

IN THE SUPREME COURT OF OHIO

**STATE OF OHIO, ex rel.
LORI ANN BROWNING, nka BURNS
Plaintiff-Appellee**

Case No. 12-1108

**-vs-
TERRY DEAN BROWNING
Defendant-Appellant**

**On Appeal from the Court of Appeals,
Fifth Appellate District
Court of Appeals Case Nos.
CT2011-55 & CT2011-060 (consolidated)
2012-Ohio-2158
Muskingum County Domestic Relations
Trial Court Case No. JV000036341**

**APPELLEE, MUSKINGUM COUNTY JOB AND FAMILY SERVICES,
CHILD SUPPORT DIVISION'S MEMORANDUM IN RESPONSE TO
APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION**

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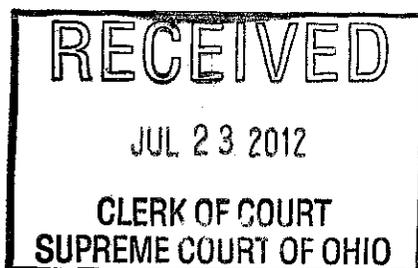
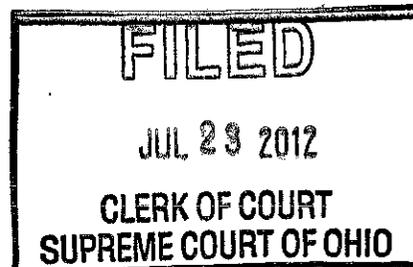


TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE AND FACTS RELEVANT TO APPELLANT’S
ASSIGNMENT OF ERROR 1

APPELLEE-MUSKINGUM COUNTY CHILD SUPPORT ENFORCEMENT AGENCY’S
POSITION AS TO WHY THIS CASE DOES NOT PRESENT A SUBSTANTIAL
CONSTITUTIONAL QUESTION AND IS NOT A CASE OF PUBLIC
OR GREAT GENERAL INTEREST 1

ARGUMENT IN OPPOSITION OF APPELLANT’S PROPOSITIONS OF LAW I..... 6

ARGUMENT IN OPPOSITION OF APPELLANT’S PROPOSITION OF LAW II..... 9

ARGUMENT IN OPPOSITION OF APPELLANT’S PROPOSITION OF LAW III..... 11

CONCLUSION..... 12

CERTIFICATE OF SERVICE 12

TABLE OF AUTHORITIES

Case Law

<i>Lungard v. Bertram</i> , 86 Ohio App. 392 (1949)	9
<i>Miller v. Nelson-Miller</i> , 2012-Ohio-2845 (Decided June 27, 2012)	10
<i>Salamon v. Taft Broadcasting Co.</i> , 16 Ohio App.3d 336 (1984)	9
<i>Strack v. Pelton</i> , 70 Ohio St.3d 172 (1994) ..	10

Ohio Statutes

Ohio Rev. Code § 2151.23.....	7
Ohio Rev. Code § 2151.23(A)(11).....	1, 2
Ohio Rev. Code § 2151.23(B)(4).....	1, 2
Ohio Rev. Code § 2151.23(G)(1).....	1
Ohio Rev. Code § 2151.23(G)(2).....	1
Ohio Rev. Code § 2151.23.1.	1
Ohio Rev. Code § 3103.03(B)	7
Ohio Rev. Code § 3103.03.1.	7
Ohio Rev. Code § 3109.21(B)	11
Ohio Rev. Code § 3109.27(A)	11
Ohio Rev. Code § 5101.31(B)	2, 7
Ohio Adm. Code § 5101:12-45-05(E)(3).....	7

Civil Rules

Civ. R. 1(B).....	9
Civ. R. 17	8

Juvenile Rules

Juv. R. 1(B)	9
Juv. R. 19	2

**APPELLEE, MUSKINGUM COUNTY JOB AND FAMILY SERVICES, CHILD
SUPPORT DIVISION'S POSITION AS TO WHY THIS CASE DOES NOT PRESENT A
SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS NOT A CASE OF PUBLIC
OR GREAT GENERAL INTEREST**

The matter presented to this Court concerns the Appellant's continued attempt, 16 years after the issuance of a child support order, to avoid paying approximately \$11,000.00 in past due child support. Appellant raises three basic issues in his quest to have this Court accept jurisdiction. First, he raises standing as it relates to the subject matter jurisdiction of the Court. Second, he raises the form of the pleading presented to the Juvenile Court. And third, he raises the lack of filing a Uniform Child Custody Jurisdiction Affidavit. These issues do not rise to the level of a substantial constitutional question nor do they involve matters of public or great general interest. There must be some assurance provided by our legal system that judgments will be deemed final when the substantive rights of the parties have been protected throughout the proceedings and the only issues complained of involve form over substance.

