

ORIGINAL

IN THE SUPREME COURT OF OHIO

J.R. ROSE

Plaintiff/Appellant

-v-

MARY G. PAULLUS, et al

Defendant(s)/Appellee(s)

CASE NO:

12-1635

On appeal from the Butler  
County Court of Appeals 12th  
Appellate District

C.A. CASE NO: CA 2012 05 0116

MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT J.R. ROSE

J.R. ROSE (577781)  
Chillicothe Correctional  
Post Office Box 5500  
Chillicothe, Ohio 45601

PLAINTIFF/APPELLANT

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Hamilton, Ohio 45011

COUNSEL FOR DEFENDANT/APPELLEE(S)

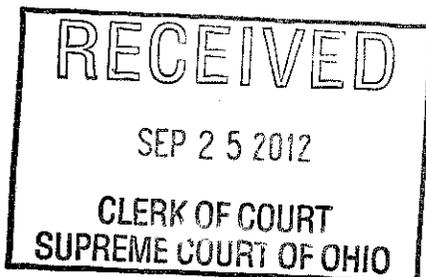


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**EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL  
INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTION QUESTION**

The issues at hand in the case sub judice, center around the right to address the court and the guarantees afforded by the Fourteenth Amendment of the United States Constitution and Article I, Section 16, and Section 2, of the Ohio Constitution of due process and equal protection. The very foundation of our government rests upon these rights and safeguards the rights of litigants to the just processing of their cause.

In 2000, this Honorable Court set forth the policy behind the vexatious litigator statute for the purpose to prevent abuse of litigation of those who persistently and habitually file lawsuits "without" reasonable grounds. However, this does not in any way limit the right to mount a vigorous defense, or give any court the right to quiet a manifest injustice.

## STATEMENT OF THE CASE AND THE FACTS

On or about January, 2001, Appellant was solicited by family and friends who wanted to place their funds with Appellant for the risk/reward of the stock market. Prior to accepting any funds, Appellant sought the advice and instruction of Raymond James Financial Services. Being unlicensed in securities, Appellant relied on the advice and instruction of District Manager, H. David Griswell, and followed his instructions for compliance.

Legally pooling each partners funds, investments were made in the NYSE and utilized "covered call" options for income and investing in state approved annuities for long term growth.

With the demise of the stock market, the assets in the account with Raymond James Financial Services dwindled in sync with the market.

A complaint was rendered by one of the partners to the Ohio Department of Securities, and they did not agree with the orchestration of Raymond James Financial Services and demanded the common enterprise shut down.

Following their demand, it became apparent that the account would not be able to pay the partners back their original deposit. At Appellant's insistence, Appellant once again, met with the Department of Securities for their help for remedy.

Subsequent of that meeting, Appellant by and through counsel, foolishly pled to a Bill of Information with the assurance that Appellant was looking at five years probation.

Fully cooperating and "voluntarily" divesting himself of his assets, Appellant was given a twenty year sentence and made a pariah by the media and falsely accused of running a "Ponzi" scheme.

After being wrongfully incarcerated, Appellant eventually discovered that a multitude of partners submitted false claims to not only the court-appointed receiver, but to the various insurance carriers as well.

This deception by the partners, and reliance on their deception, caused the wrongful reversal of commissions from the insurance carriers and set in motion the unwarranted depletion of the monies Appellant set aside for remedy and relief of the partners in the common enterprise.

As afforded by law, Appellant filed complaints on those partners who committed fraud to the Butler County Common Pleas Court.

On or about May 3, 2012, Appellant was served Notice of Filing Final Appealable Order of a judgment entry identified by the court as a "Final Appealable Order" was filed with the Butler County Clerk of Courts on April 27, 2012.

On May 7, 2012, Appellant filed a Motion for Leave and a Motion to Stay Execution of vexatious declaration to the lower court

On May 23, 2012, Appellant pursuant to R.C. §2323.52, filed Motion for Leave to File Appeal with an Affidavit of Verity.

In usual fashion, on June 29, 2012, Appellant was mailed an entry dated June 18, 2012, from the lower court denying Motion to Stay Execution.

On July 23, 2012, Appellant was served Notice on July 19, 2012, of an Entry of Dismissal, dated July 11, 2012, from the Twelfth District Court of Appeals, stating Appellant's motion was not only untimely, but motion for leave as required by statute, was not available in civil action.

On July 23, 2012, pursuant to App. R. 26(A), Appellant filed a Motion for Reconsideration calling to the attention of the court the multitude of obvious errors.

On August 27, 2012, Appellant received an Entry Denying Motion for Reconsideration dated August 21, 2012.

Appellant herein, respectfully requests this Court review the Propositions of Law and the multiple abuses of process and violations of Civil Procedure and Ohio Revised codes as justice so demands.

