

ORIGINAL

IN THE SUPREME COURT OF OHIO

BETH MILLER (nka BETH KNECE), : Case No. 11-1172

Appellant/Cross-Appellee, : Appeal and Cross-Appeal from the

v. : Delaware County Court of Appeals,

NORMAN MILLER, : Fifth Appellate District

Defendant; : (Case No. 10 CAF 09 0074)

REBECCA S. NELSON-MILLER, : Administrator of the Estate of Norman

Leslie Miller, : Leslie Miller,

Appellee/Cross-Appellant. :

REPLY BRIEF
OF
APPELLEE/CROSS-APPELLANT REBECCA S. NELSON-MILLER, AS
ADMINISTRATOR OF THE ESTATE OF NORMAN LESLIE MILLER

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I. INTRODUCTION

The issue before this Court is quite simple: does the trial court's failure to comply with the signature requirement in Civ.R. 58(A), by not personally signing a judgment entry, render the resulting judgment voidable or void? Based upon the logical application of Civ.R. 58(A) and existing Court precedent, Cross-Appellant's proposition of law reasonably answers that such a judgment is voidable. If adopted, Cross-Appellant's proposition of law would ensure that the time-honored principle of finality of judgments is upheld and applied, while also recognizing longstanding rules of law and equity adopted by this Court.

In her Merit Brief, Appellant almost entirely ignored the sole proposition of law before this Court. Instead, Appellant's Merit Brief:

- Failed to discuss, refer to, or cite the Second District Court of Appeals' decision in *Lamb v. Lamb*, 2nd Dist. Nos. 24076 and 23538, 2011-Ohio-2970, 2011 Ohio App. LEXIS 2498 (June 17, 2011), which held that an invalid signature under Civ.R. 58 rendered the judgment of the trial court *voidable*, not void.
- Did not discuss, refer to, or cite this Court's decision in *Bingham v. Miller* (1848), 17 Ohio 455, which concluded that divorces unconstitutionally granted by the Ohio General Assembly were *voidable*, rather than void, based upon the importance of protecting the finality of divorces and to avoid the law of unintended and bad consequences;
- Improperly focused on issues not before this Court, *e.g.*, whether a magistrate has the requisite authority to sign a judgment entry on behalf of, and at the request of, the trial judge¹;

¹ This question was presented to this Court as Cross-Appellant's proposed Proposition of Law No. 1 in the COMBINED MEMORANDUM IN RESPONSE AND MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLEE/CROSS-APPELLANT REBECCA S. NELSON-MILLER, AS ADMINISTRATOR OF THE ESTATE OF NORMAN LESLIE MILLER filed with this Court on July 11, 2011. That proposition of law ("When a trial judge authorizes the magistrate to sign a judgment entry, the signature affixed by the magistrate on the judge's behalf satisfies the "signature" requirement in Civil Rule 58") was not accepted for review by this Court.

- Merely copied and pasted arguments raised in earlier pleadings that were based on propositions of law not accepted by this Court²; and,
- Argued legal issues not part of or pertinent to this case, *e.g.*, the enforcement of settlement agreements (See Appellant's Merit Brief, p. 21), the effect of the death of Norman L. Miller (See Appellant's Merit Brief, pp. 9 and 24), the impact of the passage of time on the validity of a judgment (See Appellant's Merit Brief, p. 26), and the law surrounding nunc pro tunc entries (See Appellant's Merit Brief, pp. 27-28).

The purpose of this Reply Brief is to refocus the discussion on the sole proposition of law before the Court. As set forth in Cross-Appellant's Merit Brief, and for the reasons below, this Court should reverse the lower appellate court's decision, and adopt the following rule of law: if the trial court fails to comply with the signature requirement of Civ.R. 58(A) by not personally signing the judgment entry, the resulting judgment is voidable, not void, and may be challenged only through a direct appeal, not by collateral attack. That holding would follow and extend this Court's decision in *State ex rel. Leshner v. Kainrad*, 65 Ohio St.2d 68, 417 N.E.2d 1382 (1981), while also recognizing the well-reasoned and existing precedents from the Second District Court of Appeals.

