

IN THE SUPREME COURT OF OHIO

PROGRESSOHIO.ORG, INC., ET AL.

Plaintiffs,

v.

JOB SOHIO, ET AL

Defendants.

) Case No.: 2012-1272
)
) On Appeal From the Tenth District
) Court of Appeals
)
)
)
)
)
)

MEMORANDUM CONTRA MOTIONS TO STRIKE
AMENDMENT TO MOTION TO REQUIRE COUNSEL FOR
THE 1851 CENTER TO FILE PROOF OF COMPLIANCE

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SUPREME COURT OF OHIO

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I. Introduction

Movant recognizes that this sort of motion practice in an appellate case is not standard or favored procedure. She wishes that the devious, improper and unethical acts of the 1851 Center had never occurred and this was never necessary. But addressing this now is unavoidable because these dishonest actions affect the integrity of the litigation and appropriate redress is only available here. They have now filed motions to strike that require response.

Just as JobsOhio as an entity would attract corruption, this litigation has as well. As Auditor Yost has recently observed in discussing JobsOhio, "What about...when the guy who is not acting in good faith sneaks his way into the tent?" This court needs to be asking this question about the 1851 Center's sneaky actions here. As the auditor further opined, "Controls and laws are not designed for the virtuous, they are designed for the tempted, and there's \$100 million worth of temptation over there." "Yost. Kasich, discuss Jobs Ohio Audit Conflict" Hallett/Vardon, *Columbus Dispatch*, 3/12/2013. This case was created and moved into this court by \$100,000 of the Victoria Ullmann's labor, knowledge and creativity. It has immeasurable value to a publicity seeker such as Thompson. Similar temptations exist which led to Thompson's attempt to steal this litigation.

II. Appellants have conceded all relevant facts regarding the contract, breach and remedy.

Since movant's motion contained factual material obtained by first hand knowledge and was certified by movant's signature as an attorney pursuant to Ohio Civil Rule 11, it is evidentiary in nature. Progress Ohio provides absolutely no evidence contra to what movant has provided. Therefore, the court can now consider Ullmann's testimony as to the facts contained

in the motion, including terms and formation of the oral contract and its breach by Progress Ohio, to be proven for the purpose of determining this motion.

III. Progress Ohio and Thompson have presented no justification whatsoever for their unethical, sexist and tortious behavior.

All ethics issues that appellants attempt to use to support their *Motion to Strike and Memorandum Contra* have been discussed and dispensed with fully in the initial motion. Movant has supported her motion appropriately with citations to the Rules of Professional Conduct so no response to that aspect is in any way needed. They presented nothing beyond what has already been discussed.

All that Progress Ohio has provided to the court is a concocted letter written after Rothenberg had breached his contract with Ullmann. She had already state that she would withdraw and intervene in this case. (See Ex. 1 and 2) There are a variety of other emails discussing the contract and breach by Progress Ohio prior to February 4 fabrication. Upon receiving that letter, Ullmann contacted Donald McTigue. Negotiations continued regarding how this matter would be handled for several weeks after the February 4 date. Allegations in Progress Ohio's motion that February 4 was somehow a magical date is misleading. The sad attempt at back dating an entry of appearance confirms Ullmann's version.

During these negotiations with McTigue, one thing became abundantly clear. These male attorneys believed that the *Ohio Rules of Professional Conduct* allowed them to hide virtually any torts, sexism, contract breach or any offense they wished to commit against Ullmann. It goes without saying that they also said it to Rothenberg and this bad advice led to the filing of the motion to intervene. Of course Thompson was making similar disingenuous statements to Rothenberg as part of his plot to steal the case. One of the reasons *Rule 4.2* exists is to prevent

attorneys from making false statements prohibited by *Rule.4.1* in order to pilfer a client from another attorney. That is one of many reasons movant felt that the unethical actions of all these lawyers had to be addressed in this case now.

As the senior member of the bar in this case, Ullmann has seen significant amounts of sexism during her career. She has worked on this issue at a lawyer and wrote *Labor and Employment Law* for the West Legal Studies series. She knows it when she sees it, and the male attorneys here are acting in a blatantly sexist manner. *Ohio Rules of Professional Conduct 8.4 (g)* Movant has also observed in her many years of practice in the discrimination area that male attorneys will simply go off the cliff when confronted with their own sexism and do things they normally would never do. However, the fact that they cannot control themselves before a bench that is predominantly women is reprehensible.¹

