

ORIGINAL

IN THE SUPREME COURT OF OHIO

Stephanie Y. Clough : CASE NO. 2013-1445
 Appellant : On Appeal from the Lake
 : County Court of Appeals
 v. : Eleventh District
 :
 James V. Cireddu : Court of Appeals
 Appellee : Case No. 2012-L-103

MOTION FOR CLARIFICATION
 OF ENTRY DECLINING JURISDICTION

Stephanie Y. Clough
 8060 Wright Road
 Broadview Heights, Ohio 44147
 Phone: 440-417-3382
stephanieclough@hotmail.com

APPELLANT, PRO SE

Hans C. Kuenzi, Co., L.P.A.
 Skylight Office Tower, Suite 410
 1660 West Second Street
 Cleveland, Ohio 44113
 (216) 241-9711
Hans@Kuenzilaw.com

COUNSEL FOR APPELLEE, JAMES V. CIREDU

Rebecca J. Castell, Esq. LLC.
 12690 Opalocka Drive
 Chesterland, Ohio 44026.
 (440) 729-1252
rcastellLAW@gmail.com

GUARDIAN AD LITEM

FILED
 JAN 17 2014
 CLERK OF COURT
 SUPREME COURT OF OHIO

RECEIVED
 JAN 17 2014
 CLERK OF COURT
 SUPREME COURT OF OHIO

Now comes the Appellant, Stephanie Y. Clough, who respectfully requests this Honorable Court for clarification of its decision to decline jurisdiction to hear this case based on memoranda filed.

Clearly it was shown in Appellant's Memorandum that the Ohio Legislature significantly amended §O.R.C. 3109.04(E)(1)(a) which specifies the requirements for a change in circumstances in order to change a previous custody decree. The change eliminated the requirement that change in circumstance must also be material adverse to the children. The general assembly provided further clarification in its Summary of Enactment under title, Grounds for Custody Modification – Elimination of need for danger to child's health or development. "The act eliminates the requirement that a court find, in certain contexts, that a child's present environment endangers significantly his physical health or his mental, moral, or emotional development before it may modify certain prior child custody decrees. Under the act, if a court finds that a change has occurred in the circumstances of the child who is the subject of the decree, his custodian, or either joint custodian, and that the modification is necessary to serve the best interest of the child, the court may modify the prior custody decree if the harm likely to be caused by a change in environment is outweighed by the advantages of the change in environment to the child."

Current law requires only that a change in circumstances has occurred, and that the modification of the prior decree is in the best interests of the child, and that the harm likely to be caused by a change in environment is outweighed by the advantages of the change in environment to the child. Appellee's argument that the change in the law eliminated the specific restrictions under the doctrine "material adverse" is preposterous. Under Appellee's argument the "material adverse" requirement was broadened and established an even higher threshold in order to obtain a change in circumstances. This interpretation is in direct opposition to the letter

and intention of the Ohio Legislature. The Ohio Legislature made it perfectly clear that it intended to eliminate the need for danger to the child's health or development as grounds for custody modification. Other than a child's physical health, mental, moral, or emotional development, what other accepted medical terminology could be considered under the caption "material adverse". Furthermore, under this Honorable Court's own case precedents the threshold to determine a change in circumstances should not be placed so high as to prevent the child's best interests from being served. This Court has gone even further stating that placing a higher burden than required by law is subjectively invoking individual opinion over the letter and intent of the law.

The Appellant requests clarification and an explanation from this Honorable Court as to how it can ignore the Ohio Legislature's authority to amend or modify previous statutes concerning the post decree modification of parental rights and responsibilities. Under Article §4.02 subsection C, "The decision in all cases in the Supreme Court shall be reported, together with the reasons therefore". Appellant request this Honorable Court provide its reasons for ignoring prevailing law. Appellant also requests a definitive answer to whether the doctrine of "judicial discretion" allows a judge to disregard current law. This principle clearly presents itself as one of public or great general interest.

Secondly, Appellant's second assignment of error, "The appellate court erred and abused its direction unreasonably, arbitrarily, and unconscionably by supplanting its own judgment in place of remanding back the trial courts failure to consider the extensive facts presented to find a change in circumstances in the residential parent and in the lives of the children", went unchallenged by the Appellee in his Memorandum in Response to Appellant's memorandum. The Appellee merely offered the same misrepresentations issued by the Appellate Court in minimizing and covering up Appellee's numerous discretions and denying Appellant's appeal.