## PROPOSITION OF LAW

### Whether the courts abused the Ohio Rules of Practice and Procedure

The polestar of construction and interpretation of statutory language is "legislative intention." State ex rel. Francis v. Sours (1944), 143 Ohio St. 120, 124. As elucidated to the Twelfth District Court of Appeals, and in accordance with Civil Rule 58(B), the clerk of courts shall serve all parties notice of the judgment and its date of entry upon the journal within three (3) days of entering the judgment upon the journal in a manner prescribed by Civil Rule 5(B). The "language" implies the formal preparation of a written journal of judgment entry by the trial court. Moreover, a judgment is final, effective, and appealable with a permanent character. William Cherry Trust v. Hoffmann, 22 Ohio App.3d 100, 489 N.E.2d 832, 22 Ohio B. 228, 1985 Ohio LEXIS 10085 (1985)

Contrary to the 12th District Appellate Court, and in alignment with Appellate Rule 4(A), and in respect to civil cases, the time for appeal does not commence until the service of the notice required by Civ. R. 58(B). Lipscomb v. London Correctional Inst., 96 Ohio App.3d 245, 644 N.E.2d 1079, 1994 Ohio App. LEXIS 3290 (1994). More importantly, App. R. 4(A) tolls the time for filing a notice of appeal only if service is not made within the three-day period of Civ. R. 58(B). (decided under former analogous section) State ex rel. Hughes v. Celeste, 67 Ohio St.3d 429, 1993 Ohio 214, 619 N.E.2d 412, 1993 Ohio LEXIS 1867 (1993) The right to appeal is a property interest, a litigant may not be deprived of that interest without due process of law.

In further defiance of Rules of Civil Procedure, the trial court refused discovery pursuant to Civil Rule 26. No person has the privilege to refuse to produce a document upon request in a judicial proceeding unless the federal or state constitution, a statute or case law provides otherwise. This rule applies at all stages. Springfield Local Sch. Dist. Bd. of Educ. v. Ohio Ass'n of Pub. Sch. Emples., 106 Ohio App.3d 855, 667 N.E.2d 458, 1995 Ohio App. LEXIS 4616 (1995).

It is clear and convincing that the appellate court and the trial court abused their authority and violated what the General Assembly intended.

#### PROPOSITION OF LAW II

Whether the trial court abused its discretion by imposing R.C. §2323.52 to quiet a manifest injustice

The vexatious litigator statute was designed to stop litigators from using the court system as a weapon, or to prevent abuse by those who persistently file lawsuits without "reasonable grounds." Mayer v. Bristow, 91 Ohio St.3d 3, 13, 740 N.E.2d 656 (2000) While Appellant agrees that this type of conduct should be prevented, it can not be used to quiet a manifest injustice.

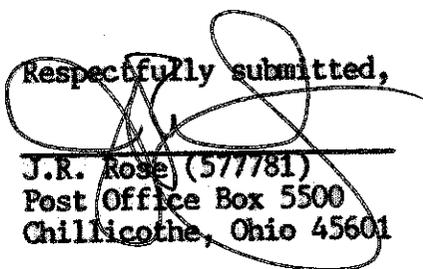
Ironically, the trial court did not make the erroneous declaration until Appellant's summary judgment was filed. The former partners did not offer any reciprocal evidence to defeat the summary judgment as required by law. The motion for summary judgment forces the non-moving party to produce evidence on any issue for which that party bears the burden of production at trial. Celotex v. Catrett (1996), 477 U.S. 317, 91 L.Ed.2d 265, 106 S.Ct. 2548, 1986 U.S. LEXIS 118.

As clarified, and certified as conflict with the Seventh District Court of Appeals, in Humbert v. Borkowski, 2005 Ohio App. LEXIS 943, 2005 Ohio 918, (2005), Appellant filed leave to appeal as mandated by rule, timely filed said appeal, and subsequently wrongfully dismissed.

CONCLUSION

For the above stated reasons, this Honorable Court should accept jurisdiction.

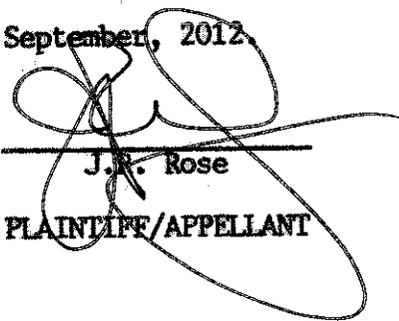
Respectfully submitted,

  
\_\_\_\_\_  
J.R. Rose (577781)  
Post Office Box 5500  
Chillicothe, Ohio 45601

PLAINTIFF/APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum in Support of Jurisdiction was forwarded by regular U.S mail to Michael Masana, Counsel for Defendant(s) on this 24<sup>th</sup> day of September, 2012.

