

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE ex rel.  
STANLEY J. WASSERMAN, et al.,

Relators-Appellees,

v.

CITY OF FREMONT, et al.,

Respondents-Appellants.

\* Case No. 2011-0683  
\* On appeal from the Sandusky County  
Court of Appeals, Sixth Appellate District  
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\* Court of Appeals Case No. S-10-031  
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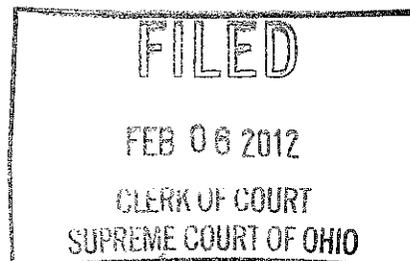
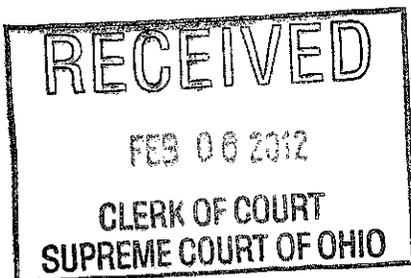
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MOTION FOR CLARIFICATION  
STANLEY J. WASSERMAN AND KATHRYN A. WASSERMAN, APPELLEES

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## **Concerning Ohio Supreme Court Slip Opinion No. 2012-Ohio-27 dated January 10, 2012**

*The Supreme Court first writes in this Slip Opinion:*

**“Court of appeals erred in granting a writ of mandamus to compel an appropriation proceeding when the court had not yet determined that relators had met their burden of proving that their property had been taken by the city.”**

*Later in the text of the same document the Supreme Court writes on page 3:*

**“These further proceedings should permit the parties to submit evidence concerning whether a taking of the Wassermans’ property has occurred.**

The later statement written by the court affords both parties the opportunity to again submit evidence to enable the Court of Appeals to decide this issue appropriately. With the case remanded to the court of appeals, we, as appellees, respectfully request the Supreme Court to clarify the meaning of one sentence of text also found within the above referenced “Slip Opinion” so that adequate **relevant** evidence may be presented. Please review the following excerpts copied verbatim from various case documents.

*The Court of Appeals writes within the top paragraph on page 6 of the Appeals Court “Decision and Judgment” dated January 18, 2011:*

**“For the foregoing reasons, we find that the agreement, although contractual in nature, created an easement over the respondents’ property.”**

*“Merit Brief of Amicus Curiae, State of Ohio, In Support of Neither Party” Filed with the Supreme Court, August, 29 2011. Please note that “counsel of record” writes:*

**“The drainage tile removes excess water from the Wassermans’ land, and they allege that they own an easement for the portion that runs through City lands.”**

This statement by Counsel for Amicus Curiae, contains the wording, **“and they allege that they own an easement.”** The State of Ohio through it’s “counsel of record” has chosen to use wording which also challenges the Appeals Court’s decision concerning the finding of

easement. While the Appeals Court's determination of easement was perhaps not the primary issue at hand, the Supreme Court, having the entire case record available, writes a short summary of the case in the sentences that follow.

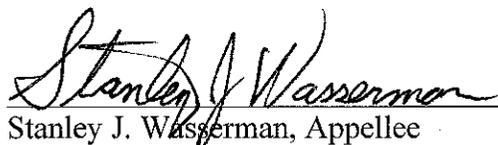
*Slip Opinion No. 2012-Ohio-27 the Supreme Court writes on page 2:*

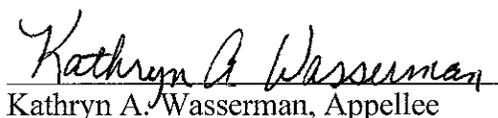
**“The Wassermans alleged that when the city constructed a reservoir on its property, the city damaged drainage tiles belonging to the Wassermans, and that the city’s actions interfered with the Wassermans’ use of their drainage easement over the city’s property and with their use of their property, due to inadequate drainage. Thus, the Wassermans alleged the city’s actions constituted a taking of their property.”**

The exact intent of the Supreme Court in choosing to use the same words, **“alleged that”** which appears within the first sentence is ambiguous. Clearly the words **“alleged that”** used within this sentence can be associated with the verbs **”damaged”** and **“interfered”**; however, this sentence lacks clarity if in fact the Supreme Court also intended to specify that the Wassermans had only alleged their ownership of a drainage easement through the city’s property as did the statement found within the Merit Brief of Amicus Curiae.

In conclusion the original document of Agreement 1582 dated October 14, 1915 has been in plain view of all who seek to review it. It is therefore the belief of the appellees that clarification by the Supreme Court with regard to whether the Supreme Court’s writing upholds the Appeals Court’s decision finding that this document had created a binding easement.

Respectfully submitted,

  
Stanley J. Wasserman, Appellee

  
Kathryn A. Wasserman, Appellee

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Merit Brief of Appellees Stanley J. Wasserman and Kathryn A. Wasserman was sent this 3<sup>rd</sup> day of February 2012, via ordinary U.S. mail, to the following:

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