Appellee did not and cannot show in the Magistrates Decision of June 1, 2012 or the subsequent Judgment Entry issued on August 22, 2012 that the Appellee's conduct was ever considered nor were any findings of fact or conclusions recorded. Therefore, the Appellant's was not afforded her right of an independent second review under the U.S. and Ohio Constitutions. Appellant requests that this Court provide its reasons and authority to disregard the rights of the Appellant afforded under the U.S. and Ohio Constitutions.

Additionally, Appellant provided evidence that the Appellate Court ignored the record in this case and failed to consider the actions of the Appellee from the date of the original decree up to the date of the hearing to modify custody. The Appellate Court in its entry of May 20, 2013 stated there was no failure on the part of the Appellee to provide information such as school or medical records or of certain children's extracurricular events, telephone contact or interference of visitation. This assertion is blatantly false. The record clearly shows that the Appellant filed a Motion to Establish a Schedule for Telephone Contact on June 10, 2010; an Emergency Motion for Possession of Children on June 11, 2010; a Show Cause Motion on August 16, 2010, and a Motion to Compel the Exchange of Medical, School and Extracurricular Activity on September 21, 2010, all after the initial decree dated December 22, 2009.

A hearing on the above matters was conducted on January 7, 2011 and the findings were journalized on May 10, 2011. The Trial Court found the Appellant's motions to establish daily telephone contact and motion to compel the exchange of information to be "well-taken". Certainly it can be construed that if Appellant's motions were deemed "well-taken" and in the best interests of the children than Appellee's behavior preceding the order was a significant change and "materially adverse" to the children. Appellant's show cause motion was deemed not well-taken on a technicality that the court was at liberty to determine enforcement. However, Appellant was awarded two extra days of visitation due to the Appellee interrupting her

visitation. Additionally, during the hearings on April 24, 2012 and April 25, 2012, Appellant also submitted an email dated October 18, 2010 from the Appellee, admitted as Exhibit G, "You are not invited to appear at and interrupt the children's activities at your will. I will ask that you contact me, in writing or verbally prior to activities to ask permission to attend." The Appellee confirmed under oath that the Appellant was required to ask for permission to attend the children's extracurricular activities. By his own written word and testimony under oath the Appellee restricted the Appellant's parental rights. This evidence was ignored and buried by the Trial Court and subsequently by the Appellate Court.

Finally, the Appellate Court misrepresented the Appellee's use of the children's incorrect surname. The Appellate Court stating that the Appellee only used the incorrect surname on a few of the children's personal items such as dance clothing and programs is false and in direct opposition of the record. The Appellant submitted multiple official documents as evidence showing use of the incorrect surname. Exhibit MM – Patient Registration at University Hospitals, Exhibit NN – University Hospitals Statement, and Exhibit OO – University Primary Care Practices, all listed the incorrect surname. Also, Exhibit FF showed the incorrect surname on a school supply form. These documents were also authenticated by the Appellee's mother under oath. These occurrences can hardly be classified as a few personal items or inconsequential. There was never any justification for the Appellee to use another surname at any time during the proceedings and it was clearly done in an effort to alienate the Appellant. It was an intentional act by the Appellee to prevent the Appellant from having access or information pertaining to the children's activities or medical health issues. The Appellate Court failed to accept that it was shown through the submission of actual records pertaining to the children's school, medical and other activities that the Appellee was deliberately registering the children under the wrong surname, which action initially prevented the Appellant from obtaining

medical information for her children. This action could have potentially caused severe consequences if the children would have required immediate medical care and their medical histories could not be located because they were listed under the wrong surname.

Furthermore, Appellant testified and the record supported that she was not provided medical or school information in a timely fashion and also that the Appellee was providing medical care for the children in violation of Medical Guidelines. Appellee admitted under oath that he has given the children medical treatment himself, even though this is contrary to the medical profession's code of conduct, nor is he a pediatric specialist. Appellee further admitted that his self-prescribed medical treatment had not been included in the children's medical records. As a licensed doctor of medicine, the Appellee knows full well the necessity and legal requirement of keeping an accurate and complete medical record for the safety of the patient. It is only a matter of good fortune that the children have not been gravely and irreparably harmed by this unapproved and dangerous practice. It is unconscionable that the Appellate Court downplayed and ignored this potentially dangerous and life-threatening practice. The Appellant would like an explanation of how this practice was not considered reckless endangerment of the children which meets even the harshest threshold for a change in circumstances also having to be "materially adverse" to the children. Prior to the original custody decree, while in the custody of the Appellant, the children had been receiving appropriate medical care from a licensed pediatrician. After the initial custody change, continuing up until the Appellant filed to modify custody the children were being treated by the Appellee, in direct opposition to Medical Guidelines. Appellee's treatment was also going unrecorded in the children's health histories in violation of legal requirements pertaining to keeping an accurate and complete medical record for the safety of the patient. The Appellant requests that this Honorable Court provide an explanation for ignoring the Appellee's dangerous practice. The