Title 31 of the Ohio Revised Code is written with the underlying principle that the courts of Ohio should always act in the best interest of the child. In this case, the Court of Appeals correctly found that the Appellant failed to timely object to or appeal the errors of which he now complains. The Appellant had a common law and statutory duty to support his children. He has never argued otherwise. A simple reading of the Ohio Revised Code renders it beyond dispute that the lower court had subject matter jurisdiction over the issue of child support and health care insurance coverage.

Ohio Rev. Code § 2151.23(A)(11), (B)(4), (G)(1), (G)(2) and Ohio Rev. Code § 2151.23.1 unambiguously give the juvenile courts of Ohio subject matter jurisdiction over child support and health care insurance. Ohio Family Law Handbook, Eighth Annual Edition,

Anderson Publishing Co. 1996 (hereinafter “Anderson, 1996”). The decision of the Court of Appeals recognizes the subject matter jurisdiction of the lower court over child support and neither expands nor contracts it.

In 1996, the Muskingum County Child Support Enforcement Agency (hereinafter “agency”) was the local Title IV-D agency for Muskingum County and it remains so today. As such, it was and is mandated to operate a program for support enforcement in Muskingum County. The agency has always operated under the supervision of the State Department of Human Services. The program of child support enforcement included and continues to include location of absent parents, the establishment of parentage, the establishment and modification of child support and medical support orders, as well as the enforcement of those orders, and the collection of child support. Ohio Rev. Code § 5101.31(B) (Anderson, 1996). All of the programs of the child support enforcement agency were, and remain, extended to those parents who were not receiving aid to dependent children. In 1996, the inter-play between the court system and the child support system was in its infancy. The procedure of filing a request for child support by motion was a common practice at the time based in part on the language of Ohio Rev. Code § 2151.23(A)(11) (Anderson, 1996) which stated that the court had jurisdiction to hear a “request” for child support; Ohio Rev. Code § 2151.23(B)(4) (Anderson, 1996), which granted jurisdiction to hear and determine an “application” for child support; and Juvenile Rule 19 which stated that an “application” to the court shall be made by “motion” (Anderson, 1996).

With this mandate in place, Ms. Browning, the mother of the two children in this case, sought the services of the agency. On her behalf, the agency brought an action in the Juvenile Court asking for the establishment of a child support and health care order. This matter was not brought with the State of Ohio or agency as the sole plaintiff. The matter was brought “ex rel” in

the relationship of the agency as a mandated provider of services to the biological mother of the two children, who more than anyone else, had a common law and statutory right to seek an order for child support from the children's father. The matter was brought on the information of the mother and at her instigation. Because this matter was brought in the name of the mother-plaintiff, she, as the real party in interest, had "standing" to bring this action. The agency simply operated as the entity who filed the action on her behalf.

Further, the Court of Appeals correctly placed substance over form in finding that the name given to the pleading presented to the lower court did not deprive it of subject matter jurisdiction. It is more important for a court to reach the merits of a claim rather than to engage in a war of semantics. The name given to the document was not controlling. The "heart" of this action was to obtain a child support and health care insurance order. It is ironic that, in the Appellant's divorce action filed by counsel, the action was given the designation of "DB" signifying that it was a divorce without children. Further, in its opinion in this case, the Court of Appeals styled the character of the proceedings as a "criminal appeal from the Muskingum County Court of Common Pleas." The parties had minor children at the time of the divorce and the instant action stems from a civil contempt proceeding. A minor error in the title of a document does not divest it of its purpose. More important than the title of the action at the juvenile court level, the Appellant was given clear notice of why he was being brought to court, and he was given notice of the date, time, and place of the hearing. In fact, the Appellant appeared at that hearing, gave testimony and thereafter did not object to the court's order until 15 years later. The Appellant not only failed to timely object to these issues, he perpetuated the problem by filing his divorce action and separation agreement stating that the "care, custody, and control" of the minor children were under the Juvenile Court order that he now seeks to vacate.

Finally, filing of the UCCJA was not needed in this case as the action was brought solely for child support and health care insurance orders. The filing of this affidavit is expressly excluded from child support proceedings, and having himself benefited from the court's order that granted him visitation time with his children, the Appellant cannot now complain of the court's decision. This Court cannot "unring" the bell of custody and visitation as the children are now 30 and 21 years of age.