IV. Amendment to Motion to Remove 1851 Center as Counsel of Record.

Movant does need to make an amendment to her motion regarding Thompson. The first sentence in that motion should contain the citation to Supreme Court Rule of Practice 2.03 which was accidentally omitted. This rule states: "The attorney representing a party shall be designated counsel of record for that party." Since Thompson's position in this matter is amicus curiae and he cannot within the bounds of the ethics rules ever represent Progress Ohio in this case, he can never be counsel of record in this action. No one can simply walk in off the street and become counsel of record for a party before this court. The gross rule violation is the reason

¹ This is even more blatant than in most employment situations. This is probably the first case in which the male "replacement" has violated attorney ethics rules to displace a female. Rothenberg has at this point admitted he violated a contract with Ullmann, he never had any actual ownership interest in the case, he has not paid for her services and he had absolutely no legally significant reason whatsoever for his actions. His only excuse is that he wanted the case to appear nonpartisan. If that were an issue, the 1851 Center served that purpose as amicus. Ullmann never brought this case for any partisan reason. This proves the standard prima facie case and necessary pretext. As Auditor Yost is now involved in investigating JobsOhio there can be no logical argument that this case is in any way partisan. Appellees' counsel are properly arguing legal issues so that has never been relevant to the actual case. It was all pretext to steal the case for a man.

for the motion, not merely the ethics violations standing alone. Mr. Thompson has violated a variety of ethics rules in an effort to avoid the requirements of Supreme Court Rule 2.03. The court should not allow him to be counsel of record for an actual party until he can show no rules were violated. Movants apologizes for any confusion that may have caused. Of course since Thompson is primarily here as a publicity seeker, it's the oral argument time he is after. He is also attempting to circumvent the court's requirement that amicus petition the court for oral argument time, *Supreme Court Rule of Practice* 17.06.²

V. Appellants have by deception anointed the 1851 Center the lead party to this action without leave of Court while hypocritically arguing that the Court lacks the authority to grant movant that status.

Progress Ohio and Thompson argue in their motions that no one can intervene in this case at this time. Yet that is exactly what the 1851 Center is trying to do by deception. The 1851 Center is attempting to elevate itself to lead party without leave of court from the position of amicus curiae. They have jockeyed to obtain this position through relentless violations of the *Rules of Professional Conduct*. They have so little connection with the case that they cannot even put forth a colorable claim to intervene, so they are trying the smoke and mirrors approach. Although Ullmann's motion to intervene is indeed unique, it is build upon admitted facts and applicable law, not illusion or falsehood. The 1851 Center has not intervened or otherwise requested leave of court to become a party in this case. The 1851 Center is attempting to usurp a position in this case without entitlement by mendacity. Ullmann's request for the case to be returned to her is completely justified.

² Thompson attempted to pressure Ullmann into giving him her 15 minutes and she refused. That is when Thompson's improper actions before this court began in earnest. Rothenberg also pressured Ullmann to give up the case by saying it would "look better" if Thompson did it. In other words, he wanted allow a man to publically take credit for Ullmann's work. Now no women attorneys or appellant exist in the case. Litigation as a boys' only club lives on in the 21st Century. At least for these appellants and the counsel here.

Despite Thompson's unfounded contention to the contrary, the clerk knew exactly the nature of the motion movant filed since she discussed the motion at length with the clerk. Whether it is in one motion or two or three is ultimately irrelevant. Because the nature of wrongdoing here is so severe, movant exercised the option to have the court determine exactly how that is handled.

V. The attempts by McTigue/McGinnis to conceal the unethical acts by the 1851 Center by ratifying them are themselves unethical.

The reason that McTigue/McGinnis entered the case and tried to back date their entry of appearance is to create an illusion that the actions of the 1851 Center are somehow ethical by ratification. Attorneys are not permitted to ratify the unethical actions of other attorneys and they are in fact assisting Thompson in his unethical actions. *Ohio Rules of Conduct 8.4 (a)*. This probably violated 8.4 (b) and (c) also since it is prejudicial to this Court's handling of this case.

Nothing McTigue/McGinnis does alter Thompson's violations of 4.1 and 4.2. Those are completed violations with obvious damage. Ullmann would have to waive those violations since they constituted attacks on her as well as Rothenberg.

The idea behind this is likely that it creates a buffer with regard to conflict of interest by the 1851 Center. But since they gave complete control to of movant's case to this unethical devious non party, it is very apparent that that conflict of interest is fully operational and destroying this case. Until the 1851 Center publically discloses every donor and every interoffice communication regarding this case, they have an active conflict of interest in gross violation of *Ohio Rules of Professional Conduct 1.7*.