  
\_\_\_\_\_  
J.R. Rose

PLAINTIFF/APPELLANT

IN THE SUPREME COURT OF OHIO

J.R. ROSE : CASE NO:  
Plaintiff/Appellant : On appeal from the Butler  
County Court of Appeals 12th  
Appellate District  
-v- :  
MARY G. PAULLUS, et al :  
Defendant(s)/Appellee(s) : C.A. CASE NO: CA 2012 05 0116

APPENDIX TO  
MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT J.R. ROSE

*Pro Se*

IN THE COURT OF APPEALS OF BUTLER COUNTY, OHIO

J.R. ROSE,

CASE NO. CA2012-05-116

Appellant,

FILED BUTLER CO.  
COURT OF APPEALS

ENTRY OF DISMISSAL

vs.

MARY G. PAULUS, et al.,

JUL 11 2012

Appellees.

MAHY L. SWAIN  
CLERK OF COURTS

The above cause is before the court pursuant to a motion for leave to file appeal filed by appellant, J.R. Rose, on May 29, 2012. Appellant seeks to appeal an entry of sua sponte dismissal filed in the Butler County Court of Common Pleas on April 27, 2012.

Pursuant to App.R. 4(A), a notice of appeal shall be filed within 30 days of the later of the entry of the judgment or order appealed from, or in a civil case, service of the notice of judgment and its entry if service is not made on the party within three days. The transcript of docket and journal entries indicates that service was made upon appellant on the same day that the entry he seeks to appeal from was filed, April 27, 2012. Accordingly, to be timely filed, appellant needed to file his notice of appeal on or before May 28, 2012, and it is one day late.

Appellant seeks leave to appeal. However, pursuant to App.R. 5(A)(1), leave to appeal is only available in three classes of cases: (1) criminal proceedings, (2) delinquency proceedings, and (3) serious youthful offender proceedings.

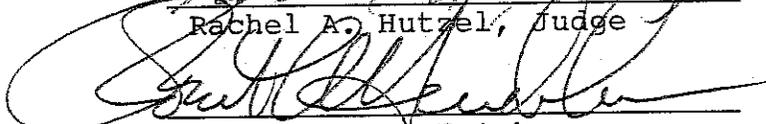
The present appeal is taken from an entry of dismissal filed in a civil case. Accordingly, this court is without jurisdiction to grant appellant leave to appeal. Therefore, the motion for leave to file appeal is DENIED, and this cause is hereby DISMISSED, with prejudice, costs to appellant.

IT IS SO ORDERED.



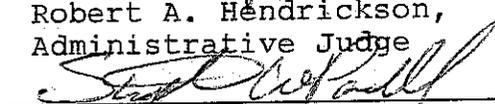
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Rachel A. Hutzal, Judge



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Robert A. Hendrickson,  
Administrative Judge



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Stephen W. Powell, Judge

pro x

IN THE COURT OF APPEALS OF BUTLER COUNTY, OHIO

FILED BUTLER COUNTY COURT OF APPEALS

J.R. ROSE,

CASE NO. CA2012-05-116

Appellant,

AUG 21 2012

ENTRY DENYING MOTION FOR RECONSIDERATION

vs.

MARY L. SWAIN  
CLERK OF COURTS

MARY G. PAULUS, et al.,

Appellees.

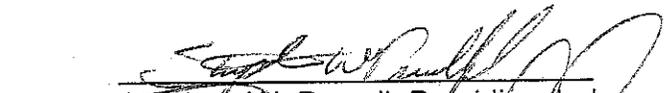
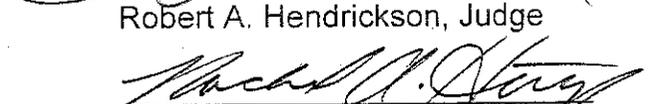
The above cause is before the court pursuant to a motion for reconsideration filed by appellant, J.R. Rose, on July 26, 2012. Appellant seeks reconsideration of this court's entry of dismissal filed on July 10, 2012.

The test generally applied upon the filing of a motion for reconsideration is whether the motion calls the attention of the court to an obvious error in its decision, or raises an issue for consideration which was either not considered at all or not fully considered by the court when it should have been. *Matthews v. Matthews*, 5 Ohio App.3d 140 (1981).

The present appeal was dismissed because appellant filed a motion for leave to appeal in a civil action, and the court concluded that leave to appeal is not available pursuant to the terms of App.R. 5(A)(1). Appellant in his motion for reconsideration now apparently contends that he was not served with the order he appealed from until after April 30, 2012 which, he argues, makes the notice of appeal timely filed.

The motion for reconsideration does not call the court's attention to an issue that was not considered at all or not fully considered by the court when it should have been. The motion for reconsideration is therefore DENIED.

IT IS SO ORDERED.

  
Stephen W. Powell, Presiding Judge  
  
Robert A. Hendrickson, Judge  
  
Rachel A. Hutzal, Judge