This case is "old." The obligation to pay current child support no longer exists. Over 16 years have passed since the Juvenile Court issued its orders. In the intervening 16 years, there have been many statutory changes in the law and in internal operating procedures at the state and local levels, rendering the probability remote that the issues raised by the Appellant will occur in the future in this type of case. Much progress has been made by the state in standardizing forms and operations in the eighty-eight Ohio counties that have child support agencies. Therefore, review of the Court of Appeals decision in this case will have limited precedential value because of the specific facts of this case. As to the interest of the public, it is suggested that Mr. Browning himself rarely took an interest in his own case, given the many opportunities he had during various enforcement actions to raise these issues, and therefore it is doubtful that the general public would likely have an interest in any additional review by this Court. As stated earlier, the public is concerned with the best interest of the child which includes being supported by both its parents, not with seeking technical loopholes to avoid an obligation which has been specifically codified as in a child's best interest.

The Appellant's "Statement of Facts and of the Case" omits several significant events: While mentioned in a foot note, in May 1997, the Appellant, by and through counsel, filed a "complaint" against Ms. Browning asking the Common Pleas Court to terminate his marriage

relationship and verified, under oath, that “There are two children born as issue of said marriage, to wit: Joshua born May 25, 1982 and Jason born January 31, 1991. The care, custody and control of the minor children is with the Muskingum County Juvenile Court in Case Number: 36341.” Ms. Browning, through counsel, filed an answer to the complaint admitting the paragraph containing the above language. As part of the divorce, the parties entered into a separation agreement, executed in November 1997, which recited the same language regarding the subject matter of the children being in Juvenile Court. The separation agreement which was adopted by the divorce court with the final judgment entry also recited the jurisdictional language of the complaint and separation agreement. The decree was filed December 1997. The child support order for Joshua terminated on October 30, 2000. No objection was filed at that time to the findings of the agency. In February 2003, the Appellant, represented by two separate attorneys, admitted to being guilty of criminal non-support and was sentenced accordingly. He did not object at that time. The child support order for Jason terminated May 23, 2009. The Appellant objected to the amount that he was ordered to pay as an arrearage payment by requesting an administrative hearing officer to review that matter. The administrative hearing officer upheld the recommended arrearage amount and the Appellant did not object further to that matter.

To summarize, there is no substantial constitutional question or matter of public or great general interest presented to the Court in this case. The Appellate Court preserved the constitutional integrity of the subject matter jurisdiction of the courts of Ohio. Child support was in 1996, and remains, a “justiciable” matter for the courts to resolve. In 1996, after these parents had stopped living together, there was a present and immediate need for a court order requiring Mr. Browning to support his children. Acting in the best interest of the children, the lower court

and the Court of Appeals correctly placed substance over form by choosing to ignore Mr. Browning's invitation to engage in a war of semantics over the title of the pleading, and instead looked to the "heart" of the pleading. Mr. Browning fully participated in the lower court action and, within a year, through counsel, represented to the divorce court that the subject matter of the Juvenile Court regarding his children was in full force and effect. For this Court to review the decision of the Court of Appeals would send an unwanted message to those who owe child support arrearages: fully participate in the original hearing, take advantage of any benefit one receives from the lower court's decision, sit on rights, don't comply with the lower court's orders, wait until there is no way any alleged errors can be corrected, and then complain. Because of its fact pattern, this case does not lend itself well to this Court setting precedent. A lengthy time has passed from the date the child support order was issued to the time Mr. Browning first raised the issues herein. In addition the divorce action filed by the Appellant avoided addressing the matter of child support and health care based on both parties' assertions that those matters were properly under the jurisdiction of the Juvenile Court. The Appellant is simply making an unconscionable attempt to get out of paying his past due child support. By declining to accept jurisdiction, this Court can close the door to collateral attacks in cases like this that are closed and have been fully and fairly litigated. Accepting this case will place this mother and other mothers (and fathers) who are rightfully owed child support at risk of losing unpaid and overdue child support, and even of having to repay the very support to which they were legally entitled due to an error of mere form, and not substance.

ARGUMENT IN OPPOSITION OF APPELLANT'S PROPOSITIONS OF LAW I:

There is no substantial constitutional question presented to this Court. All substantive elements of due process were met with adequate opportunity to appear, defend, object, and

appeal. The Juvenile Court patently and unambiguously possessed subject matter jurisdiction over the matters of child support and health care insurance. Ohio Rev. Code § 2151.23 (Anderson, 1996). The decision of the Juvenile Court and Court of Appeals did not expand or contract the subject matter jurisdiction of the court. Sixteen years after the child support order was issued, the Appellant raises the issue of the connection between standing and subject matter jurisdiction. The Court of Appeals correctly found that standing is distinct from subject matter jurisdiction.