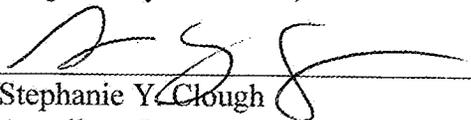
Appellant filed a motion for clarification with the Appellate Court but they refused to offer any explanation or reason, stating there was no law that required it. Clearly, there is no explanation for Appellee's conduct so the Trial Court and Appellate Court simply refused to acknowledge that it occurred.

Finally, in regard to the surname issue, the Appellate Court concluded that the Appellee stopped using the wrong surname after the court issued its decision on the surname. This is also incorrect and in stark contrast to the record. On July 5, 2012, Appellant filed a Motion to Enforce the Trial Court's Judgment Entry of April 18, 2012. On April 18, 2012, the trial court properly journalized the denial of the Appellee's request to change the surname of the children to his own. This action was needed because the Appellee had continued to use the children's incorrect surname even after the court issued its final ruling. On one particular occasion the minor child Jasmine was embarrassed and suffered anxiety when forced by the Appellee to give her incorrect surname in front of a large crowd at the Brecksville, Ohio Miss Princess Pageant. Appellant was also told by Appellee's family that it would continue to use their own surname for the children in direct violation of the court order. On August 21, 2012, the trial court found the Appellant's Motion to Enforce Judgment Entry of April 18, 2012, well taken and granted. Therefore, the record proves that the Appellee did not stop using an incorrect surname after the Trial Court issued its ruling. The findings of the Appellate Court concerning the Appellee's use of the incorrect surname are grievously understated and misrepresented.

In conclusion, the Appellant has provided significant and material evidence that the findings and conclusions by the Appellate Court were incorrect. Furthermore, the Appellant has provided evidence that the Ohio State Legislature amended the specific requirements concerning the post decree modification of parental rights and responsibilities. The Appellant requested and was denied clarification by the Appellate Court for ignoring the Ohio State's Legislature

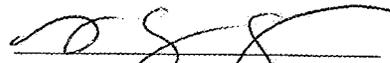
authority to amend or modify its laws. Lastly, it was shown that the Trial Court, and followed in succession by the Appellate Court, deliberately attempted to alter, ignore and to minimize the failure and numerous discretions of the Appellee against the best interests of the children. The doctrine of “judicial discretion” does not give the Trial Court, or the Appellate Court the right to ignore indisputable evidence simply because it doesn’t support their decision. The Appellant has shown convincingly that the Trial Court attempted to dismiss the actions of the Appellee, and in fact, failed to consider them at all. The Appellate Court subsequently selectively considered and trivialized the Appellee’s actions and totally ignore the official record of this case then supplanted its opinion in place of the Trial Court denying the Appellant her constitutional right of second review. The Appellant requests an explanation and specific reasons for not accepting this case. The mere mention of memoranda as a reason to deny jurisdiction is not sufficient and not keeping with the Ohio Constitutional requirement to provide a reason. The aspects of this case as to whether “judicial discretion” allows a judge to ignore existing law certainly is one of public or great general interest. Time-honored boundaries must be enforced. Additionally, this case involved a question of state law. Finally, this case involved the Appellant’s rights under the U.S. and Ohio Constitutions. Failure of this Court to provide concise explanations for its refusal to hear this case would be viewed as placing a higher value on affirming a lower court judgment over the rights and best interests of the citizenry. Let it not be forgotten that this case is about rights of the Appellant and the best interest of two children, which this Honorable Court is sworn to protect.

Respectfully submitted,


Stephanie Y. Clough
Appellant, Pro se

PROOF OF SERVICE

A copy of the foregoing Motion for Clarification and Reconsideration of Entry Declining Jurisdiction was sent by regular U.S. Mail this 15 day of January 2014 to: Hans C. Kuenzi, attorney for Plaintiff, 1660 West Second Street, Suite 410, Cleveland, Ohio 44113, and Rebecca Castell, Guardian ad Litem, at 12690 Opalocka Drive, Chesterland, Ohio 44026.



Stephanie Y. Clough

Appellant, Pro se