knece to sign any of the documents, and he testified that he were in negotiations for at least two to three hours at the courthouse that day. By his testimony there were so many changes to the document it became a memorandum.

Beth Knece testified on direct examination regarding her motion ( as the husband's motion being first in time cause the husband to proceed first) The witness expounded on her cross examination indicating that "every time that Mr. Miller threatened her with violence her daughter wasn't there."

The witness stated that by the time she filed for divorce she was scared and that the husband was drinking regularly. (Husband denies the connotation and indicated that they both drank beers in the barn regularly) At one point he grabbed her arm and told her he was "going to take it all including your daughter". This is when she filed. All the account money was "actually hers" (separate and not marital) but she thought putting his name on the accounts would "calm him down." She further explained her statement that she believes that she does not owe him any money because she was forced to refinance the house and that "the house was paid off which was marital that we both owed"; and she "paid off the fencing and the barn" and all into the marital debt that they owed. She was " stuck with everything in the barn which is on the credit cards mostly all the household debt".

On cross examination she did admit that she elected to pay off the mortgage (that provision was also placed into the agreement --page 3 paragraph I(3)). The wife testified that she does not understand the terms of the agreement and they are unclear to her. The magistrate specifically asked the wife regarding the circumstances of the courthouse negotiations, and her testimony was consistent with the husband's, to wit; "we went back and forth and back and forth and signed them at the court..."

The magistrate finds that despite the testimony of the wife the terms of the agreement are clear. The valuation of the realty is clear and is in paragraph I(1) on page 2. The very next paragraph was extensively interlineated. The written words ----crossing out the typed words ----control. The clause states that "*wife shall sign a promissory note to husband for \$40,000 due and payable when the property is sold or eight years from the date of this decree which ever is earlier. Husband shall have a security interest in wife's property for this amount. ... 3. The wife shall be liable on the mortgage and shall hold husband harmless thereon. Wife shall refinance the property within 12 months.*"

The second clause at issue is on page 5 under paragraph III (3). This clause is captioned "Financial and Investment Accounts"; was also interlineated, and provides that "*3. Wife shall pay to husband \$10,000 within two days of the signing of the Final Divorce Decree. The wife shall pay the husband the sum of an additional \$40,000 within 4 years of the divorce or sooner if wife receives more than \$80,000 at the time of wife's receipt of such inheritance from her father's estate.*"

The clauses are unambiguous. It is clear that there are two separate obligations. The first obligation deals with the realty. That clause requires the wife to remit the stated sum of \$40,000 upon the date of October 14, 2013, or earlier on the sale of the property. (The Court speaks through its journal, and by simple mathematical calculation of eight years the due date is thus October 14, 2013) The wife participated in the negotiation of this clause and signed the deed. She also made efforts to follow the terms of the clause when it benefitted her, to wit the refinancing and obtaining more cash from the realty. She did not meet her burden to indicate that her signing of the deed was under duress.

The second obligation deals with the Financial and Investment Accounts. The wife paid the first \$10,000. The clause also provides that the wife is responsible to pay to the husband the additional \$40,000 "no later than four years from the date of the divorce or sooner if wife receives more than \$80,000 at the time of wife's receipt of such inheritance from her father's estate."

The Court speaks through its journal, and by simple mathematical calculation the due date is thus October 14, 2009. The absence of a comma after "divorce" does not cause the clause to be ambiguous. Wife is simply subject to a second condition that could trigger her performance earlier than October 14, 2009—simply the death of her father and her receipt of an \$80,000 inheritance.

Neither party established sufficient evidence that the wife's father died or that she received the sum of \$80,000 as an inheritance from wife's father's estate. However, nor did wife provide evidence that this payment is somehow of such a nature that it is inequitable to be enforced under the totality of the property division.

While it is clear that, given the statements testified to by wife, the husband should not be expecting any future voluntary compliance, at the time of the motion to show cause and at the time of the trial (the only time frame that can be used) the wife had not yet violated the terms of the Decree of Divorce. Thus, the magistrate finds the Decree to be clear and unambiguous. (The magistrate further finds that at the time of the trial the defense of the wife of inability was not sustained.)

However, as aggravating as it would be to have to re-file, the husband's Motion to Show Cause fails as being premature as the time for performance was not proven to have passed.

The wife filed a Motion for Relief from Judgment based on a two prong argument. First, the Decree is not a valid judgment ----and is void. Second the wife is entitled to relief because she was under duress ----the "agreement" is not genuine.