The Court of Appeals rightly noted that Ms. Browning was a co-party to the action. She is the real party in interest in this case. She is named as a plaintiff on the pleading submitted to the lower court. Because the action was brought “ex rel” in its capacity as the local Title IV-D agency, the Muskingum County Child Support Enforcement Agency was the proper entity to bring this matter to the lower court’s attention. In 1996, the agency had the duty to establish child support and medical support orders. Ohio Rev. Code § 5101.31(B) (Anderson, 1996). The Ohio Administrative Code provided options to the agency for accomplishing its mission. Ohio Adm. Code § 5101:12-45-05(E)(3) states that the agency shall “either schedule an administrative child support hearing or file a court action to establish a child support order when a man is presumed to be the father of the child and a parent, guardian, or legal custodian of a child, or the person with whom the child resides requests the CSEA to establish a child support order but does not specifically request an administrative child support order.” Mr. Browning was presumed to be the father of the children as they were born during the marriage. He did not support his children after the parties separated, thus there is an “injury in fact traceable to the defendant’s conduct.” Ohio Rev. Code § 3103.03(B), 3103.03.1 (Anderson 1996). There has been no evidence presented that suggests Ms. Browning specifically requested that an administrative

child support order be issued. The agency properly exercised its option to file an action in court. Further, had the agency chosen to determine the child support order through the administrative process, Mr. Browning would have been deprived of a visitation order and would not have had the court's equity powers exercised in his behalf. A child support order issued by any other name is still a child support order.

The doctrine of standing has an important place in our legal system and courts of our state have correctly found a lack of standing when a matter is brought in a fictitious name, when a legal name is required, or when there is no "ownership" or "holder-in-due-course" in a mortgage or other like document when a complaint is filed. However, the Court here is not dealing with a "possession" but rather is dealing with children.

As the mother of these two children, Ms. Browning had standing to bring this action and the agency was the proper entity to bring the suit to the Court on her behalf. To have standing, the case must be prosecuted in the name of the real party in interest. Civil Rule 17. This matter was prosecuted by the agency in the name of the biological mother of the children, therefore the requirement to have standing to prosecute this matter was met. There is a logical and legal connection among the mother of these children, her need for contribution from the father to support the children, his neglect of the duty to support his children, and the child support enforcement agency as the entity responsible for providing child support services.

It is also asserted that Mr. Browning has waited too long to raise this issue. Over three years have passed since the child support order terminated and 16 years have passed since the order originated. Despite the Appellant filing a divorce action within a year of the issuance of the Juvenile Court's child support order and being brought before the court four times for civil

contempt for failing to pay his child support and one time for criminal non-support, Mr. Browning never raised the issues of which he now complains. Accordingly, he has forfeited and waived any alleged defects, errors, or irregularities.

The Court of Appeals correctly aligned this case with those cases in which this Court found that an attack on standing did not deprive the lower court of subject matter jurisdiction. Any defects or errors in standing could have been cured at the time of the Juvenile Court's hearing by substitution or by amendment or could have been cured in the divorce action. The bottom line is that Mr. Browning owed a duty of support to his children and the entity that issued the order, be it court or the child support agency, is of no significance as both have the statutory authority to issue child support orders.

ARGUMENT IN OPPOSITION OF APPELLANT'S PROPOSITION OF LAW II:

The Court of Appeals correctly placed substance over form in finding that the name given a pleading is not controlling. *Salamon v. Taft Broadcasting Co.*, 16 Ohio App.3d 336 (1984). Rather, it is the substance of the pleading that is important. *Lungard v. Bertram*, 86 Ohio App. 392, (1949). The Rules of Civil Procedure require construction and application of those rules in a way that effects just results and eliminates unnecessary expense and undue delay. (Civ. R. 1(B)) (Anderson, 1996). Likewise, the Rules of Juvenile Procedure call for a liberal interpretation of the rules that not only provides the parties with a fair hearing and recognition of their constitutional rights, but also provides for the care and protection of the children within its jurisdiction and the welfare of the community. (Juv. R. 1 (B)), (Anderson, 1996). Mr. Browning was given notice of the date, time and place of his hearing as well as its purpose. He appeared. He testified. The court ruled. Mr. Browning did not timely object or appeal. Less than one year

