

ORIGINAL

IN THE SUPREME COURT OF OHIO

MARY M. GENTILE	:	Case No. 2013-0692
	:	
Appellee-Plaintiff	:	
	:	
v.	:	ON APPEAL FROM THE CUYAHOGA
	:	COUNTY COURT OF APPEALS,
	:	EIGHTH APPELLATE DISTRICT
RICHARD D. GENTILE	:	
	:	
Appellant-Defendant	:	COURT OF APPEALS
	:	CASE NO. 97971
	:	

**MOTION FOR RECONSIDERATION OF DENIAL OF JURISDICTION IN  
DISCRETIONARY APPEAL OF APPELLANT RICHARD D. GENTILE**

Scott Rosenthal, Esq. (0069135)  
Adam J. Thurman, Esq. (0068257)  
Schoonover, Rosenthal, Thurman, &  
Daray, L.L.C  
1001 Lakeside Avenue, Suite 1720  
Cleveland, Ohio 44114  
Tel: 216-589-9600; Fax 216-589-9800

Counsel for Appellee-Plaintiff

Christopher P. Lacich, Esq. (0062291)  
Roth, Blair, Roberts, Strasfeld & Lodge, LPA  
100 East Federal Street, Suite 600  
Youngstown, Ohio 44503  
Tel: 330-744-5211; Fax: 330-744-3184  
[clacich@rothblair.com](mailto:clacich@rothblair.com)

Counsel for Appellant-Defendant

**RECEIVED**  
SEP 10 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

**FILED**  
SEP 00 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

**MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION**

**OF APPELLANT RICHARD D. GENTILE**

Now comes Appellant Richard D. Gentile pursuant to Ohio Supreme Court Rule of Practice No. 11.2 and hereby moves this Honorable Court for reconsideration of its denial of jurisdiction in the case sub judice. The Court's entry declining to accept jurisdiction to hear the instant case was filed with the Clerk of Court of the Supreme Court of Ohio on September 4, 2013. The instant Motion for Reconsideration is timely filed, said filing having occurred on or before September 13, 2013, within the ten (10) day time limit set forth in the Rule.

For background, this is a domestic relations case on appeal from Cuyahoga County, Ohio. The parties were divorced on February 17, 2012, having married in 1986. At issue before this Honorable Court are two propositions of law whose fact patterns developed during and as a result of the parties' long-term marriage.

Proposition of Law No. 1 centers on whether Appellee-wife met her burden of proof in tracing an inheritance received by her in 1990; whereas, Proposition of Law No. 2 involves the handling of a "failed investment" by the trial court in the scheme of equitable distribution of marital assets, as well as in conjunction with the award of spousal support. Further, Constitutional questions, of public or great general public interest, as well as Civil plain error are alleged to have been invoked by the handling of these issues by the lower courts.

In the case, sub judice, it is respectfully suggested that it was error for the Court to not accept jurisdiction considering the important issues raised by Proposition of Law No. 1 and Proposition of Law 2. The issues presented have arisen in the past, and will continue to surface in domestic relations case in the future, however, the case law opinions on these two issues are from a variety of appellate court districts and clarification by the Supreme Court will greatly assist future litigants.

This Honorable Court's overarching guidance is needed to establish solid legal precedent in these two areas of domestic relations law. The citizens and judiciary of the State of Ohio and members of the domestic relations bar would greatly benefit from the sharp legal insight that this Honorable Court, by accepting jurisdiction, would provide.

The Court is asked to reflect on its decline of jurisdiction and consider the following suggested errors in the light of the same:

- 1) The Court missed the opportunity in Proposition of Law No. 1 to definitively set forth the proper procedure and the proper analysis of facts for lower courts in Ohio when presented with separate property issues in domestic relations cases. The separate property fact pattern in the case, sub judice, provides the Court with such an opportunity.
- 2) The Court overlooked the opportunity in Proposition of Law No. 2 to address the proper procedure and the proper analysis of facts for lower courts in Ohio when presented with "failed investment" scenarios in domestic relations cases, and in the context of long-term marriages, the equitable distribution of the assets that remain, and a spousal support award. The "failed investment" fact pattern in the case, sub judice, provides the Court with such an opportunity.
- 3) The Court neglected an opportunity to opine on the seldom-used and often discouraged remedy of Civil, plain error, which the appellant suggested was also raised by the lower courts' rulings on Proposition of Law No. 1 and No. 2. By accepting jurisdiction, the Court can opine on this issue in the context of the issues raised in this appeal.

- 4) The Court passed on the opportunity to establish long-needed precedent in domestic relations law in the State of Ohio, on the issues raised in Proposition of Law No. 1 and No.2, all in light of the Constitutional, public or great, general public interest, and Civil, plain error raised.

The standards for the granting of a Motion for Reconsideration have been recently set forth in *State ex rel Gross v. Industrial Commission*, 115 Ohio St. 3d 249, 2007-Ohio-4914 (2007):

“The standard for reconsideration is nebulous, but we have suggested that we grant such motions, when persuaded, ‘upon reflection,’ to deem our prior decision as having been made in error.” *Gross, supra.*, citing *State ex. Rel. Huebner v. W. Jeferson Village Council* (1996), 75 Ohio St. 3d 381, 383, 662 N.E. 2d 339.

See also *Acordia of Ohio, LLC v. Fishel*, Slip Opinion No. 2012-Ohio-4648, (October 11, 2012).

The Court, on reflection, must note that it was error to not accept jurisdiction of the appellant’s appeal to dispel the myth that the highest court in the State of Ohio has an interest in hearing only those cases related to commercial matters, criminal matters, or matters involving large corporations. The case, sub judice, presents the court as to Proposition of Law No. 1 and Proposition of Law No. 2 with an excellent opportunity to dissect and instruct the lower courts of Ohio in Domestic Relations cases given the convoluted and somewhat novel fact patterns presented by these separate property and “failed investment” issues found in this instant case.

### **CONCLUSION**

Appellant, Richard D. Gentile, respectfully requests that this Honorable Court reconsider its September 4, 2013 decision declining jurisdiction in the case sub judice. Appellant further

requests that the Court enter an Order directing that jurisdiction is accepted to consider the issues of the case on the merits.

Respectfully submitted,

ROTH, BLAIR, ROBERTS, STRASFELD & LODGE  
A LEGAL PROFESSIONAL ASSOCIATION



Christopher P. Lacich (#0062291)  
100 East Federal Street, Suite 600  
Youngstown, Ohio 44503  
Telephone: (330) 744-5211  
Facsimile: (330) 744-3184  
Email: [clacich@rothblair.com](mailto:clacich@rothblair.com)  
Attorney for Appellant-Defendant

**CERTIFICATE OF SERVICE**

A copy of the foregoing Motion for Reconsideration of Denial of Jurisdiction has been sent on this 9 day of September, 2013 to:

Scott Rosenthal, Esq.  
Adam J. Thurman, Esq.  
Schoonover, Rosenthal, Thurman, & Daray, L.L.C  
1001 Lakeside Avenue, Suite 1720  
Cleveland, Ohio 44114  
Counsel for Appellee-Plaintiff



Christopher P. Lacich (#0062291)  
Attorney for Appellant-Defendant