The movant has the burden of proof to indicate that the prior judgment of this Court should be vacated or is no longer applicable pursuant to the specific enumerated reasons in Civil Rule 60(B)

A Civ R. 60(B) Motion pertains to the Court rendered final judgment and not the prior December 2004 decree/memorandum. One can only move for relief from a Judgment, not from a document that does not rise to the level of a final order. The Motion, therefore pertains to the Judgment of 10/14 2005 and the filing of the Motion on January 21, 2009 is not within the maximum period of time under any of the subsections ----except for reasons 4 or 5.

*Ohio Civ. Rule . 60(B) states:*

*"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment.*

*The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation."*

Recently the Fifth District Court of Appeals in *Wooster Sheet Metal v Lucak, et al* ( 2008-Ohio-3962; 2007 CA 326 )(August 4, 2008) addressed the requirements to prevail under a 60(B) motion:

*In order to prevail on a motion brought pursuant to Civ.R. 60(B), " \* \* \* the movant must demonstrate that (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceedings was entered or taken. " Argo Plastic*

Products Co. v. Cleveland (1984), 15 Ohio St.3d 389, 391, 474 N.E.2d 328, citing GTE Automatic Electric v. ARC Industries (1976), 47 Ohio St.2d 146, 351 N.E.2d 113, paragraph two of the syllabus. If any prong of this requirement is not satisfied, relief shall be denied. Argo at 391, 474 N.E.2d 328.

Civ.R. 60(B) represents an attempt to "strike a proper balance between the conflicting principles that litigation must be brought to an end and justice should be done." (Wooster at par 18-19)

Regarding the requirements to prevail as indicated by the well settled law quoted above:

First, as stated above the Magistrate finds that the Motion was made more than three years from the date of the Decree. The magistrate finds as a conclusion of law that the movant's Motion was not timely filed— in calculating from the date of the Entry— except under her argument that Civ R. 60 (B) (4) or ( 5 ) applies within the parameters contemplated in the rule as "within a reasonable time". Thus the movant's arguments fail under reasons 1, 2, and 3 because of timeliness.

Movant first must satisfy the requirement that her underlying position would be meritorious under reason 4 or 5 should the court vacate the prior decree. The movant failed to provide sufficient probative evidence that the accounts and interests she spoke of were in fact separate—other than her testimony that living with the husband caused her such duress so as to establish the account as joint. This is not evidence indicating a separate property interest so as to show a patently one sided agreement.

Further the movant's position that the misconduct of the husband caused her to be under duress thereby skewing the property/debt division is also precluded by the time frame in the rule—even assuming that she had provided satisfactory and probative evidence to indicate duress. Her self serving statements do not rise to a level of probative evidence.

There is no evidence before the Court indicating that there was any newly discovered evidence or that any of the Movant's evidence—or respondent's evidence for that matter—was unavailable for the hearing. The movant cannot bootstrap the argument of the signature on the original being a surprise. For all of the testimony regarding the genuineness of the signature or the altering of the document, the original has always been on record; the parties have always had the use of the certified copy provided by the Clerk (ostensibly with the signature on the last page) , and the parties—i.e. the movant in this case have had other opportunities to address the "issue" ,if it was one prior to this instant litigation. Movant failed to establish this ground.

The movant failed to prove the essential elements of fraud. The movant failed to timely exercise her opportunity to raise an objection to any irregularity in the hearing or in the signature on this reason. Moreover her own later testimony contradicts his assertion of fraud.

The Movant did not present any probative evidence that would cause the Court to vacate the Decree under reason number four. The movant failed to show that the decree was inequitable—particularly as she used the terms of the decree during this same course of time for her own individual interests and purposes. She believed she was divorced; and that the decree granted her the sole title to the realty. Only now as she is facing the enforcement of her duties under the decree, is the issue of duress and equitability being raised.

Finally, the movant is seeking to have the court grant the Motion under reason number 5, “any other reason justifying relief”. There has been no testimony indicating the existence of any such reason in this case. Again, as stated above, there is insufficient evidence to even determine that the movant has a meritorious ground if relief were granted.

First, the evidence indicates that the Judge specifically authorized the signatures—and directed them on this type of agreement/ decree. A duty can be delegated, and in this case the Judge delegated the duty of authorizing his signature on those documents not requiring any contest or independent adjudication. Even assuming *arguendo* that the signature was not authorized, the characterization by the movant of the decree being void is misplaced. The Decree at most, would be voidable ——— not automatically invalid, but subject to collateral attack by one or both of the parties.

