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IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. LARRY KLAYMAN,	)	CASE NO. 2013-0296
Relator,	)	Original Action in Mandamus
vs.	)	
CUYAHOGA COUNTY COURT OF COMMON PLEAS, DOMESTIC RELATIONS COURT, ET AL.,	)	
Respondents.	)	

RESPONDENT CUYAHOGA COUNTY COURT OF COMMON PLEAS, DOMESTIC RELATIONS COURT'S MEMORANDUM IN OPPOSITION TO RELATOR'S MOTION TO STRIKE RESPONDENT'S MOTION TO DISMISS

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. LARRY KLAYMAN,	)	CASE NO. 2013-0296
Relator,	)	Original Action in Mandamus
vs.	)	**RESPONDENT CUYAHOGA COUNTY COURT OF COMMON PLEAS, DOMESTIC RELATIONS COURT'S MEMORANDUM IN OPPOSITION TO RELATOR'S MOTION TO STRIKE RESPONDENT'S MOTION TO DISMISS**
CUYAHOGA COUNTY COURT OF COMMON PLEAS, DOMESTIC RELATIONS COURT, ET AL.,	)	
Respondents.	)	

Pursuant to S.Ct.Prac.R. 4.01(B), respondent Cuyahoga County Court of Common Pleas, Domestic Relations Court ("respondent Domestic Relations Court") respectfully submits this memorandum in opposition to relator's motion to strike respondent Domestic Relations Court's motion to dismiss.

Relator relies on S.Ct.Prac.R. 3.11(D)(2). See Relator's Motion to Dismiss at para. 3. That rule, in its entirety, provides as follows:

> If the Supreme Court determines that service was not made as required by this rule, it may strike the document or, if the interests of justice warrant, order that the document be served and impose a new deadline for filing any responsive document. If the Supreme Court determines that service was made as required by this rule or that service was not made but the movant was not adversely affected, it may deny the motion to strike.

S.Ct.Prac.R. 3.11(D)(2).[1]

In this case, the certificate of service for respondent Domestic Relations Court's motion to dismiss recites that it was served on March 19, 2013 by regular U.S. Mail, postage prepaid, upon relator and counsel for respondent Court of Appeals. Under S.Ct.Prac.R. 3.11(B)(1), "[s]ervice by mail is effected by depositing the copy with the United States Postal Service for

[1] Relator's motion to strike represents that he has quoted that rule "in its entirety," but he has not. Relator's motion entirely omits the second sentence of S.Ct.Prac.R. 3.11(D)(2).

mailing." Relator's motion to strike acknowledges that he received the service copy of respondent Domestic Relations Court's motion to dismiss on April 8, 2013. See Relator's Motion to Strike at para. 2. So regardless of whatever problems relator may be having with the receipt of mail that has been sent to him at his designated mailing address, respondent Domestic Relations Court served its motion to dismiss as required by S.Ct.Prac.R. 3.11. Consequently, relator's motion to strike Domestic Relations Court's motion to dismiss is not well taken and should be denied.

Relator's motion to strike alternatively requests a new deadline to respond to respondent Domestic Relations Court's motion to dismiss, indicating that relator has experienced inexplicable delays in receiving mail at his designated address. Although relator's motion to dismiss says he did not receive the service copy until April 8, 2013, he does not indicate that he was unaware of respondent Domestic Relations Court's March 20, 2013 motion to dismiss before that date.[2] Relator attempts to substantiate his claim of delayed mail delivery by tendering an affidavit from the manager of a UPS store who indicates that several unidentified customers had recently complained about untimely mail delivery and his belief as to the cause of the delays. The UPS manager's affidavit does not appear to have been notarized and is therefore of dubious evidentiary value.

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[2] Indeed, relator's March 27, 2013 motion to strike respondent Court of Appeals' motion to dismiss acknowledges that he received that respondent's motion on March 22, 2013, which left him only one business day to respond to it. Relator says his March 25, 2013 motion for an enlargement of time to respond to that motion was not accepted for filing by the Clerk's office and that the Clerk's office then suggested that he seek relief under S.Ct.Prac.R. 3.11(D)(2). Given that relator received the Court of Appeals' motion to dismiss on March 22, 2013, was in direct communication with the Clerk's office on or about March 25, 2013, and filed his first motion to strike on March 27, 2013, it would seem at least improbable that relator could have been wholly unaware that respondent Domestic Relations Court had filed its motion to dismiss on March 20, 2013.

At any rate, the record here does not substantiate any claim that respondent Domestic Relations Court did not make service as required by S.Ct.Prac.R. 3.11. To the extent that S.Ct.Prac.R. 3.11(D)(2) permits the Supreme Court to impose a new deadline for filing any responsive document if the Court determines that service was *not* made as required by Rule 3.11 and the interests of justice so warrant, the fact that service *was* made as required by Rule 3.11 would appear to preclude relator's alternative request for a new deadline to file a responsive document.

Accordingly, respondent Domestic Relations Court respectfully urges this Court to deny relator's motion to strike its motion to dismiss.

Respectfully submitted,

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PROOF OF SERVICE

A true copy of the foregoing Respondent Cuyahoga County Court of Common Pleas, Domestic Relations Court's Memorandum in Opposition to Relator's Motion to Strike Respondent's Motion to Dismiss was served this 12TH day of April 2013 by regular U.S. Mail, postage prepaid, upon:

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