

IN THE SUPREME COURT OF OHIO

13 - 0893

FIFTH THIRD MORTGAGE COMPANY

Plaintiff-Appellee,

vs.

MARCIA C. BELL, *et al.*

Defendants-Appellants.

On Appeal from the
Madison County Court of Appeals,
Twelfth Appellate District

Court of Appeals Case No.
CA20130003

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT GREG BELL

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SUPREME COURT OF OHIO

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Judgment Entry of the Twelfth District Court of Appeals (April 19, 2013)

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I. EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.

“[I]t is now fundamental that [once a state establishes avenues of appellate relief], these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts.”

Williams v. Oklahoma City, 395 U.S. 458, 459, 89 S.Ct. 1818 (1969) (citing references omitted.)

At issue in this case is the construction and constitutionality of Ohio’s statute dictating a requisite bond to obtain a stay of execution on appeal – R.C. § 2505.09. The statute purports to require an absolute posting of not less than the cumulative total for all claims covered by the judgment and interest in order to stay execution pending appeal – without regard for an appellant’s ability to pay or the security of the appellee’s judgment.

In this case, the Twelfth District Court of Appeals relied on R.C. § 2505.09 in maintaining a supersedeas bond of over twice the principal judgment amount in a case where the plaintiff’s *in rem* judgment was already more than adequately secured by a mortgage, and the court of appeals was aware that the property sold at a sheriff’s sale for nearly \$47,000 more than the amount complained of.¹ Despite the property’s sale value being well in excess of the judgment amount, the court of appeals still required a bond of \$324,600.00. Because 100% cash collateral is required to secure a supersedeas bond, and the property owner did not have \$324,600.00 cash, he could not secure a stay pending appeal, despite that no personal judgment was rendered against him, despite that the plaintiff’s relief was limited against the property only, and despite that the value of the property was well in excess of the amount due to the plaintiff, as demonstrated by the winning sheriff’s sale bid. Because the appellant could not secure a stay, the property was sold at a sheriff’s sale while the appeal was pending and then confirmed.

¹ It was ultimately determined through the Confirmation of Sale that the property’s sheriff’s sale value was over \$10,000 more than the combined amount of funds found due to the Clerk of Courts, the Treasurer, the Recorder, the Auditor, Plaintiff, and the purchaser for prorated taxes.

Because R.C. § 2505.09 acts as an unreasoned impediment to poorer appellants' open and equal access to a meaningful appeal, and because it strips the discretion of courts to regulate procedural matters, it is unconstitutional. Further, the statute threatens to irrevocably strip the rights of every owner of property during appeal, making this case one of public or great general interest.

This case is one of public and great general interest because it affects a substantial constitutional right – the right to a meaningful appeal. The United States Supreme Court has held that once an appeal is afforded, “it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause.” *Lindsey v. Normet*, 405 U.S. 56, 77 (1972) (citing references omitted); *see also Williams v. Oklahoma City*, 395 U.S. 458 (1969) (per curiam), quoting *Griffin v. Illinois*, 351 U.S. 12 (1956) (Once the avenue of appellate review is afforded, it “must be kept free of unreasoned distinctions that can only impeded open and equal access to the courts.”). *Lindsey* recognizes that a substantial barrier to the right to an appeal is effectively the denial of the right to an appeal. *See also Douglas v. People of State of Cal.*, 372 U.S. 353, 358, 83 S.Ct. 814 (1963) (“There is lacking that equality demanded by the Fourteenth Amendment where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshaling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself. The indigent...has only the right to a meaningless ritual, while the rich man has a meaningful appeal.”); *Griffin* at 19 (“There can be no equal justice where the kind of an appeal a man enjoys depends on the amount of money he has.”).

R.C. §2505.09 denies equal justice and acts as a substantial barrier to the right to appeal as it makes an appeal meaningless because the appellant irrevocably loses the very right he or she is fighting to protect – the fundamental right to one’s property – during the appellate process, due to the financial inability to secure a 100% cash bond. The statute deprives the appellant of the right to a meaningful appeal and the right to his property without any regard for whether the appellee’s interest would otherwise be insecure. This can hardly be deemed “open and equal” access to a meaningful appeal, nor “equal justice.” Rather, wealthy litigants are afforded full protection of their property rights pending appeal by virtue of being able to obtain a stay, whereas poorer litigants cannot obtain a stay and cannot prevent their property rights from being stripped – the exact irreparable harm which they seek to remedy through the appeal.

