

ORIGINAL

IN THE SUPREME COURT OF OHIO

Michael L. Hawsman, minor, et al.,

Appellees,

v.

The City of Cuyahoga Falls, et al.,

Appellants.

Case No. 2001-1588

On Appeal from the Summit
County Court of Appeals,
Ninth Appellate District

11-1588

APPELLEES' MOTION TO STRIKE PROPOSITION OF LAW II
AND APPENDIX PAGES 33-36 FROM THE MERIT BRIEF OF APPELLANTS
CITY OF CUYAHOGA FALLS

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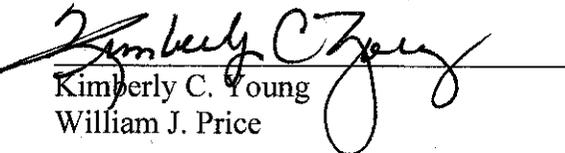
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APPELLEES' MOTION TO STRIKE PROPOSITION OF LAW II
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Appellees, Michael L. Hawsman, Minor, et al., moves this Court to strike that portion of the Merit Brief filed by Appellants City of Cuyahoga Falls which contains "Proposition of Law II" as such proposition was not included in the Appellant's Memorandum in Support of Jurisdiction, as set forth in S.Ct. Prac. R. 3.1(B) and the appendix pages 33 through 36 as those pages contain information that was not part of the record at the trial court or court of appeals.

These reasons are more fully explained in the attached memorandum.

Respectfully submitted,
Kimberly C. Young, Counsel of Record


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COUNSEL FOR APPELLEE
MICHAEL L. HAWSMAN, et al.

MEMORANUM IN SUPPORT

This case arises from an injury claim by the Appellee, Michael L. Hawsman, sustained at an aquatics facility operated by the Appellant City of Cuyahoga Falls. In its Memorandum in Support of Jurisdiction, Appellant sought this court's review of one proposition of law. Specifically:

As recognized in *Cater v. Cleveland* (1998), 83 Ohio St.3d 24, an indoor municipal swimming pool is used for recreational purposes and, as such is an immune governmental function under R.C. 2744.01(C)(2)(u). It is not similar to an office building or courthouse and therefore the exception to immunity pursuant to R.C. 2744.02(B)(4) does not apply.

The Merit Brief of Appellant, filed with this Court on March 9, 2012, contains an additional proposition of law which was not contained in the Memorandum in Support of Jurisdiction, as required by S.Ct. Prac. R. 3.1(B), and therefore addresses an issue not accepted by this court for review.

Proposition of Law II asks this court to review an issue not raised at by the Appellants in the lower courts. This Court has held that as a general rule, it will not consider arguments that were not raised in the courts below. *Belvedere Condominium Unit Owners' Ass'n v. R.E. Roark Cos.*, 67 Ohio St. 3d 274, 279 (Ohio 1993) citing *State v. 1981 Dodge Ram Van* (1988), 36 Ohio St.3d 168, 170, 522 N.E.2d 524, 526. While not absolute, this rule should be applied in this instance, inasmuch as the Proposition of Law II, presented by Appellants, is not implicit in the Court's determination of the matter presented by the proposition. To the contrary, it asks this Court to expand its review

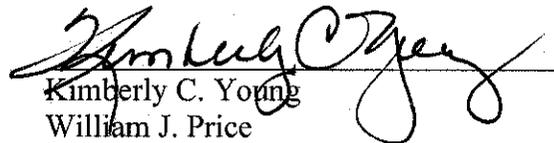
beyond the facts and issues presented by in the instant matter to unnecessarily reach an indiscriminate and sweeping determination on statutory interpretation.

Finally, the Appendix pages 33 through 36, offered by Appellants in support of their second proposition of law, contains evidence that was neither introduced below, nor contained in the record certified and transmitted by Court by the Clerk of the Ninth District Court of Appeals. As such it should be stricken from the record before this Court.

For all of the foregoing reasons Appellees move this Court to strike those portions of Appellants' Merit Brief containing arguments relating to its second proposition of law, pages, 11 through 21, as well as the appendix pages 33 through 36.

Respectfully submitted,

Kimberly C. Young, Counsel of Record

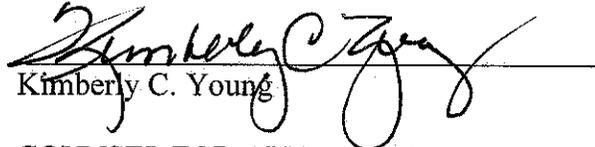


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PROOF OF SERVICE

I certify that a copy of this Brief of Appellees was sent by ordinary U.S. mail to counsel of record for the Appellant, Hope L. Jones and Paul A. Janis, Director of Law, City of Cuyahoga Falls, 2310 Second Street, Cuyahoga Falls, Ohio 44221 on March 13, 2012.


Kimberly C. Young

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