At that time the court then looks at the conduct of the complaining party. Here, certainly the defect, as voidable, is *waivable*. In this case the movant has waived any defect in this decree by her own conduct; using the terms of the decree for her own individual purposes and benefit, and by failing to object to the defect even after she should have known. The movant failed to prove that she did not have in front her, and at her disposal, the copy of the decree indicating the very signature that she now complains is insufficient.

The case law regarding this particular ground clearly outlines that the facts under this particular scenario and reason number 5 reason be compelling. Given the facts as set forth in evidence here—if any set of circumstances would constitute a waiver, these would. The totality of the testimony clearly indicates that there is no particular equitable or legal cause to grant relief to the movant under Civ Rule 60 (B).

The decree is enforceable; any defects in same having been waived by the litigants by their conduct.

**Based upon the above the Magistrate’s Decision is as follows:**

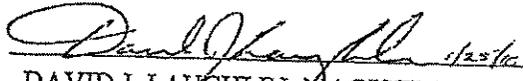
A The Motion to Show Cause, filed by the husband on April 7, 2009 pertaining to the obligations in the decree maturing on October 14, 2009 is dismissed as premature.

B The Motion for Relief from Judgment filed by wife on January 21, 2009 is denied and dismissed.

C In all other respects all orders not modified herein remain in full force and effect.

D Each shall party his or her fees; Costs of the matter to be shared equally by the parties after the application of the deposits.

\_\_\_\_\_  
DATE

  
DAVID J. LAUGHLIN, MAGISTRATE

**NOTICE**

**Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R.53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civil Rule 53(D)(3)(b).**

CC: Elizabeth Gaba, Esq.  
David Gordon, Esq.

This document sent to each attorney/party by:	
<input checked="" type="checkbox"/>	ordinary mail
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<input checked="" type="checkbox"/>	attorney mailbox
<input type="checkbox"/>	certified mail
Date: 1-26-10	By: <i>sl</i>

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

BETH E. MILLER (nka KNECE),  
Plaintiff

VS.

NORMAN L. MILLER,  
Defendant

JUDGE EVERETT H. KRUEGER  
CASE NO. 04 DR A 09 434

2010 APR 11 11:02  
CLERK OF COURT  
DELAWARE COUNTY, OHIO

JUDGMENT ENTRY  
APPROVING THE MAGISTRATE'S DECISION OF JANUARY 26, 2010  
OVERRULING PLAINTIFF'S OBJECTIONS

This matter comes on for consideration on the Magistrate's Decision filed on January 26, 2010. The court has independently reviewed the pleadings and arguments, and approves and adopts the Magistrate's Decision as ordered below.

Plaintiff filed her Objections on February 10, 2010. The transcript was filed on July 16, 2010 by Official Court Reporter Sylvia L. McElwain. The Magistrate's Decision filed on January 26, 2010 correctly outlines the procedural history before the Magistrate.

PLAINTIFF'S OBJECTIONS

**Plaintiff's Objections Are Addressed As Follows:**

Plaintiff filed Objections to the Magistrate's Findings and Conclusion of Law set forth in the Magistrate's Decision filed on January 26, 2010. However, the Objections have to do with the Magistrate Denying Plaintiff's Motion for Relief from Judgment Entry-Decree of Divorce filed October 14, 2005. Therefore, the Court will consider Plaintiff's Objection as one overall Objection.

— FIRST OBJECTION: *Plaintiff objects to the Magistrate denying her Motion for Relief from Judgment Entry-Decree of Divorce filed October 14, 2005.*

Ohio Civil Rule 60(B) states: "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment.

The motion shall be made within a reasonable period of time, and for reasons (1),



(2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation.”

Plaintiff waited approximately 3 years and 3 months before she filed her Motion for Relief from Judgment Entry pursuant to Ohio Civil Rule 60 (B). Therefore, the length of time Plaintiff waited to file her 60(B) Motion prohibits her from pursuing remedies under Ohio Civil Rule 60(B) (1), (2) or (3).

Furthermore, Plaintiff failed to present sufficient probative evidence that a judgment has been satisfied, released or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated or it is no longer equitable that the judgment should have prospective application. Finally, the Court finds based on the testimony that there is no other reason justifying relief from the judgment.

In order to prevail on a motion brought pursuant to Civ. R. 60(B) the movant must demonstrate that (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ. R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ. R. 60(B)(1), (2) Or (3), not more than one year after the judgment, order or proceedings was entered or taken. *Wooster Sheet Metal v. Lucak, et al*(2008-Ohio-3962; 2007 CA 326)(August 4, 2008).