This case provides the Court with an opportunity to ensure meaningful appellate rights and to protect all property owners’ rights to not have their property needlessly and irrevocably stripped from them during an appeal. This applies to anyone owning property in this state, from individual homeowners and small businesses, to large corporations and trusts. The court of appeals’ decision below threatens every owner’s right in his or her property. A decision by this Court will ensure that no property owner is left helpless and required to stand by and watch their property rights and equity be ripped out from under them during appeal – not to maintain the status quo which is the purpose of requiring a bond in the first place – but to provide the appellee protection in *excess* of its judgment. Where an appellee’s judgment is adequately protected pending appeal, there is no reasoned explanation to require additional security in the form of a cash bond. Instead, such a requirement unconstitutionally impedes the appellant’s right to a meaningful appeal and equal justice.

Construing the statute in this case is particularly relevant and timely as it is frequently implicated in foreclosure cases filed across the state. Just last month, the Columbus Dispatch reported that for the first three months of the year, foreclosure filings were up nearly 15% in Ohio over last year, marking the fourth straight quarter of foreclosure increases in the state.² While foreclosure filings nationwide are down 23% from a year ago, foreclosures in Ohio continue to rise.³ Whatever one's opinion is concerning the foreclosure crisis in this state, the constitutionality of R.C. § 2505.09 has wide ranging impact across all appeals subject to an unconstitutionally excessive bond requirement. If property owners cannot rely on the equity in their property to secure a stay of execution pending appeal, many meritorious appeals will not be brought because the property owner is helpless to prevent being ousted from the property while the appeal is pending, knowing that even if they are successful on appeal, they will not get their property back. *See* R.C. § 2329.45 (providing that when a judgment in satisfaction of which lands are sold is reversed, the reversal "shall not defeat or affect the title of the purchaser.") and R.C. § 2325.03 ("title to property passing to a purchaser in good faith (including a purchaser at a duly confirmed judicial sale) is unaffected by an attack on the final judgment involving the property.").

Courts of appeal across the state have expressed differing opinions on how to balance the competing interests of the appellant and the appellee with regard to the bond statute. Whereas the court of appeals in this case determined that R.C. § 2505.09 authorized a cash bond of twice the principal judgment amount, despite that no money judgment was rendered and despite that the judgment was secured by a mortgage on property valued at over \$45,000 more than the principal

² *Ohio foreclosure filings up slightly in the last month*, the Columbus Dispatch, April 11, 2013, available at: <http://www.dispatch.com/content/stories/business/2013/04/11/ohio-foreclosure-filings-up-slightly.html>.

³ *Id.*

judgment amount, other courts have used their discretion in refusing to literally apply the statute. See *Irvine v. Akron Beacon Journal*, 147 Ohio App.3d 428, 2002-Ohio-2204, 770 N.E.2d 1105, at ¶ 108 (9th Dist.) (“An ‘adequate supersedeas bond’ could reasonably be construed to mean no bond at all, if the trial court felt that none was necessary.”); *Lomas & Nettleton Co. v. Warren*, 11th Dist. No. 89-G-1519, 1990 WL 93138, *2 (June 29, 1990) (“The posting of a supersedeas bond is not mandatory to stay an execution in all cases.”); *Buckles v. Buckles*, 46 Ohio App.3d 118, 119 (10 Dist. 1988) (mortgage permitted to be substituted for the monetary supersedeas bond); *National City Bank N.E. v. Beyer*, 6th Dist. No. H-99-017, 1999 WL 1203742 (finding R.C. § 2505.09 relates to a judgment rendered for money damages, and that no purpose would be served in requiring a bond in a case where a money judgment was not rendered).