II. LAW AND ARGUMENT

Cross-Appellant's proposition of law states a logical rule of Ohio law that this Court should adopt. If the signature of a trial court does not comply with the requirements of Civ. R. 58, then the judgment entry should be considered voidable, not void. This rule applies particularly where there is an *agreed* judgment entry, the validity of which has not been questioned or challenged for years after its filing. It applies equally as to *any* judgment entry that was not appealed and has been left unquestioned or unchallenged for a period of years. Under

² See *e.g.*, pages 11-16 of Appellant's Merit Brief are copied and pasted from the legal argument section of the Memorandum in Response of Appellant/Cross-Appellant Beth Kneze that addressed a proposition of law that was not accepted by this Court.

either set of circumstances, there is no risk that the judgment has done anything other than what the trial court intended.

Appellant essentially posited three arguments. First, Appellant contended that the Magistrate's signing of the "Judgment Entry Decree of Divorce" in October 2005 (the "Decree of Divorce") was a defective or unlawful delegation of power. See Appellant's Merit Brief, pp. 10-26. That issue is not before the Court. Second, Appellant asserted that the Magistrate's signing the Decree of Divorce was an unconstitutional act. See Appellant's Merit Brief, pp. 15-16; 23-24, and 26-27. That issue is not before the Court. Third, and in passing, Appellant argued that the judgment entry signed by the magistrate, rather than the trial judge, is void. This is the only issue before the Court, and to which Appellant devoted only portions of pages 22-27 of her Merit Brief.³ But, Appellant's argument is contrary to applicable legal precedent and the sound practical considerations long ago recognized by this Court in *Bingham v. Miller*.

Appellant did not address the important principle of honoring the finality of judgments. For our legal system to work—especially in the area of family law—litigants and others must know that a judgment is final and able to be relied upon. The resolutions of cases (especially those done by agreement) cannot rest on uncertainty or the apparent approval of trial courts. They must have as their foundations certainty and finality.⁴

³ Appellant inexplicably addressed another issue, that of *nunc pro tunc* entries. See Appellant's Merit Brief, pp. 26-28. That issue is not before the Court and has nothing to do with this appeal.

⁴ The laws of Ohio have adequate safeguards. Any final order, including one based on the defective signature of a trial judge, can be challenged on direct appeal. See R.C. 2305.01, *et seq.*; Civ.R. 54(A); App.R. 3 and 4; and *Lamb*, *supra*. If the final order has been based on fraud or another of the grounds articulated in Civ.R. 60(B) (none of which are applicable in this case), then the final order later can be collaterally attacked in a motion for relief from judgment.

A. Appellant's errant analysis of *State ex rel. Lesher v. Kainrad* was overly simplistic, ignored the legal and practical considerations upon which *Lesher* was based, and failed to demonstrate why *Lesher* should not guide the outcome of this case.

In *Lesher*, this Court determined the validity of a divorce judgment that failed to comply with Civ.R. 53. This Court held that a domestic relations judgment which did not comply with the mandates of Civ.R. 53 was voidable, not void. Appellant's errant and overly simplistic argument is that, because *Lesher* involved a different Civil Rule and the trial judge (rather than a magistrate) signed the judgment entry, then the holding in *Lesher* should not apply. See Appellant's Merit Brief, pp. 16, 22-24. Appellant's argument is misplaced.

In *Lesher*, this Court succinctly explained what happens when a judgment is void: "[i]t is as though proceedings had never occurred; the judgment is a mere nullity." *Id.* at 71, quoting *Romito v. Maxwell*, 10 Ohio St.2d 266, 267, 227 N.E.2d 223 (1967). As in the instant case, the litigants and the legal system in *Lesher* relied on the apparent validity and finality of this domestic relations judgment. This Court recognized that the former husband *could have* voided the divorce judgment based upon the trial court's lack of compliance with Civ.R. 53, but his failure to pursue "appropriate remedies" in a timely fashion (most notably, a direct appeal) acted "as an estoppel" to his ability to do so. *Id.* Finding and holding the non-complying judgment to be voidable (rather than void) did not deprive the former husband in *Lesher* of any opportunity to appeal the judgment. The same is true of Appellant herein.