If any prong of this requirement is not satisfied, relief shall be denied. *Argo Plastic Products Co. v. Cleveland* (1984), 15 Ohio St. 3d 389, 391.

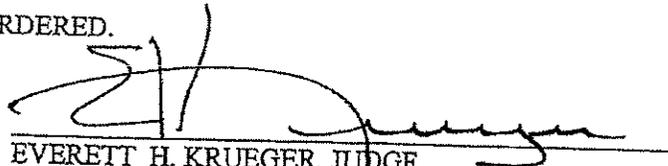
Plaintiff's objection to the Magistrate denying her Motion for Relief from Judgment Entry Decree of Divorce filed October 14, 2005 is not well taken.

**Plaintiff's objection is overruled.**

The Court adopts the Magistrate's Decision and incorporates the same in this Entry as the Judgment of this Court.

**This is a Final Appealable Order and the Clerk is directed to notify the parties and counsel accordingly.**

IT IS SO ORDERED.

  
EVERETT H. KRUEGER, JUDGE

CC: Parties  
Elizabeth Gaba, Esq.  
David Gordon, Esq.

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

P

BETH MILLER

32  
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Plaintiff-Appellant

-vs-

NORMAN MILLER

Defendant-Appellee

JUDGES:

Hon. Sheila G. Farmer, P.J.  
Hon. Julie A. Edwards, J.  
Hon. Patricia A. Delaney, J.

Case No. 10 CAF 09 0074

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Delaware County Court of  
Common Pleas, Domestic Relations  
Division, Case No. 04DR A 09 434

JUDGMENT:

REVERSED AND REMANDED

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Appellant:

ELIZABETH N. GABA  
1231 E. Broad St.  
Columbus, OH 43205

For Appellee:

DAVID GORDON  
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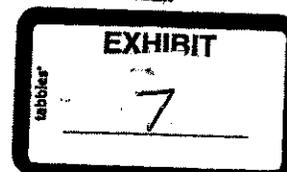
JAN ANTONOPLOS  
CLERK

2011 MAY 26 AM 10:48

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FILED



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*Per Curiam*

{¶1} Plaintiff-Appellant, Beth Miller (nka Knece), appeals the August 19, 2010 decision of the Delaware County Court of Common Pleas, Domestic Relations Division.

#### STATEMENT OF THE FACTS AND CASE

{¶2} Appellant and Defendant-Appellee, Norman Miller, were married on April 28, 1990. One child was born as issue of the marriage on September 9, 1990.

{¶3} On September 29, 2004, Appellant filed a complaint for divorce against Appellee. Appellee filed an answer and counterclaim. The matter proceeded before a magistrate of the Domestic Relations Division.

{¶4} The trial court docket shows the case was set for a settlement conference on December 21, 2004. On December 27, 2004, a document was filed with the trial court with the handwritten title, "Memorandum of Agreement." Underneath the words "Memorandum of Agreement" is a typewritten title, "AGREED JUDGMENT ENTRY (DECREE OF DIVORCE)." The body of the document is typed but it also contains handwritten interlineations initialed by the parties. The document is signed by the parties and the counsel for the parties. The document contains a signature line for the trial court judge assigned to the case. The signature line shows a signature of the "[trial court judge/initials of magistrate]". A Shared Parenting Plan and a guidelines worksheet were also docketed on December 27, 2004. That document also contains the same signature.

{¶5} On October 14, 2005, the trial court issued a *sua sponte* entry captioned "Judgment Entry Decree of Divorce." The judgment entry states:

{¶6} "The Court, sua sponte hereby adopts and incorporates the document filed December 27, 2004 titled, 'Memorandum of Agreement' as an Agreed Judgment Entry (Decree of Divorce) as a final Journal Entry, Decree of Divorce."

{¶7} The judgment entry contains the same signature.

{¶8} Since the divorce, both parties have remarried.

{¶9} In March 2007, Appellee moved to amend the shared parenting plan and recalculate child support. The parties resolved the issues by agreed entries in July 2007.

{¶10} On January 21, 2009, Appellant filed a motion for relief from the October 14, 2005 Judgment Entry Decree of Divorce and moved to vacate the December 27, 2004 Memorandum of Agreement, both pursuant to Civ.R. 60(B). Appellant argued in the motion that the trial court improperly adopted the Memorandum of Agreement without following the procedures of Civ.R. 53. Appellant further argued that the December 27, 2004 Memorandum of Agreement and the October 14, 2005 Judgment Entry Decree of Divorce should be vacated pursuant to Civ.R. 60(B)(4) and 60(B)(5).