Despite these cases, arguably the statutory language leaves no discretion for a court to determine what an adequate bond is because the statute sets forth an absolute floor necessary in order to secure a stay; a court determining in its discretion that an adequate bond is zero or a nominal amount is in violation of the statute’s command. Accordingly, R.C. § 2505.09 unconstitutional in light of Civ.R. 62(B) and Article IV, Section 5(B) of the Ohio Constitution. See *Rockey v. 84 Lumber Co.*, 66 Ohio St.3d 221, 223, 611 N.E.2d 789 (1993) (holding that “The Ohio Rules of Civil Procedure, which were promulgated by the Supreme Court * * * must control over subsequently enacted inconsistent statutes purporting to govern procedural matters.”). This appeal raises novel issues because this Court has not provided specific guidance on the interplay of courts’ discretion in the face of the contrary statutory language of R.C. § 2505.09, nor has it provided guidance concerning relevant considerations in setting an adequate bond, or guidance concerning the outer constitutional limits of a trial court’s discretion to determine an adequate bond.

In spite R.C. §2505.09's statutory language to the contrary, courts do have discretion to determine what is an adequate bond. This includes discretion to determine that an adequate bond means no bond, despite that R.C. § 2505.09 attempts to strip courts of this power. Further, the wide discretion which courts enjoy warrants guidance from this Court on the outer constitutional limits of that discretion. Without such guidance, if a trial court exercises discretion in an unconstitutional manner, the property owner has no recourse while they appeal that decision because they will be unable to obtain a stay while the appeal is pending, and the property will be sold in the interim, irrevocably terminating the property owner's rights. *See* R.C. §§ 2329.4 and 2325.03. If property owners cannot rely on the equity in their property to secure a stay of execution pending appeal, many meritorious appeals will not be brought because the homeowner will be kicked out on the street while the appeal is pending, knowing that even if they are successful on appeal, they will not get their home back. This reality unreasonably impedes poorer litigants' constitutional right to a meaningful appeal.

This case directly challenges the constitutionality of R.C. § 2505.09 as an unreasoned distinction impeding the right to a meaningful appeal because it was applied in this case to require a double bond, despite that property of adequate value was tendered to protect the interest of the appellee. Indeed, a brief review of the facts in this case shows just how far the appellate court strayed from protecting the appellant's right to a meaningful appeal and right to protect his property.

In this mortgage foreclosure, the defendant-appellant Greg Bell ("Mr. Bell") sought a stay of execution with the trial court while he appealed the trial court's grant of summary judgment to the bank. When the stay was denied without reason by the trial court, Mr. Bell applied to the court of appeals for relief. The Twelfth District granted Mr. Bell's motion to stay

conditioned on the posting of a supersedeas bond in the amount of \$324,600.00 – over twice the amount of the *in rem* principal judgment rendered in this case, which was already secured by property demonstrably valued at over \$45,000 more than the principal judgment amount. This bond is unconstitutionally excessive because it is not related to protecting the interest of the plaintiff and it acts as a substantial barrier to Mr. Bell’s right to an appeal. The bond acts to deprive the appeal of its effectiveness because Mr. Bell is not financially able to obtain the bond as set by the court of appeals, resulting in his property being sold at a sheriff’s sale. Being unable to stay the sheriff’s sale results in the loss of meaning to Mr. Bell’s appeal because even if he is successful on appeal, he will not be restored to his interest in the property. Rather, he is left with the substandard remedy of restitution. If the statute is permitted to require this bond based on these facts, there is no limit to its reach to prevent all but the wealthiest litigants from obtaining a stay pending appeal. If one cannot obtain a stay pending appeal to preserve the very property interest they are fighting for on appeal, particularly where the appellee’s interest is already secure without additional bond, how is the constitutional right to appeal meaningful?

Despite that the plaintiff was more than adequately protected by the property, that plaintiff was not entitled to collect a money judgment against Mr. Bell, and that Mr. Bell’s financial inability to secure \$324,600 in cash resulted in the irreparable loss of his property pending appeal, the court of appeals nonetheless relied upon R.C. § 2505.09 as authority to justify the requirement of a cash bond over twice the amount of the *in rem* principal judgment. Because the statute acts as an unreasoned impediment to the constitutional right to a meaningful appeal, it is unconstitutional, and because of the threat it poses to all appellants’ constitutional rights to a meaningful appeal and rights in their property, it is of great public and general interest. Moreover, because the bond was set by the court of appeals in the first instance in this

case, and the court of appeals denied Mr. Bell's request to reconsider the amount of the bond, this Court is Mr. Bell's only avenue of appellate review concerning the amount of the bond, which affects his substantial rights. R.C. § 2505.09 is unconstitutional and the trial court abused its discretion in applying it in this case. Mr. Bell respectfully requests that this Court accept jurisdiction to ensure the right to a meaningful appeal and security in Ohioan's property rights pending appeal.

