

ORIGINAL

IN THE SUPREME COURT OF OHIO
APPEAL FROM THE COURT OF APPEALS OF OTTAWA COUNTY, OHIO
SIXTH APPELLATE DISTRICT

IN THE MATTER OF: * Supreme Court Case No. 12-2097
A. G., a minor child. * Court of Appeals Case No. OT-11-003
Appellant. *

REPLY BRIEF OF APPELLANT A.G., A MINOR CHILD

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STATEMENT OF THE FACTS

Appellant A.G. respectfully submits that the statement of facts provided to this Court and as set forth in her merit brief is supported by specific references contained within the transcript of proceedings which occurred after the filing of Appellee Father's Motion on September 14, 2009 (*See Supplement to Merit Brief of Appellant A.G. at Exhibit D*). The trial court's findings of fact and conclusions of law as contained within its January 21, 2011 Decision and Judgment Entry (*See Attachment C of Merit Brief of Appellant A.G. a Minor Child*) forms the basis of the instant appeal to this Court. As such, it is within this Court's discretionary purview to ascertain whether or not the trial court relied upon sufficient facts and appropriate findings in arriving at the conclusions that it did. Therefore, it is understandable that Appellee Father would simply "adopt" the findings of the trial court rather than submit its own supported historical accounting of the trial proceedings, in turn, being supported by specific references to justify his claims.

Appellant A.G. further submits that this Court should take note that Appellee Father's assertion that "It is, however, factually inaccurate to assert that the Appellant was not allowed to participate" (*See Merit Brief of Appellee Father at page 1, third paragraph*) is seemingly contradictory to the trial court's finding that Appellant A.G. "... ***does not have a constitutional right to be present during a trial*** that involves a dispute between her parents." (*See Exhibit K of Supplement to Merit Brief of Appellant A. G. at page 2, first un-numbered paragraph*) (*Emphasis added*). It is interesting to note that while Appellee Father

expresses recognition that Appellant A.G. "...has a significant interest in these proceedings..." (*See Merit Brief of Appellee Father at page 7, second paragraph*), her wishes were adequately protected and advanced because Appellant A.G. was represented by counsel and Appellee Mother participated at the proceeding, (*See Merit Brief of Appellee Father at page 1, third paragraph*).

Herein lies the basis and justification for the instant appeal to this Court. Appellee Father's arguments completely ignore her constitutional rights as guaranteed by the Fourteenth Amendment of the United States Constitution and Article 1, Section 16 of the Ohio Constitution. Appellant A.G. posits that these constitutional provisions and the resultant standards and practices developed in support of these rights must apply to all persons, including those *under the age of majority* (children). The current civil and juvenile rules of practices do not currently provide adequate protection of these constitutional rights to minor children. Except for the specific situation in which a child has been charged in a delinquency proceeding, children *are routinely and summarily denied* the right to participate in any proceedings, particularly those in which the child has a direct interest in the outcome of the case, Appellant A.G.'s case now before this Court is such a case. For the reasons set forth in Appellant A.G.'s argument, these standards and practices regarding the violation of children's right to due process *must be recognized as unconstitutional and therefore, changed.*

**APPELLANT A.G.'S REPLY TO APPELLEE FATHER'S ARGUMENT IN
SUPPORT OF PROPOSITION OF LAW**

Proposition of Law No. I: The denial of a person, under the age of majority, the opportunity to participate in trial proceedings in which they have a direct interest, is a violation of that person's right to due process as guaranteed by the 14th Amendment of the U. S. Constitution and Article 1, Section 16, of the Ohio Constitution.

In her merit brief, Appellant A.G. submitted her proposition of law, asserting that she was denied the right to due process of the law as guaranteed by the Fourteenth Amendment of the United States Constitution and Article 1, Section 16 of the Ohio Constitution when the trial court improvidently applied the rules of juvenile procedure and precluded her participation at trial, thereby denying her the guaranteed due process rights to which she was entitled. Appellant re-emphasizes her position that because this issue involves the statutory construction of a guaranteed due process right to her, *a member of the class of persons under the age of majority*, this matter is ripe for this Court's review and consideration. Appellant A.G., being a minor child under the age of eighteen (18) years old, re-emphasizes the following:

Section 1 of the Fourteenth Amendment (titled "Civil Rights") provides, in relevant part, that:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person*

of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Emphasis added).

Appellant is a citizen of the United States for purposes of this Court's consideration in this matter. The Fourteenth Amendment **does not make** any distinction *regarding the age of the person* subject to the protections afforded by it. Rather, it applies to *all persons*.

Article 1, Section 16 (titled "Redress for Injury; Due Process"), of the Ohio Constitution further provides that:

"All courts shall be open, and *every person*, for an injury done him in his land, goods, person, or reputation, *shall have remedy by due course of law*, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law." (Emphasis added).

Article 1, Section 16 also **does not make** any distinction *regarding the age of the person* subject to the protections afforded by it. Again, it applies to *all persons*.

Although Appellee Father's merit brief provides clarity to the process of the juvenile court (Ottawa County) having received jurisdiction of a certified domestic relations case (Henry County), said certification *is not* being challenged in this case. Appellee Father's argument regarding the use of the Civil Rules of Procedure instead of the Juvenile Rules of Procedure tend to epitomize the due process issues now before this Court. The case law cited by Appellee Father highlight the incongruences which have been derived from inconsistent and multiple interpretations by and of the various trial and appellate courts reviewing similar issues.