{¶11} Appellee filed a Motion to Show Cause on April 7, 2009 for Appellant to show cause as to why she had not complied with a property division found in the Memorandum of Agreement.

{¶12} After a further review of the file, Appellant filed a "Motion to Vacate the 'Judgment Entry Decree of Divorce' and to Strike the 'Agreed Judgment Entry (Decree of Divorce)' for Cause Shown Herein", on April 10, 2009. The basis of Appellant's motion was that the December 27, 2004 Memorandum of Agreement and October 14, 2005 Judgment Entry Decree of Divorce were signed by the magistrate on behalf of the

trial court judge. Appellant argued in her motion that because the magistrate signed the October 14, 2005 Judgment Entry Decree of Divorce for the judge, the Decree of Divorce was a void judgment and was not a final, appealable order.

{¶13} The matter came on for hearing before a different magistrate on April 14, 2009. The issues before the magistrate were: (1) Appellee's motion to show cause, (2) Appellant's Civ.R. 60(B) motion, and (3) Appellant's motion to vacate and strike. At the hearing, Appellant withdrew her Civ.R. 60(B) motion without prejudice to re-filing and chose to proceed only on her motion to vacate and strike the December 27, 2004 and October 14, 2005 entries based on the signatures on the entries. The magistrate set Appellee's motion to show cause and Appellant's motion to vacate and strike for an evidentiary hearing on July 27, 2009. A Magistrate's Order memorializing these issues was filed on April 15, 2009.

{¶14} On July 20, 2009, Appellant served a subpoena upon the trial court judge to testify at the July 27, 2009 evidentiary hearing. The trial court judge filed a Motion to Quash the Subpoena. He also submitted an affidavit with the following statements:

{¶15} \* \* \*

{¶16} "[The magistrate] was duly appointed as Magistrate to conduct all Domestic Relations proceedings;

{¶17} "As Domestic Relations' Magistrate, she was given authority only to sign my name to all judgment entries that were agreed to and approved by the parties;

{¶18} \* \* \*

{¶19} An evidentiary hearing was held before the magistrate on July 27, 2009 and a decision was issued on January 26, 2010. At issue before the magistrate was the

validity of the December 27, 2004 and October 14, 2005 entries and Appellee's motion to show cause. The magistrate reviewed the procedural history of the case and determined the Memorandum of Agreement and Judgment Entry Decree of Divorce were valid entries. He concluded that the contested entries complied with Civ.R. 53 and it was within the judge's authority to delegate the duty of signing his name to agreed judgment entries to the magistrate. Further, because the parties relied on the entries for their own individual purposes such as remarrying and that the case had been reopened in 2007 without issue as to the entries, the magistrate found that the parties waived any objection they may have to the validity of the entries.

{¶20} In the Magistrate's Decision, the magistrate went on to complete a Civ.R. 60(B) analysis of Appellant's original January 21, 2009 motion, although Appellant had withdrawn that motion. The magistrate denied Appellant's 60(B) motion. The magistrate also denied Appellee's motion to show cause.

{¶21} Appellant filed objections to the Magistrate's Decision. On August 19, 2010, the trial court approved the Magistrate's Decision and overruled Appellant's objections.

{¶22} It is from this decision Appellant now appeals.

#### **ASSIGNMENTS OF ERROR**

{¶23} Appellant raises four Assignments of Error:

{¶24} "1. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT IN FINDING THAT THE JUDGMENT ENTRY WAS ENFORCEABLE BECAUSE THE ENTRY DID NOT ADHERE TO THE MANDATES OF CIV.R. 58.

{¶25} "II. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT IN FINDING THAT THE JUDGMENT ENTRY WAS ENFORCEABLE AND A FINAL APPEALABLE ORDER BECAUSE THE JUDGMENT ENTRY DID NOT ADHERE TO THE MANDATES OF CIV.R. 53.

{¶26} "III. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY NOT DETERMINING THAT THE ALTERATION OF THE THEN-TITLED 'MEMORANDUM OF AGREEMENT' TO SAY 'AGREED JUDGMENT ENTRY DECREE OF DIVORCE' CAUSED THE MEMORANDUM TO NO LONGER EXIST IN THE COURT FILE, AND FURTHER BY NOT DETERMINING THAT THE NOW ALTERED DOCUMENT NEWLY CALLED 'AGREED JUDGMENT ENTRY (DECREE OF DIVORCE)' WAS NEVER FILED, AS IT WAS ABSENT FROM THE DOCKET OF THE COURT.