V. This court has the inherent and statutory authority to deter ethics violations.

The web page article by the 1851 Center attached to the earlier motion is a smoking gun as far as ethics violations are concerned. There is virtually no way for Thompson to defend himself. He instead tries to argue that this court cannot consider proof of ethics violations that affect its processes, citing Rules of Professional Conduct 8.3. Rule 8.3 indicates that wrongdoing is to be reported to "a disciplinary authority empowered to investigate and act upon such violation." R.C. 4705.02 grants that authority to various courts in the state, including this one. Of course every court has inherent authority to control the actions of attorneys appearing before it. His motion to strike arguing this is an improper forum is therefore without any basis whatsoever.

Conclusion

Movant created this case and did the work that got it here. All plaintiff wants the court to do is to return her to primary party status as specific performance for breach of contract by Progress Ohio. Both Motions to Strike filed in this case are without basis in law or fact and should be overruled. Progress Ohio has admitted breach of contract and improper actions in attempting to take control of this case. Movant asks the court to grant her appellant status to preserve the integrity of this litigation and prevent further wrongdoing by appellants. Movant requests that this Court officially remove Maurice Thompson as counsel of record and officially declare that the 1851 Center cannot improperly usurp party status in this case.

Respectfully submitted,



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Attorney at law

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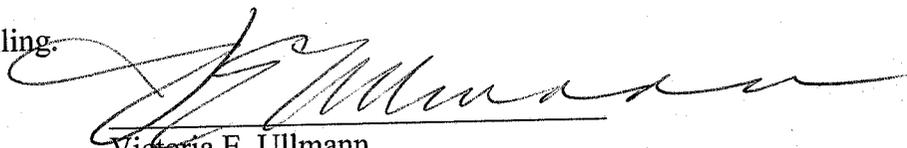
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Columbus, Ohio 43205

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CERTIFICATE OF SERVICE

I here by certify that copy of the above motion was emailed to attorneys for the parties
and Maurice Thompson on date of filing.



Victoria E. Ullmann

Attorney at law

New Reply Delete Archive Junk Sweep Move to Ca

Victoria Ullmann 

Search email 

JobsOhio

Joyce Patton

Search the web to learn more about Joyce Patton

Folders

- Inbox 200
- Junk 2
- Drafts 8
- Sent
- Deleted 42
- court documents 18
- JobsOhio
- New folder



Joyce Patton (joyce@progressohio.org) Add to contacts 2/01/13 Actions
To: Victoria Ullmann

Victoria,
 Brian is back and has asked me to clarify that Maurice is the lead on the brief and oral arguments on the standing issue.
 You are still our attorney but on the standing issue it needs to be as outlined.
 You will review the brief and need to work with the other attorneys on the final.
 Please call Brian if you have any questions.
 Joyce



Victoria Ullmann (victoria_ullmann@hotmail.com) 2/01/13
Dear Joyce, I am sending this to you cause I don't know if Brian is back and I ...

Quick views

- Bills
- Court documents 1
- Documents 1
- efiling
- Flagged
- JobsOhio
- Photos 2
- Shipping updates 2
- New category

EX1

New Reply Delete Archive Junk Sweep Move to Ca

Victoria Ullmann 

Search email 

(No Subject)

Folders

- Inbox 201
- Junk 2
- Drafts 8
- Sent
- Deleted 42
- court documents 18
- JobsOhio
- New folder

Quick views

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- Shipping updates 2
- New category



shaun (shaun@progressohio.org) 2/02/13
To: Victoria Ullmann, Brian Rothenberg, Joyce Patton

Actions

Victoria-

As ProgressOhio's attorney of record I am requesting a meeting this week. You mentioned that Tuesday at 10:00 am works, so let's keep that time.

Thank you



Victoria Ullmann (victoria_ullmann@hotmail.com) 2/02/13
To: shaun

Actions

Just so you know, the more I think about it this weekend, the more I want to file my own brief, either as amicus or intervenor. I could have been a party in this case but agreed to help Brian as long as I was lead counsel and did the Supreme Court argument. It will be days of agony dealing with Maurice on a brief I can do in less than two days by myself. They will read mine no matter what I file it as because I have done everything on this case (with M and D) for two years. I'm done with crap.



shaun (shaun@progressohio.org) 2/01/13
Okay. Thank you. Sent from my iPhone



Victoria Ullmann (victoria_ullmann@hotmail.com) 2/01/13
10 should be okay but I have not checked my calendar. I do not remember ha...



shaun (shaun@progressohio.org) 2/01/13
McTique will not be at our meeting. Let's meet at 10:00 am at our office on ...



Victoria Ullmann (victoria_ullmann@hotmail.com) 2/01/13
I am tired of dealing with this. I told you I would quit or sign a brief as long as...

Victoria Ullmann



EX 2