later, in his own pleading for a divorce, Mr. Browning swore to the Domestic Relations Court that the “care, custody and control” of his children resided in the Juvenile Court in the child support matter. Mr. Browning had a legal duty to support his children. He had the opportunity to cure any defects in the Juvenile Court order in his divorce action. He did not. The Appellant argues that substituting the word “complaint” would have made a difference. An error in the title of a pleading, when the substance of the pleading clearly presents a matter within the subject matter jurisdiction of the court, should not result in that order being vacated 16 years after its being issued. So doing would violate the spirit of liberal construction of the civil rules and juvenile rules of procedure and would cause the courts to engage in a war of semantics that ought to be avoided. Under the circumstances of this case, it is not in the best interest of these children or by any means fair, that this Court should vacate the Juvenile Court’s order for child support based on the improper nomenclature of the pleading.

This Court has recently given instruction as to what constitutes a “void” order and what constitutes a “voidable” order. Void orders occur when a court lacks subject matter jurisdiction. A voidable order occurs when the court possesses subject matter jurisdiction but errors or irregularities exist in the proceedings or in the order. *Miller v. Nelson-Miller*, 2012-Ohio-2845 (Decided June 27, 2012) citing *Cochran’s Heirs’ Lessee v. Loring*, 17 Ohio 409, 423 (1848). It is clear that the Juvenile Court possessed subject matter jurisdiction over the matters of child support and health care insurance. Mr. Browning has forfeited and waived any errors or defects in the proceedings below as he failed to timely object to the magistrate’s decision issued in 1996 and as he failed to timely appeal the court’s decision in 1996. As this Court noted in *Miller*, there is a strong interest in preserving the finality of judgments. *Strack v. Pelton*, 70 Ohio St.3d 172 (1994). Perfection, although desired, should give way to finality when due process rights

have been protected throughout the proceedings, and particularly when, as here, the Appellant has fully participated in the proceedings below and failed to timely object until after the child support order has terminated. It is clear that changing the title of this action from “motion” to “complaint” would not have affected the outcome of the order, nor would that change have added to the due process rights that Mr. Browning took full advantage of by appearing and defending in the action.

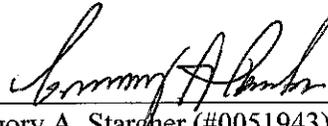
ARGUMENT IN OPPOSITION OF APPELLANT’S PROPOSITION OF LAW III:

The Court of Appeals correctly recognized that the matter presented to the Juvenile Court was a child support proceeding. Therefore, no UCCJA statement was needed. The necessity of filing this affidavit with the court is limited to a parenting proceeding. Ohio Rev. Code § 3109.21(B) (Anderson, 1996), 3109.27(A). In addition, it is clear from the decision and order issued in the Juvenile Court that Mr. Browning received a benefit from the court’s decision. The decision says in pertinent part: “The parties agree that custody shall remain with the mother... Plaintiff argued that the Defendant’s visitation with the children should be limited for the following reasons: Defendant’s current girlfriend and her friends did drink and abuse drugs in the home in the past. The parties separated September 1, 1995.” Ms. Browning “lost” the argument to limit Mr. Browning’s parenting time. The decision of the court granted Mr. Browning visitation such as the parties could agree upon or if they could not agree, in accordance with the court’s standard order of visitation. Mr. Browning should not be allowed to receive a benefit from the court’s order, then complain of a defect that could have been easily cured at that time. The children are of the age of majority now and the matter is beyond the authority of any court to address and correct. Because of the unreasonable delay in raising this issue, Mr. Browning has forfeited and waived any defects that may have existed.

CONCLUSION:

For the reasons set forth above, this case lacks a substantial constitutional question and does not involve matters of public and great general interest. Because Mr. Browning failed to raise the issues that he now complains of in a timely manner, this Court should not accept jurisdiction. He has forfeited his right to raise these issues at this late date. Appellee, Muskingum County Child Support Enforcement Agency, requests that this Court decline jurisdiction in this case.

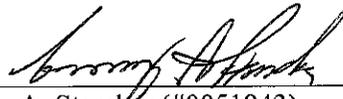
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the within Appellee-Muskingum County Job and Family Services, Child Support Division's Memorandum in Response to Appellant's Memorandum in Support of Jurisdiction, was served on Lori Ann Browning (Burns), 200 Willis Drive, Lot 109, Zanesville, OH 43701 and Elizabeth N. Gaba, Attorney for Defendant-Appellant, Terry Dean Browning, 1231 East Broad Street, Columbus, OH 43205, by regular U.S. Mail, this 19th day of July, 2012.



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