

IN THE SUPREME COURT OF OHIO

MORRIS K. HINTON,

: Case No. 2012-1292

Plaintiff-Appellant,

: First Appellate District

v.

Case No.: C-120353

GARY F. FRANKE

:

and

:

GARY F. FRANKE CO., LPA,

:

Defendants-Appellees.

MOTION TO DENY REQUEST FOR
MEDIATION

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SUPREME COURT OF OHIO

Now come defendants-appellees Gary F. Franke and Gary F. Franke Co., LPA (collectively as "Franke"), and moves this Court to deny the request of the Appellant to refer this matter to mediation under the authority of S. Ct. Prac. R. 2.6. and S. Ct. Prac. R. 17.1.

As this Court is aware, the referral of cases before it to mediation pursuant to S. Ct. Prac. R. 2.6. is completely discretionary and has to be a case which the Supreme Court deems appropriate. This matter does not involve any issue that would be appropriate for mediation.

The procedural posture of this case is outlined for this Court in the Appellees' Response Memorandum.

As pointed out, this case is not one that involves any facts or any issues. The appeal results from the granting of a Motion for Summary Judgment in favor of the Appellees because the Appellant failed to abide by the Trial Court's scheduling order and failed to properly respond to a Motion for Summary Judgment.

The record will reflect that the Trial Court gave the Appellant ample notice as to what he needed to do in response to a Motion for Summary Judgment by virtue of his order dated March 2, 2011. The Appellant failed to respond to the directive outlined in the Court's Order and on April 4, 2011, the Trial Court placed of Entry and Order dismissing the Complaint of the Plaintiff. In that Order, the Court described why it granted such a Motion.

The Appellant did not file the Notice of Appeal from the Order.

On January 24, 2012, the Appellant moved for relief from the April 4 Judgment under Civ. R. 60(B)(2) based upon what he claimed to be "newly discovered evidence." The Trial Court overruled the Appellant's Motion and outlined the reasons why he proceeded in such a manner.

The Appellant then appealed from that ruling to the First Appellate District. After that Notice of Appeal was filed, the Appellees moved to dismiss the appeal, arguing that the Civ. R. 60(B) filing was nothing more than an attempt to be an improper substitute for a timely filed Notice of Appeal. It is from that ruling of the First Appellate District that the Plaintiff now contends is a proper case to be referred to mediation pursuant to the Rules of this Court.

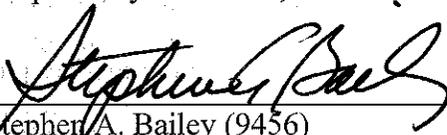
This case is strictly one involving interpretation of the Rules of Civil Procedure and the Rules of Appellate Procedure and is certainly not one for mediation.

Therefore, the Appellees move this Court for an Order rejecting the Appellate's request to refer this case to mediation.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing by electronic mail and ordinary U.S. mail, postage prepaid, on August 15, 2012, upon the following:

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