II. STATEMENT OF THE CASE AND FACTS

Plaintiff-Appellee Fifth Third Mortgage Company ("Fifth Third") filed foreclosure against Mr. Bell in February of 2012, and the trial court ultimately granted summary judgment in Fifth Third's favor. A decree in foreclosure was entered for the amount of \$157,187.56 with interest at 3.25% from May 1, 2011, together with advances for taxes and insurance. Due to bankruptcy discharge, no personal judgment was rendered against Mr. Bell, and no other defendant obtained a judgment against Mr. Bell in the case.

Mr. Bell timely appealed the grant of summary judgment to the Twelfth District Court of Appeals, challenging, *inter alia*, the complete lack of evidence of Fifth Third's standing at the time the lawsuit was filed (the appeal to the Twelfth District is still pending). After filing his appeal, Mr. Bell moved the trial court for a stay of execution of the judgment. Although no opposition was filed, the trial court denied the Motion without explanation. Mr. Bell promptly filed a motion to stay in the Twelfth District in accordance with App.R. 7, which was also unopposed.

The Court of Appeals granted Mr. Bell's Motion for a Stay conditioned upon posting a supersedeas bond in the amount of \$324,600.00 – over twice the amount of the outstanding principal balance due on the loan. Thereafter, Mr. Bell filed a Motion to Reconsider with the

Twelfth District, which was not opposed, asking the court of appeals to reconsider the bond amount in light of the fact that the winning bid at the sheriff's sale – \$204,000.00 – demonstrated the value of the property at issue was more than sufficient to protect Fifth Third's interest, which was ultimately determined to be \$183,038.17, accounting for all interest and advances due to Fifth Third. The Motion to Reconsider also set forth via an affidavit that Mr. Bell contacted multiple bond companies in an effort to secure the bond, but was unsuccessful because 100% cash collateral was required.

The Court of Appeals denied the Motion to Reconsider, leaving in place the \$324,600.00 bond requirement.⁴ Mr. Bell was not able to secure the bond and the property was sold at a sheriff's sale.⁵ Copies of the court of appeals' entries and the trial court entry are attached

⁴ Ultimately, the bond set by the court of appeals was over \$130,000 more than the amounts determined to be due to the Clerk of Courts, the Treasurer, the Recorder, the Auditor, Plaintiff, and the purchaser for prorated taxes, as demonstrated by the Confirmation of Sale. That excess plus the sheriff's sale value of the property demonstrates that Mr. Bell lost his interest in his property and the right to a meaningful appeal, not because the bank otherwise would have been insecure pending appeal, but because Mr. Bell was not financially able to secure a \$334,000.00 buffer the court of appeals deemed R.C. § 2505.09 authorized it to impose. The court of appeals essentially required security of well over \$500,000.00 (the \$204,000.00 property value plus a \$324,600.00 bond) in a case where the plaintiff was due \$183,038.17.

⁵ The appeal to this Court is not moot due to the sale of the property because the issue presented in this appeal is one that is capable of repetition, yet evading review. *State ex rel. Cincinnati Enquirer v. Heath*, 121 Ohio St.3d 165, 2009-Ohio-590, 902 N.E.2d 976, ¶ 11, citing *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229, 231, 729 N.E.2d 1182 (2000) (a claim is capable of repetition, yet evading review if “(1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.”). As demonstrated by the course of proceedings in this case, a challenge to a lower courts' decision as to the amount of a supersedeas bond cannot be fully litigated before the judgment is executed and the property is sold because the appellant cannot obtain a stay of execution pending appeal due to the unconstitutional bond, permitting the appellee to proceed with a sale of the property while the appeal is pending. Moreover, there is a reasonable expectation that Mr. Bell and other similarly situated property owners could be subject to unconstitutionally excessive bonds in the future, and be unable to prevent the sale of their property pending appeal of the bond because they cannot obtain a stay due courts', including the Twelfth District's, reliance on R.C. § 2505.09 in setting unconstitutional bonds. Further, even if a case is deemed moot with respect to one of the litigants, this Court may hear the appeal “where there remains a debatable constitutional question

hereto. Mr. Bell appeals the court of appeals' decision setting the bond as it affects substantial rights for Mr. Bell and all litigants – the right to a meaningful appeal and one's fundamental interest property.

III. ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law #1: R.C. § 2505.09 is an unconstitutional burden on an appellant's constitutional right to an appeal where its application deprives the appellant of a meaningful appeal.

The United States Supreme Court has held that when an appeal is afforded, "it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause." *Lindsey v. Normet*, 405 U.S. 56, 77 (1972) (citing references omitted); see also *Williams v. Oklahoma City*, 395 U.S. 458 (1969) (per curiam), quoting *Griffin v. Illinois*, 351 U.S. 12 (1956) (Once the avenue of appellate review is afforded, it "must be kept free of unreasoned distinctions that can only impede open and equal access to the courts."). In *Lindsey*, the Court found that Oregon's double bond requirement in forcible entry and detainer appeals created a substantial barrier to appeal and violated the Equal Protection Clause. *Id.* at 79. The Court noted that it was "particularly obvious" that the double bond provision discriminated against the poor. *Id.* While Ohio's statute does not require a bond in the amount of double the judgment, it does act as an unreasoned impediment to the constitutional right to an appeal, especially as applied to the poor.

R.C. § 2505.09 provides:

Except as provided in section 2505.11 or 2505.12 or another section of the Revised Code or in applicable rules governing courts, *an appeal does not operate*

to resolve, or where the matter appealed is one of great public or general interest." *State ex rel. White v. Kilbane Koch*, 96 Ohio St.3d 395, 2002-Ohio-4848, 775 N.E.2d 508, ¶16, citing *Franchise Developers, Inc. v. Cincinnati*, 30 Ohio St.3d 28, 505 N.E.2d 966 (1987), paragraph one of the syllabus and *Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Mgt. Dist.*, 73 Ohio St.3d 590, 598, 653 N.E.2d 646 (1995).

as a stay of execution until a stay of execution has been obtained pursuant to the Rules of Appellate Procedure or in another applicable manner, and a supersedeas bond is executed by the appellant to the appellee, with sufficient sureties and in a sum that is not less than, if applicable, the cumulative total for all claims covered by the final order, judgment, or decree and interest involved, except that the bond shall not exceed fifty million dollars excluding interest and costs, as directed by the court that rendered the final order, judgment, or decree that is sought to be superseded or by the court to which the appeal is taken. That bond shall be conditioned as provided in section 2505.14 of the Revised Code. (emphasis added).

In this case, the Twelfth District applied the statute to require a bond in an amount in excess of twice the principal judgment, in addition to the value of the property which fully covered the plaintiff's judgment. Interpreting R.C. § 2505.09 to permit a bond in such excess without regard for a litigant's ability to pay, the terms of the judgment awarded to the plaintiff, or the security of the plaintiff acts as a substantial barrier to an appellant's right to an appeal, which effectively denies the right to an appeal and denies equal protection of the law.

It does so by creating two classes of appellant litigants – those appellants wealthy enough to post the supersedeas bond are fully protected by a stay pending appeal and are thus permitted to retain their property interests, whereas poor appellants who cannot post the bond cannot obtain the benefit of a stay and permanently lose their interest in their property. Their only “redress” is the subpar remedy of restitution of the sheriff's sale value of the property, which is far from equivalent to the constitutionally protected interest in the property itself. *See* Article 1, Section 1 of the Ohio Constitution. Thus, as applied, the bond acts to afford different protection on appeal based on wealth. Wealthy litigants are afforded full protection on appeal, but poor litigants are left only with the insufficient remedy of restitution. Further, the effectiveness of the appeal is robbed by the bond provision, depriving appellant's of due process of law. The mechanical application of R.C. § 2505.09 to set a bond well in excess of the judgment amount, in an amount the appellant cannot afford such that the appellant cannot secure a stay and is irreparably stripped

of his or her interest in property, without regard for whether a money judgment is rendered or whether the plaintiff's judgment is otherwise insecure, violates the appellants' equal protection and due process guarantees under the United States Constitution and the Ohio Constitution, and therefore the statute is unconstitutional.