This Court in *Lesher* recognized the dramatic effect of determining a judgment to be void: it would render "many alleged divorces complete nullities". *Id.* The Court recognized that the problem of Civ.R. 53 compliance was potentially widespread, such that many divorce judgments would have been placed in jeopardy if the Court had adopted a rule determining that the *Lesher* judgment was "void."

The rationale of the *Leshner* holding applies with equal strength in the instant case. It is irrelevant that the Millers' Divorce Decree involves a different civil rule. *See, e.g., Christy v. Christy*, 4th Dist. No. 96CA902, 1997 Ohio App. LEXIS 2692 (June 12, 1997), at *12 (applying *Leshner* to find a judgment voidable, not void, when it failed to satisfy Civ.R. 54(A)). This case implicates the same issues as *Leshner* (the finality of a domestic relations judgment and the deleterious effects of voiding it). A ruling that such a judgment is a "mere nullity" would result in hundreds of long-completed divorces and dissolutions being "undone," and create uncertainty and chaos for thousands of persons who believed that their marriages were lawfully terminated—and who since have structured their lives accordingly.

In the Millers' case, both the court of appeals and Appellant inexplicably ignored the holdings in *Leshner* and subsequent cases. For example, the Fifth District Court of Appeals previously followed *Leshner* in *Beal v. Beal*, 5th Dist. CA 2182, 1984 Ohio App. LEXIS 9168 (April 3, 1984). Citing to, and relying upon *Leshner*, the Fifth District recognized in *Beal* that *Leshner* "dealt with the same issue in which a divorce hearing was held before a trial referee and no objections were filed to the divorce entry, nor a timely appeal filed from that order even though the requirements of Civ.R. 53(E) were not complied with." *Id.* at *4. Because the judgment was rendered voidable, not void, the Fifth District concluded that the former husband's "failure to pursue his appropriate remedies in a timely fashion acts as an estoppel to a remedy at this late date." *Id.*

B. Appellant did not discuss or even refer to the rulings of the Second District Court of Appeals that judgments not personally signed by the trial judge are merely voidable, not void—the position advocated by Cross-Appellant in this case.

The position advocated by Cross-Appellant in the proposition of law accepted by the Court is logical and based on longstanding precedent. In addition to the holdings in *Leshner* and

Beal, the Second District Court of Appeals has found, under circumstances analogous to this case, that judgments not personally signed by the trial judge are *voidable* not void.⁵

1. The Second District Court of Appeals has taken the more logical view of non-compliance with Civ.R. 58.

Dating back more than 20 years, the Second District Court of Appeals has spoken on the issue twice, both times in the context of a court's "rubber-stamp" signature in lieu of the trial judge's physically signing a judgment. In *Lamb v. Lamb*, 2nd Dist. Nos. 24076 and 23538, 2011-Ohio-2970, 2011 Ohio App. LEXIS 2498 (June 17, 2011), the Second District decided the issue in a context similar to the one in this case, i.e., a party seeking to vacate a domestic relations judgment years later on the basis that the trial court judge had not properly signed it. In so doing, this Court of Appeals relied on its own precedent in *Platt v. Lander*, 2nd Dist. App. No. 12371, 1991 Ohio App. LEXIS 2117 (May 7, 1991). Both times, the Second District held that: a "rubber-stamp" signature of a trial judge did not comply with the requirements Civ.R. 58 to create a final order; but, the resulting judgment was voidable, not void. Further, such a judgment no longer is voidable if and after no appeal is taken from it. *Lamb, id* at ¶¶ 7-8, 10-13.