{¶27} "IV. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BECAUSE [THE JUDGE] SHOULD HAVE RECUSED HIMSELF FROM PRESIDING OVER THIS MATTER BECAUSE HE WAS CALLED AS A MATERIAL WITNESS TO TESTIFY ABOUT FACTS IN THE CASE, AND HE TESTIFIED BY AFFIDAVIT. IT WAS PLAIN ERROR FOR HIM TO RULE ON APPELLANT'S OBJECTIONS."

I., II.

{¶28} We consider Appellant's first and second Assignments of Error simultaneously because we find them to be dispositive of this appeal. Appellant argues that the trial court erred in adopting the Magistrate's Decision that found the October 14, 2005 Judgment Entry Decree of Divorce was a final, appealable order because the entry fails to comply with Civ.R. 53 and Civ.R. 58. We agree.

{¶29} At issue in this case is the October 14, 2005 Judgment Entry Decree of Divorce. The trial court judge attested that the magistrate was given authority to sign the judge's name to all judgment entries that were agreed to and approved by the parties. The underlying December 27, 2004 Memorandum of Agreement giving rise to the October 14, 2005 Judgment Entry Decree of Divorce was an agreed entry, signed by the parties and their counsel. On October 14, 2005, the trial court filed a *sua sponte* Decree of Divorce. A review of that entry shows that the magistrate signed the judge's name to the document and initialed the signature with her initials.

{¶30} The October 14, 2005 entry, as a Final Decree of Divorce, is a judgment because it terminates the case or controversy the parties have submitted to the trial court for resolution. *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 736 N.E.2d 101; *Aguirre v. Sandoval*, Stark App. No. 2010CA00001, 2010-Ohio-6006. Judgments that determine the merits of the case and make an end to it are generally final, appealable orders. *Harkai*, supra. There is no differentiation between an "agreed judgment" and "judgment" for purposes of finality. Appellate courts are given the jurisdiction to review the final orders or judgments of lower courts within their appellate districts. Section 3(B)(2), Article IV, Ohio Constitution. For a judgment to be final and appealable, however, it must satisfy not only the requirements of R.C. 2505.02, and if applicable, Civ. R. 54(B), but also Civ.R. 58. Civ.R. 58(A) states,

{¶31} "Subject to the provisions of Rule 54(B), upon a general verdict of a jury, upon a decision announced, \* \* \*, the court shall promptly cause the judgment to be prepared and, *the court having signed it*, the clerk shall thereupon enter it upon the

journal. A judgment is effective only when entered by the clerk upon the journal.” (Emphasis added.)

{¶32} At issue in the present case is whether the October 14, 2005 Judgment Entry Decree of Divorce complies with Civ.R. 58. Upon our review of the relevant case law and the rules of practice and procedure, we find it does not.

{¶33} “Where a matter is referred to a magistrate, the magistrate and the trial court must conduct the proceedings in conformity with the powers and procedures conferred by Civ.R. 53. ‘Magistrates are neither constitutional nor statutory courts. Magistrates and their powers are wholly creatures of rules of practice and procedure promulgated by the Supreme Court.’ *Yantek v. Coach Builders Limited, Inc.*, Hamilton App. No. C-060601, 2007-Ohio-5126, ¶9, citing *Quick v. Kwiatkowski*, Montgomery App. No. 18620, 2001-Ohio-1498, citing Sec. 5(B), Art. IV, Ohio Constitution.

{¶34} Civ.R. 53 does not permit magistrates to enter judgments. This is the function of the judge, not the magistrate. *Brown v. Cummins* (1997), 120 Ohio App.3d 554, 555, 698 N.E.2d 501; *In re K.K.*, Summit App. No. 22352, 2005-Ohio-3112, at ¶17; *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 217-218, 736 N.E.2d 101; *Kidd v. Higgins* (Mar. 29, 1996), Lake App. No. 95-L-112.

{¶35} The exercise of the magistrate's powers under Civ.R. 53 is intended only to “assist courts of record.” *Yantek*, supra at ¶10. “A magistrate's oversight of an issue or issues, even an entire trial, is not a *substitute* for the [trial court's] judicial functions but only an *aid* to them.’ ‘[E]ven where a jury is the factfinder [in a proceeding before a magistrate], the trial court remains as the ultimate determiner’ of the case. It is the

primary duty of the trial court, and not the magistrate, to act as the judicial officer." *Id.* citing *Hartt v. Munobe*, 67 Ohio St.3d 3, 6, 1993-Ohio-177, 615 N.E.2d 617.