Proposition of Law #2: R.C. § 2505.09 is an unconstitutional abrogation of a court's authority to regulate procedural matters.

R.C. § 2505.09 provides that there is no stay of execution pending appeal until "a supersedeas bond is executed by the appellant to the appellee, with sufficient sureties and in a sum that is not less than, if applicable, the cumulative total for all claims covered by the final order, judgment, or decree and interest involved." The statute sets an absolute floor on the amount of the bond, thereby stripping a court's discretion to determine what an adequate bond is. In other contexts, this Court has long recognized the courts' discretion in determining proper conditions of a stay:

that the court has ample power to stay the execution of the judgment or final order, and it may grant the stay upon such terms as it sees fit; and if, in the opinion of the court, no other terms than the stay itself are required, the stay may be so granted.

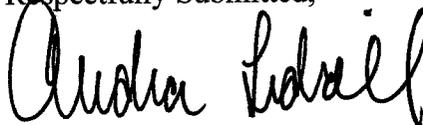
Henderson v. James, 52 Ohio St. 242, 261, 39 N.E. 805 (1895). This Court has also held that "[t]he Ohio Rules of Civil Procedure, which were promulgated by the Supreme Court * * * must control over subsequently enacted inconsistent statutes purporting to govern procedural matters." *Rockey v. 84 Lumber Co.*, 66 Ohio St.3d 221, 223, 611 N.E.2d 789 (1993). Both the Rules of Civil Procedure and the Rules of Appellate Procedure afford the courts discretion to determine what is an adequate bond based on the case. Civ.R. 62(B) and App.R. 7. Therefore, because R.C. § 2505.09 is inconsistent in its mandate of what bond must be posted, it is unconstitutional under Article IV, Section 5(B) of the Ohio Constitution. While some courts have recognized R.C. § 2505.09 cannot strip them of their discretion, *see Irvine* at ¶108, *Lomas* at *2, other courts have

found R.C. §2505.09's mandate of the minimal bond amount precludes consideration of an appellant's financial hardship. *See Ohio Carpenter's Pension Fund v. La Centre, L.L.C.*, Eighth Dist. Nos. 86597 and 86789, 2006-Ohio-2214, ¶ 32-34. The Twelfth District used the statute as justification to ignore all of the facts and circumstances in this case in setting a bond that is so excessive it cannot be deemed anything but an abuse of discretion. Because the statute is unconstitutional and the cause of divergent case law in this state concerning the important issue of on what terms an appellant may fully protect his or her property interest pending appeal by obtaining a stay, it must be stuck down by this Court.

IV. CONCLUSION

This matter presents an issue of great public and general concern and involves a substantial constitutional question because Ohio's bond statute, R.C. § 2505.09, places unreasoned impediments to the constitutional right to an appeal, thereby stripping appellants of a meaningful appeal and rendering the statute unconstitutional. The statute also unconstitutionally interferes with courts' discretion to determine an adequate bond based on the facts and circumstances of each case. The purpose of a supersedeas bond is to maintain the status quo and a statute that does not provide discretion in how that can be achieved is unconstitutional. For the forgoing reasons, Mr. Bell respectfully request that this Court accept jurisdiction in this case.

Respectfully Submitted,



Troy J. Doucet (0086350)

Audra L. Tidball (0087764)

COUNSEL FOR APPELLANT GREG BELL

CERTIFICATE OF SERVICE

I certify that a copy of this MEMORANDUM IN SUPPORT OF JURISDICTION was sent by ordinary USPS postage prepaid mail to the following parties this 31st day of May, 2013:

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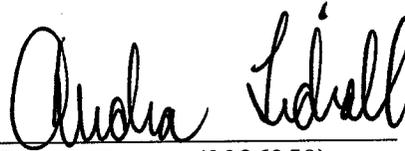
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APPENDIX

Judgment Entry of the Twelfth District Court of Appeals (April 19, 2013)

Judgment Entry of the Twelfth District Court of Appeals (March 27, 2013)

Entry of the Madison County Common Pleas Court (March 8, 2013)

IN THE COURT OF APPEALS OF MADISON COUNTY, OHIO

FIFTH THIRD MORTGAGE CO., : CASE NO. CA2013-02-003

Appellee, : ENTRY DENYING APPLICATION
: FOR RECONSIDERATION

vs.