There is no legally-significant distinction between the "rubber-stamp" signatures examined in *Lamb* and *Platt* and the non-complying signature of the trial court in the Millers' case. The common denominators in each of these cases are: (i) an apparently-valid domestic relations judgment and final order; (ii) the decision of both litigants to accept the final order and forego an appeal; (iii) acceptance by the litigants and the court system of the validity and finality

⁵ In the Merit Brief of Cross-Appellant and this Reply Brief, Cross-Appellant assumes *arguendo* that the signature of the trial judge in the Millers' Decree of Divorce did not comply with the requirements of Civ.R. 58. This Court did not accept for review the proposition of law set forth by Cross-Appellant that would have recognized the validity of a signature on behalf of the trial court by a magistrate. Appellant, however, devoted most of her Merit Brief to that issue. See Appellant's Merit Brief, pp. 10-21, 24-25. To the extent this Court chooses to consider such arguments, Cross-Appellant incorporates by reference the arguments raised in its jurisdictional memoranda relating to proposed proposition of law number one. See COMBINED MEMORANDUM IN RESPONSE AND MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLEE/CROSS-APPELLANT REBECCA S. NELSON-MILLER, AS ADMINISTRATOR OF THE ESTATE OF NORMAN LESLIE MILLER filed with this Court on July 11, 2011.

of the judgment; (iv) the passage of years without any challenge to the validity of the judgment; (v) reliance on the final order; and, (vi) the parties' changing and structuring their lives according to the trial court's judgment. It is logical, fair, and orderly that the parties in each of these cases are estopped from challenging the validity of these judgments.

2. *Lamb and Platt* show that the Fifth District Court of Appeals' approach in this case is flawed and inconsistent with the goal of orderly civil procedure.

As noted in the Merit Brief of Cross-Appellant, some Courts have held, like the court of appeals below, that a "rubber-stamp" judgment entry is not a final appealable order. *See e.g., In re Mitchell*, 93 Ohio App.3d 153, 154 (1994) (Eighth District deciding effect of rubber-stamp signature); *Flores v. Porter*, 5th Dist. No. 2006-CA-42, 2007-Ohio-481, 2007 (Fifth District deciding effect of rubber-stamp signature). Unfortunately, also like the court of appeals below, these cases did not address or acknowledge: the enforceability of such orders; or, the bad and potentially-catastrophic effects of such a holding. Determining that such a judgment is void (rather than voidable) leaves cases "re-opened" that parties and courts long ago believed to be resolved and completed. More importantly, that determination leaves litigants who rely on the judgments "up in the air" and in jeopardy of losing family and property acquired since the judgment was entered. That result is completely contrary to the goal of orderly civil procedure.

The *Lamb* and *Platt* decisions provide such order and certainty. They stand for the proposition that a "voidable rubber-stamped order becomes final when no appeal is taken." *Lamb* at ¶ 13, citing *Platt*. Significantly, *Lamb* heeds the foundational principle of finality of judgments, finding that a party is *estopped* from challenging the validity of a judgment based on the court's signature (that later might be revealed to be out of compliance with Civ.R. 58). *Id.*

Indeed, in the instant case, the *Lamb-Platt* holdings would have determined that Appellant was estopped from challenging the validity of the Decree of Divorce because

Appellant: (i) did not file a direct appeal; (ii) relied on the finality of the judgment; and, (iii) did not question its finality or validity when her former husband moved in 2007 to amend the parties' shared parenting plan and to recalculate child support. Everyone involved in the Millers' divorce action (including the parties and the trial court) accepted the Divorce Decree as final and binding. Surely, these litigants (and the general public) would view the non-complying signature to be a "legal technicality" that should not disrupt or "undo" their lives years later. Given the passage of time, the parties' unquestioned acceptance of the judgment, and faithful reliance on the judgment as a final order, it now is disingenuous of Appellant to challenge it on a non-substantive "technicality." Equally so, it would be unfair to "reopen" this divorce case now, more than seven years after it ended.

C. Appellant's brief discussion of the "practical considerations" misstated Cross-Appellant's arguments, ignored the far-reaching policy ramifications of the lower appellate court's decision, and overlooked the applicable legal precedents.

