

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL.
WAYNE T. DONER, ET AL.,

Relators,

v.

JAMES ZEHRINGER, DIRECTOR,
OHIO DEPARTMENT OF
NATURAL RESOURCES, ET AL.,

Respondents.

Case No.: 2009-1292

RELATORS' RESPONSE TO RESPONDENTS MOTION FOR LEAVE TO FILE
SUPPLEMENT TO EVIDENCE AND CROSS-MOTION TO FILE ITS OWN
SUPPLEMENT TO EVIDENCE

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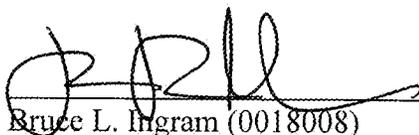
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CLERK OF COURT
SUPREME COURT OF OHIO

Relators do not oppose Respondents' Motion for Leave to File Supplement to Evidence, filed on April 30, 2014, which attached 1) ODNr's Motion to Vacate Trial Calendar that was filed in the Mercer County Court of Common Pleas and 2) the trial court's judgment vacating a trial date in response. In order to provide the full context for that motion and the trial court's judgment in response, Relators respectfully move this Court for leave to file Relators' Brief in Opposition to ODNr's Motion to Vacate Trial Calendar, which is referenced in the trial court's Judgment Entry and was filed on December 30, 2013 (attached as Exhibit A).

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served upon the following, via U.S. Mail postage prepaid and e-mail, this 1st day of May, 2014:

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Joseph R. Miller

IN THE COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

STATE OF OHIO, :
DEPARTMENT OF NATURAL RESOURCES, : Case No. 12-CIV-209

Plaintiff, : Judge Jeffrey R. Ingraham

v. :

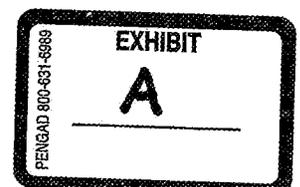
TIMOTHY A. KNAPKE, *et al.*, :

Defendants. :

**DEFENDANTS TIMOTHY A. KNAPKE AND ASHLEIGH L. KNAPKE'S BRIEF IN
OPPOSITION TO PLAINTIFF'S MOTION TO VACATE TRIAL CALENDAR**

I. INTRODUCTION

Plaintiff, the Ohio Department of Natural Resources ("ODNR"), has moved this Court to completely halt all trials that would finally require ODNR to compensate Defendants and other *Doner* Relators (collectively "Landowners") for the frequent, severe and persistent flooding of their property caused by ODNR's replacement of the spillway at Grand Lake St. Marys. It has been over fifteen years since ODNR replaced the spillway and over two years since the Supreme Court of Ohio held that ODNR's replacement of the spillway resulted in the taking of the Landowners' property; it is time to try these cases and require ODNR to compensate the Landowners. ODNR's latest delay tactic should be rejected because this Court has the authority and responsibility to determine the fully-briefed issues before it. The Landowners' show cause motion pending in the Supreme Court does not implicate this Court's authority and does not justify vacating the scheduled trials.



II. ARGUMENT

A. ODNR's Latest Delay Tactic Should Be Rejected.

The Court should not grant ODNR's motion to vacate because it is simply ODNR's latest tactic to delay compensating the Landowners for the taking of their property. As this Court is well aware, the Supreme Court of Ohio has previously held ODNR in contempt for its delay in filing these actions. *See State ex. rel. Doner v. Zehring*, 134 Ohio St.3d 326, 2012-Ohio-5637, 982 N.E.2d 664. After finally filing the petitions, ODNR and its newest counsel have done everything they can to delay these cases from going to trial. Most recently, ODNR sent the trial schedule into a tailspin by filing motions that seek to throw out the appraisals ODNR had completed and the petitions ODNR had filed to allegedly comply with the Supreme Court's Mandamus and Contempt Orders and that seek to now restart the process. When this Court indicated that it would not permit ODNR to use its motion to amend to delay the trial in the *Karr/Ransbottom* case, ODNR circumvented the Court and unilaterally prevented the trial by attempting to dismiss the case. *See* Notice of Dismissal, filed December 3, 2013, Case No. 12-CIV-207. In its notice, ODNR clearly articulated its intent to delay trial, blaming the dismissal on the Court's "aggressive trial schedule." *See id.* In fact, this Court consulted counsel for both parties in issuing the trial schedule, and ODNR did not object to the "aggressive" schedule as finalized. ODNR's attempts to argue that it is somehow the Landowners that are delaying the trials ring hollow. ODNR's delay tactics must not be permitted to succeed and these cases should proceed to trial as scheduled.