FILED
In The Court of Appeals
Madison County, Ohio

MARCIA C. BELL, et al.,

APR 19 2013

Appellants.

Renee M. Blomdahl
Clerk of Courts

The above cause is before the court pursuant to an emergency application for reconsideration filed by counsel for appellant, Greg Bell, on April 8, 2013. Appellant seeks reconsideration of this court's March 27, 2013 entry granting motion to stay judgment pending appeal contingent upon posting supersedeas bond.

When reviewing an application for reconsideration, the court considers whether the application calls the attention of the court to an obvious error in its decision, or raises an issue for consideration that was either not considered at all, or not fully considered by the court when it should have been. *Grabill v. Worthington Industries, Inc.*, 91 Ohio App.3d 469 (1993).

In his application for reconsideration, appellant argues that the bond set by the court is too high and that this court should stay execution of the judgment without a supersedeas bond. Appellant argues that this court did not consider or address his argument that appellee's judgment is secured by a mortgage and that additional security is not needed.

Appellant has failed to raise any issue that was not considered by this court when granting his motion for stay of execution of judgment contingent upon posting

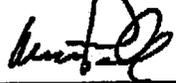
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supersedeas bond. The emergency application for reconsideration is therefore DENIED.

IT IS SO ORDERED.



Robert P. Ringland, Judge



Michael E. Powell, Judge

IN THE COURT OF APPEALS OF MADISON COUNTY, OHIO

FIFTH THIRD MORTGAGE CO., : CASE NO. CA2013-02-003

Appellee, : ENTRY GRANTING MOTION TO
STAY JUDGMENT PENDING APPEAL
vs. : CONTINGENT UPON POSTING
MARCIA C. BELL, et al., : SUPERSEDEAS BOND

FILED
In The Court of Appeals
Madison County, Ohio

MAR 27 2013

Appellants.

Renee Elizabeth
Clerk of Courts

The above cause is before the court pursuant to a motion to stay execution of judgment pending appeal filed by counsel for appellants, Marcia C. Bell, et al., on March 13, 2013.

R.C. 2505.09 provides that an appeal does not operate as a stay of execution until a stay of execution has been obtained pursuant to the Rules of Appellate Procedure or in another applicable manner, and a supersedeas bond is executed by the appellant to the appellee in a sum not less than the cumulative total for all claims covered by the final order, judgment, or decree, including interest. Civ.R. 62(B) provides that when an appeal is taken, the appellant may obtain a stay of execution of the judgment or any proceedings to enforce the judgment by giving an adequate supersedeas bond.

In the present case, appellee has obtained a judgment in foreclosure in the amount of \$157,187.56, with interest at 3.25% from May 1, 2011, together with advances for taxes, insurance and other amounts expended, plus costs. Further, additional time will be necessary to resolve this appeal, which will result in increased interest and other charges.

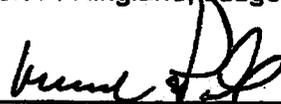
Madison CA2013-02-003

Based upon the foregoing, the motion for stay of execution is hereby
GRANTED contingent upon posting a supersedeas bond in the amount of
\$324,600.00 with the clerk of the Madison County Court of Common Pleas.

IT IS SO ORDERED.



Robert P. Ringland, Judge



Michael E. Powell, Judge

IN THE COURT OF COMMON PLEAS, MADISON COUNTY, OHIO

Fifth Third Mortgage Company,

Plaintiff(s),

-vs-

Marcia C. Bell,

Defendant(s).

Case No. CVE 20120066

ENTRY

FILED
In The Court of Common Pleas
Madison County, Ohio

MAR 08 2013

Rena E. Zablondil
Clerk of Courts

Defendant Greg Bell's motion for stay during appeal is Overruled.

So Ordered.

ENTER: March 5, 2013



Robert D. Nichols, Judge

cc: Andra Tidball
Kirk Sampson
Susan L. and Larry L. Taylor
Bethany J. Hamilton
Mark Landes
United States of America
Choctaw Lake Property Owners Association
Court Administrator

I HEREBY CERTIFY THAT THIS
IS A TRUE COPY OF THE
ORIGINAL ON FILE
RENAE E. ZABLONDIL
CLERK OF COURTS
Rena E. Zablondil