Appellant has greatly mischaracterized the basis for Cross-Appellant's position and the proposition of law now being reviewed by this Court. Appellant's Merit Brief inaccurately states that there is "tacit acknowledgment by Appellee [Cross-Appellant] that this practice of the judge [i.e., having a magistrate sign final judgment entries] 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 *Miller* holding." Appellant's Merit Brief, p. 22. This statement simply is wrong.

Cross-Appellant nowhere argues or acknowledges that the trial judge's practice of delegating the authority to his magistrate to sign agreed entries in domestic relations cases was wrong or unconstitutional. In fact, Cross-Appellant argued exactly the opposite—contending that such practice complied with Civ.R. 58. More importantly, and unlike Appellant, Cross-

Appellant urges this Court to follow (not ignore) the applicable legal precedents set forth in *Leshner, Beal, Lamb, Platt, and Bingham v. Miller*. The “practical considerations” presented by Cross-Appellant bolster the legal arguments supporting the sole proposition of law before the Court.

Our society of laws relies on the fundamental principle that judgment entries are final, enforceable, and effective. Litigants—both those in the instant case and all other divorcing couples—must be able to rely on the finality of a court’s final judgment, particularly in cases where it was entered pursuant to a court-approved agreement of the parties and unchallenged for years thereafter. This principle must be followed in domestic relations cases wherein litigants rely on divorce or dissolution decrees as the bases for raising their children, remarrying, starting a “second” family, and structuring their financial, estate-planning, and business affairs. Divorced parties re-start and re-build their lives on the foundation of final decrees and other final orders. A procedural formality or a legal technicality—here, a signature of the court that purportedly does not comply with Civ.R. 58(A)—should not stand in the way of that finality, especially when the procedural formality does not call into question the genuineness of the court’s judgment or, in some cases, the fact that it was agreed to by the parties.

In the instant case, however, the Fifth District Court of Appeals has interpreted Civ.R. 58(A) in a manner that undermines the principle of finality. The legal precedents in *Leshner, Beal, Lamb, and Platt* reinforce the notion that judgments can be final, while protecting (through direct appeal) the ability of a dissatisfied litigant to challenge it. Ohio law, sound public policy, and common sense dictate a reversal of the lower appellate court’s decision

1. **This Court, long ago, in *Bingham v. Miller*, recognized the importance of protecting the finality of divorces.**

Appellant has recognized and agreed that “it is appropriate to give some consideration to the potential issues that might arise regarding the effect of the *Miller* ruling on others who have magistrate-signed judge’s names on entries and orders.” Appellant’s Merit Brief, p. 22. Yet, Appellant contends that “matters of convenience should not dictate this Court’s substantive decisions.” *Id.* In essence, Appellant asked this Court to, in addition to ignoring applicable legal precedent, turn a blind eye to the important practical considerations flowing from this case. This case, however, involves the most important issues in the life of a litigant in a domestic relations proceeding, including: family relationships; remarriage; child and spousal support; home ownership; finances; retirement; property distribution; and, estate planning. These are not “matters of convenience.” Appellant chose not to address the chaos and disruption inevitably flowing from the lower appellate court’s decision voiding the Millers’ Divorce Decree and those of hundreds of others.

Appellant’s misguided argument also ignores longstanding precedent of this Court dating back to 1848. That year, the Court recognized the same parade of horrors projected by Cross-Appellant in this case. In *Bingham v. Miller* (1848), 17 Ohio 455, the Court held that even an unconstitutionally-granted divorce was voidable, not void. The reason was simple—the Court could not, in fairness, invalidate these divorces because “second marriages have been contracted, and children born, and it would bastardize all of these, although born under the sanction of wedlock” *Id.* at 448. These are not “matters of convenience”. They are the threads that weave and hold together our society of values and law.

2. The Court's holding and rationale in *Bingham v. Miller* should guide the decision in this case in order to avoid the unintended and bad consequences flowing from the ruling of the Fifth District Court of Appeals.