{¶36} One of the acts of the judicial officer is found in Civ.R. 58 where it states the court must sign the judgment. This Court examined Civ.R. 58 in an almost similar situation to the present case where a judgment entry was rubber-stamped with the trial judge's signature. In *Flores v. Porter*, Richland App. No. 2006-CA-42, 2007-Ohio-481, we found that the judge's rubber-stamped signature on a judgment entry did not comply with the requirement in Civ.R. 58 that the court must sign the entry, therefore rendering the entry not a final, appealable order. We cited to our brethren in the Twelfth District Court of Appeals in so holding:

{¶37} "The *Mitchell* court based its decision in part on the Twelfth District Court of Appeals case of *Brackmann Communications, Inc. v. Ritter* (1987), 38 Ohio App.3d 107, 526 N.E. 2d 823, in which the court found that a judgment entry that was not signed by the trial judge was not a final appealable order. The *Brackmann* court stated:

{¶38} "... simply because the amount in controversy is not large does not justify abandoning basic procedural formalities. Whether it be a county or common pleas court, a basic tenet of Ohio jurisprudence remains that a court speaks only through its journal ... Whether it be a county court or a common pleas court, the Ohio Rules of Civil Procedure, including Civ.R. 58, must be followed and obeyed where they are applicable.' *Id.* at 109. The *Brackmann* court thus held: 'In all civil cases appealed to this court, therefore, a formal final journal entry or order must be prepared which contains the following: 1. the case caption and number; 2. a designation as a decision or judgment entry or both; 3. a clear pronouncement of the court's judgment and its

rationale if the entry is combined with a decision or opinion; 4. *the judge's signature*; 5. a time stamp indicating the filing of the judgment with the clerk for journalization; and, 6. where applicable, a Civ.R. 54(B) determination and Civ.R. 54(B) language.' (Underlining added.) Id. at 109." Id. at ¶¶11-12.

{¶39} In *Peters v. Arbaugh*, (1976), 50 Ohio App.2d 30, 361 N.E.2d 531, the Tenth District Court of Appeals examined a judgment entry where the issue was whether a final, appealable order existed pursuant to Civ.R. 58. Judge Alba Whiteside wrote in his concurrence:

{¶40} " \* \* \* Civ.R. 58 provides that " \* \* \* the court shall promptly cause the judgment to be prepared and, the court having signed it, the clerk shall thereupon enter it. A judgment is effective only when filed with the clerk for journalization. \* \* \* (Emphasis added.)

{¶41} "It is my view, as we originally held herein, that there can be no judgment unless and until it is signed by the court, that is by the judge personally. The affixing of the judge's name by some unknown person who then initials the 'signature' cannot meet the requirement by Civ.R. 58 that the court sign the judgment. The purpose of this requirement is obvious. There need be a clear and unequivocal indication in the record that the action is that of the judge. An initialed 'signature' does not furnish that degree of clarity and certainty that is required. This is especially true where the decision and judgment are contained in a single writing since there is no prior indication either orally in open court or by a writing of the court's decision with which the initialed signature judgment can be compared to ascertain whether or not the judgment truly constitutes the action of the judge."

{¶42} The January 26, 2010 Magistrate's Decision, in denying Appellant's Motion to Vacate and Strike, concluded that the trial court is permitted to delegate the duty of signing a judgment to the magistrate. Pursuant to the dictates of Civ.R. 53 and Civ.R. 58, we find this conclusion to be in error. A court may not supersede the Rules of Civil Procedure to give authority to a magistrate to sign the judge's name to a judgment. We further find that under the confines of Civ.R. 53 and Civ.R. 58, there is no differentiation between an "agreed judgment" and a "judgment." Therefore, in this case, the October 14, 2005 Judgment Entry Decree of Divorce is not a final, appealable order because it is not signed by the court pursuant to Civ.R. 58.

{¶43} We hereby sustain Appellant's first and second Assignments of Error that the trial court erred in finding that the October 14, 2005 Judgment Entry Decree of Divorce is a final, appealable judgment.

{¶44} We also note that the Magistrate's Decision also ruled upon the merits of Appellant's Civ.R. 60(B) motion to vacate the October 14, 2005 judgment based on Civ.R. 60(B)(4) and 60(B)(5). We find any conclusions on Appellant's Civ.R. 60(B) motion to be premature because (1) Appellant withdrew that motion on April 15, 2009 and it was not before the court and (2) there was no final judgment from which a Civ.R. 60(B) proceeding could rise.

{¶45} We find it unnecessary to address Appellant's remaining Assignments of Error based on our holding above.