B. This Court Retains the Authority to Decide the Fully-Briefed Legal Issues Before It.

ODNR argues that its motion to vacate is justified because the Landowners have filed a show cause motion in the Supreme Court of Ohio, which ODNR alleges is an attempt to remove

decision-making authority from this Court. Contrary to ODNR's allegations, the Landowners have taken no action that negatively impacts this Court's authority. The Landowners have fully briefed all issues to this Court. For example, the Landowners have responded to ODNR's motions for leave to amend by explaining that Civil Rule 15 and R.C. 163.12 do not permit ODNR to amend its petitions because the original petitions were the intentional result of a process designed by ODNR to comply with the Supreme Court's orders and not a mistake. The Landowners have also explained that ODNR's proposed amendments violate various legal principles (including, but not limited to, *stare decisis*, *res judicata*, and collateral estoppel) because they would conflict with or relitigate the Supreme Court's Mandamus and Contempt Orders, previous rulings by this Court, and representations/judicial admissions ODNR has made to the Supreme Court and this Court. The Landowners then participated in an oral hearing before this Court regarding ODNR's motions for leave to amend after the Landowners filed their motion to show cause in the Supreme Court. Simply put, this Court has the authority and responsibility to determine the fully-briefed issues before it and proceed to trial as scheduled.

The Landowners' show cause motion in the Supreme Court neither preempts nor undermines this Court's authority. The Landowners have asked the Supreme Court to hold ODNR in contempt, an issue that could not be raised before this Court, and have asked the Supreme Court to impose sanctions on ODNR. Although the relief sought in the show cause motion would restrict **ODNR's behavior**, the Landowners do not ask the Supreme Court to control or restrict this Court's decision-making authority. Furthermore, the issue before the Supreme Court, whether ODNR acted contemptuously, is distinct from the fully-briefed legal issues before this Court. Thus, the Landowners' show cause motion does not preempt or undermine this Court's authority. Indeed, it is ODNR who now seeks to undermine this Court's

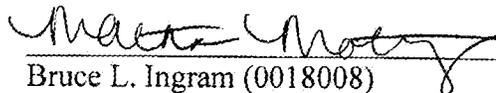
authority by asking it to abstain from determining the legal issues that are fully briefed and ready for this Court to decide.

III. CONCLUSION

The Landowners have waited long enough for their day in court. ODNR should not be permitted to deny them that long-awaited right based on the pending contempt proceeding before the Supreme Court that was made necessary by ODNR's previous delay tactics. This Court has the authority to rule on the fully-briefed issues before it and move these cases to trial.

Accordingly, the Landowners request that this Court deny ODNR's motion to vacate the trial schedule, deny ODNR's motions for leave to amend its petitions for the reasons set forth in the Landowners' briefs in opposition, and allow the cases to proceed to trial as scheduled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served upon the following, pursuant to Civil Rule 5(B)(2)(c), this 30th day of December, 2013, upon the following:

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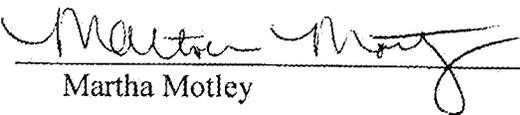
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