Appellee Father's argument, as advanced in his merit brief, is flawed for several

other reasons. Appellee Father first asserts that because the trial court allowed Appellant A.G.'s counsel to file motions, said motions "...should be construed as motions of the Appellee Mother" (*See Merit Brief of Appellee Father at page 6, third paragraph*). Then Appellee Father alternatively argues that "...Appellee Mother, as the primary residential parent and legal custodian of Appellant and as her representative, is the proper party to advance and advocate the wishes and concerns of the Appellant." (*See Merit Brief of Appellee Father at page 1, third paragraph*).

This alternative position appears to be in direct contravention to Appellee Father's claim that "...Appellant was represented by counsel, and counsel would continue to adequately represent the Appellant in the courtroom." (*See Merit Brief of Appellee Father at page 1, third paragraph*). However, Appellee Father further states that pursuant to *Hanna vs. Hanna*, 177 Ohio App. 3d 233, 2008-Ohio-3523, 894 N.E. 2d 355 (10th District), "the motions filed by Appellant are irrelevant and would not be heard at all." (*See Merit Brief of Appellee Father at page 7, second paragraph*). The *Hanna* court, which was addressing a change of custody request pursuant to R.C. 3109.04(E)(1)(b), ultimately held that a minor child **did not** have an independent legal right separate and apart from his or her parents to commence or maintain a change of custody action. Appellant A.G. posits that the *Hanna* conclusions and decision similarly violates the issue regarding a minor child's right to due process of the law as guaranteed by the Fourteenth Amendment of the United States Constitution and Article 1, Section 16 of the Ohio Constitution, as is being advanced in Appellant A.G.'s instant appeal.

Collectively, these arguments advanced by Appellee Father further illustrate the problems created by the absence (lack of physical presence) of a party to an action who has

a direct interest in the result of that action. Furthermore, at no time during the proceedings did any party challenge the trial court's determination and recognition that Appellant A.G. was a bono fide party in this action.

Appellant A.G. further notes Appellee Father's silence regarding Appellant A.G.'s concerns relative to the guardian ad litem's lack of appropriate contact and committed involvement to her in this case. As previously advanced in her merit brief, Appellant A.G. re-emphasizes that for reasons that had never been substantiated through any evidentiary adjudicatory process, the GAL "dismissed" Appellant A.G.'s fears as being trite and therefore, recommended that the trial court grant unsupervised visitation to Appellee Father. Once it became obvious that the GAL's recommendations were conflicted to Appellant A.G.'s expressed feelings and wishes, the GAL *did not* request *nor did the trial court*, on its own initiative, *appoint separate counsel* for Appellant A.G.. Appellant A.G., with the assistance of her extended family, retained counsel and filed her response to Appellee Father's motion (*See Exhibit F of Supplement to Merit Brief of Appellant A.G.*).

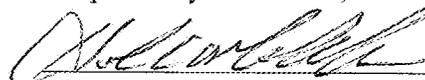
In summary, Appellant A.G. asserts that by denying her the opportunity to *personally* participate in the trial proceedings, the trial court denied her the due process rights as guaranteed by the U. S. Constitution and the Ohio Constitution, as well as the established due process requirements mandated by Juv. R. 2, 4 and 27. Absent a legitimate compelling public policy reason which outweighs the constitutional rights guaranteed to all persons, *including those under the age of majority*, these existing standards and practices which treat children differently than adult persons *must be changed*. It is again re-emphasized that this is not about whether or not a different outcome would have been achieved had

Appellant A.G. been afforded the opportunity *to attend and participate* during the adjudicatory proceedings. Rather, it is about Appellant A.G.'s constitutionally guaranteed right to attend and participate in that specific proceeding in which she had a direct interest in the outcome of the case.

CONCLUSION

As raised in Appellant A.G.'s merit brief, the decision of the trial and appellate courts in this case are fundamentally wrong and violate the rights embodied in the Fourteenth Amendment of the Constitution of the United States and Article I, Section 16 of the Constitution of the State of Ohio which collectively guarantee that any person, regardless of age, shall be afforded the right to due process, principally the fair and impartial judicial enforcement of the legislative laws of the State of Ohio. Inherent in that right is the protection of persons from unfair decisions resulting from vague, ambiguous and broad sweeping laws that are subject to multiple interpretations or are inconsistent with each other to achieve a generally unbiased result. This Court must recognize the protected rights of persons who are under the age of majority and reverse the trial court and appellate decisions in this case. A reversal will promote the constitutionally guaranteed rights embodied in the U. S. and Ohio Constitutions as applied to all persons, irrespective of their age.

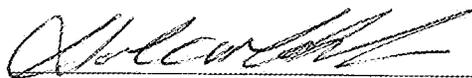
Respectfully submitted,



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PROOF OF SERVICE

I certify that a copy of the Reply Brief of Appellant A.G., A Minor Child has been sent by ordinary U. S. Mail, postage pre-paid, to Counsel of record for Appellee Father, Mr. Timothy Hallett, Esq. and Mr. Eric Nagel, Esq., Hallett, Hallett & Nagel, at 132 Fulton Street, Wauseon, OH 43567; Counsel of record for Appellee Mother, Mr. Richard A. Karcher, Esq., at 421 North Michigan Street, Suite D, Toledo, OH 43604; and the Guardian ad Litem, Ms. Bree Noblitt Brown, Esq., at 318 Madison Street, Port Clinton, OH 43452 on June 10, 2013.



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