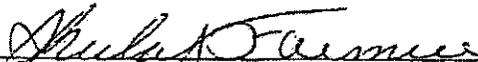
{¶46} The August 19, 2010 decision of the Delaware County Court of Common Pleas, Domestic Relations Division is reversed and the matter is remanded to the trial

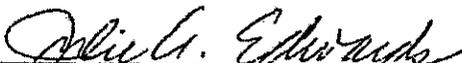
court for further proceedings to enter a Final Decree of Divorce so that Appellant can proceed on her arguments based on the underlying Memorandum of Agreement.

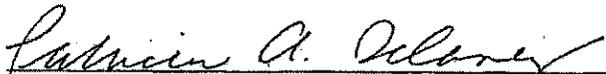
Farmer, P.J.

Edwards, J. and

Delaney, J. concur.

  
HON. SHEILA G. FARMER

  
HON. JULIE A. EDWARDS

  
HON. PATRICIA A. DELANEY

P

IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO

FIFTH APPELLATE DISTRICT

BETH MILLER

Plaintiff-Appellant

-vs-

NORMAN MILLER

Defendant-Appellee

32  
284

JUDGMENT ENTRY

Case No. 10 CAF 09 0074

For the reasons stated in our accompanying Opinion on file, the judgment of the Delaware County Court of Common Pleas, Domestic Relations Division is reversed and remanded. Costs assessed to be split equally between Appellant and Appellee.

*Sheila G. Farmer*  
HON. SHEILA G. FARMER

*Julie A. Edwards*  
HON. JULIE A. EDWARDS

*Patricia A. Delaney*  
HON. PATRICIA A. DELANEY

COURT OF APPEALS  
DELAWARE COUNTY, OHIO  
FILED  
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IN THE COURT OF COMMON PLEAS, DELAWARE COUNTY, OHIO  
DIVISION OF DOMESTIC RELATIONS

Beth E. Miller  
Plaintiff  
VS.  
Norman L. Miller  
Defendant

JUDGE EVERETT H. KRUEGER  
CASE NO. 04 DR A 09 434

JOHN ANTONOPLOS  
CLERK

2011 JUN -7 AM 9:03

COMMON PLEAS COURT  
DELAWARE COUNTY, OHIO  
FILED

JUDGMENT ENTRY

This matter comes on for consideration upon the Judgment Entry from the Fifth District Court of Appeals filed on May 26, 2011.

On December 27, 2004 a Final Shared Parenting Decree was signed under authority from the undersigned Judge. On October 14, 2005 a Final Judgment of Divorce was signed under authority from the undersigned Judge, incorporating the parties complete Memorandum of Divorce filed on December 27, 2004 and granting the Divorce. Further the Parties' Agreed Post Decree Judgment Entry filed July 31, 2007 pertaining to parental rights and responsibilities was signed under authority from the undersigned Judge.

This judge delegated authority to the Magistrate for signature and filing on each of the dates time-stamped thereon. Pursuant to the Remand, and upon review of the Record, the undersigned Judge hereby substitutes his original signature below for each of these above orders, effective the date of the original filing date for each thereof, and as if fully signed in the previous entry.

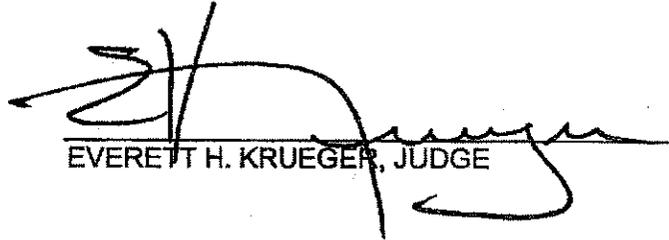
WHEREFORE IT IS HERBY ORDERED ADJUDGED AND DECREED that the parties are hereby granted a Divorce, effective 10/14/2005, under the terms and conditions as contained in the Parties' own memorandum of agreement filed on December 27, 2004, and is incorporated herein.

EXHIBIT 8

IT IS FURTHER ORDERED that the Court has approved and Orders the terms of the Agreed Post Decree Judgment Entry filed July 31, 2007, effective that date of filing, and the original signature below substitutes for the signature in that Entry.

IT IS SO ORDERED.

6/2/11  
DATE

  
EVERETT H. KRUEGER, JUDGE

The Clerk of this Court is hereby Ordered to serve a copy of this Judgment Entry upon the following by  Regular Mail,  Mailbox at the Delaware County Courthouse,  Facsimile transmission.

CC: Elizabeth Gaba, Esq.  
David Gordon, Esq.