The unintended and bad consequences that would result from upholding the court of appeals' holding below are compelling enough for this Court to reverse the erroneous ruling of the Fifth District Court of Appeals that the Millers' Decree of Divorce was not a final order (and, therefore, void). The immediate effect of that ruling is that the Millers' marriage never ended and, therefore, their divorce case remained pending. That ruling calls into question the subsequent marriages of both parties. And now, with Norman Miller having died, there is uncertainty with respect to his estate.

The Millers' case is but a microcosm of the mess created by the court of appeals' decision. The very real consequences of that decision are of interest to more persons than the Millers. In Delaware County alone, there are thousands of divorce and dissolution cases from the past 10 years that are affected by this type of uncertainty.

This troubling issue is not confined to just one county or one appellate district. Courts of appeals in other districts have grappled with cases in which parties have sought to invalidate judgments based on the argument that the trial court did not comply with the signature requirement in Civ.R. 58(A). For example, if this Court were to affirm the Fifth District Court of Appeals ruling herein, it implicitly would overrule (or, at least, call into question) the *Lamb-Platt* line of cases from the Second District Court of Appeals. And, such affirmance would draw into question the cases like *Leshner* and *Beal* that have dealt with other "defective" procedures leading to final judgments.

Since the decision of the court of appeals, on May 26, 2011, there have been a myriad of problems among litigants (past and present), legal practitioners, and the common pleas court in

Delaware County. There also have been an appreciable number of unusual legal proceedings, as parties and their attorneys jockey for position and try to protect their legal rights. In the Millers' case, for example, there have been two subsequent appeals to the Fifth District Court of Appeals. In other cases, the trial court has begun to see some of the issues created by the court of appeals' ruling that judgments in domestic relations proceedings were not final orders. For example, there is uncertainty about child-support collections, the enforceability of previous orders (especially in contempt proceedings), termination of spousal support, the administration of decedents' estates, and the validity of subsequent marriages.

Appellant gave short shrift to these "practical considerations." *See* Appellant's Merit Brief, p. 22. While dismissing these facts of life, Appellant made a confusing argument that touched on constitutional and theoretical legal considerations pertaining to issues that are not before this Court. And, toward what end?

By advocating that the Millers' Decree of Divorce should be invalidated, Appellant would leave the Millers (and thousands of other Ohio citizens) still legally married. Apparently content with the confusion, Appellant urges upon this Court a rule of law that would void these divorces and the new lives of these litigants subsequent to their judgments.

The ultimate goal of our legal system is to strive for a just result that is credible, final and reliable. There is something untoward about Appellant's position. It seeks to allow a former litigant, years after the fact, to "get out of" a court order or avoid a long-established obligation (such as child support); and, worse, to renege on an agreement made in good faith and submitted to a trial court. That result cannot be right—or just.

III. CONCLUSION

For the reasons discussed above, the court of appeals holding effectively validates many of divorces or dissolutions that long ago were deemed final. The court of appeals' ruling below

has implications that reach far beyond these parties. It sets forth a rule of law that casts doubt upon the validity of hundreds, and possibly even thousands, of judgments that were deemed final and relied upon by the parties affected by them. To correct this problem, this Court must reverse the lower appellate court's decision. This Court should hold that: if the trial court fails to comply with the signature requirement of Civ.R. 58(A) by not personally signing the judgment entry, the resulting judgment is voidable, not void; and, it may be challenged only through a direct appeal, not by collateral attack. That holding simply would follow and extend this Court's decision in *Leshner*. Such a result is a logical application of Civ.R. 58(A). It ensures the finality and reliability of judgments.

Respectfully submitted,

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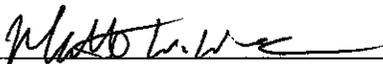
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CERTIFICATE OF SERVICE

The undersigned certifies that on February 21, 2012 a copy of the foregoing was served via U.S. mail, postage pre-paid to the following:

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