ORIGINAL

IN THE SUPREME COURT OF OHIO

14-1598

City of Cleveland, Appellee	On Appeal from the Cuyahoga County Court of Appeals, 8th Appellate District
v	COA Case No. 13 100316
Hayes W. Rowan, Appellant	Trial Court Case No. 2013 CRB 017219

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT HAYES W. ROWAN

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

This cause presents five vital issues:[1]

Parents' constitutionally protected right to the companionship of their children, affirmed in principle in *Stanley v. Illinois, (1972), Carson v. Elrod, (1976), State ex rel. Heller v. Miller* (1980;)

How senior citizens can rightly expect to be treated in a nursing home;

How the courts respond to predatory guardian-ad-litems;

How the lower courts treat petitioners encumbered both by disability and poverty;

The public's confidence in the legal system.

In this case the 8th District Court of Appeals denied an indigent Appellant his motions to waive the costs of his appeal and then to reconsider, regardless the manifest weight of his arguments in support of those requests.

The arbitrary cast of the appellate court's decisions is of the sort that fuels a crisis of confidence in the judiciary that has been lamented since biblical times,[2] and, moreover, leads to the public's diminished respect for the law, as the Supreme Court of West Virginia has held.[3]

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[2] "...teachers of the law ... they take the best seat in the restaurant, and devour the widow's house." (Luke 20:46.) "They do not defend the cause of the fatherless; the widower's case does not come before them." (Isaiah 1:23.)

[3] *In re Neeley, 364 S.E. 2nd 250, 254 (W.Va. 1987)*

The appellate court's decisions, examined with due care, undermine *"the centrality of family life - that focus for personal meaning and responsibility,"* affirmed in Stanley v. Illinois.[4] The implications affect every senior citizen who faces confinement in a nursing home, and every economically impoverished family impacted by disability.

The decisions compound the constitutionally proscribed treatment the Appellant and his mother ran up against for 10 years in the lower courts (Common Pleas and Probate of Cuyahoga County, and the 8th District Appellate.) That mistreatment is set forth in the Appellant's Motion to Clarify and Reconsider. It centers on the multiple incidents of neglect and abuse the Appellant's mother suffered in three nursing homes while she was under the Probate Court's ostensibly protective wing

The decisions compound the lower courts' failure to uphold Genevieve Rowan's right to the companionship of her son, the Appellant, (who incidentally, the record will show, lost $15,000, the last of his small inheritance, defending himself from charges arising from a desperate and foolish act of civil disobedience that he committed to draw attention to his mother's plight and to effect a change of venue from Probate Court to Municipal Court, where two years before he had encountered a rare paragon of judicial integrity in the person of the Honorable Ronald Adrine.)

It bears noting that the record includes an affidavit, and a letter from a nurse, affirming Genevieve's wishes: She wanted her son to be her guardian.[5] The record also includes excerpts of her medical chart which describe her as "educated, intelligent,

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[4] *405 US 645, 651; 92 S Ct 1208, (1972)*

[5] Aware of his own disabilities, he sought to limit his role to that of co-guardian, serving alongside a guardian-ad-litem.

articulate, alert, coherent." Not the typical state ward - and not deserving (no ward is) of the protracted sorrows and deprivation the probate court imposed on her.

Central to the abuse was the forced isolation and desuetude she endured at the hands of her guardian-ad-litem, Ronald L. McLaughlin - and three instances in which he libeled the Appellant before family members or the common pleas court in order to create a semblance of justification for denying Genevieve and her son their right to visit with each other and to communicate by phone – claim their kinship rights, a fundamental liberty.

All of which is to say, the Appellant has already shouldered more than his share of the true costs of this debacle.

STATEMENT OF THE CASE

The case began in the summer of 2013 when the Appellant moved to disqualify Judge Angela Rochelle Stokes of Cleveland's Municipal Court from hearing an unfounded misdemeanor case against him. (And it was some months before this Court's Office of Disciplinary Council certified the 2013 ethics complaint against her that he moved for her disqualification. Which is to say: On his better days, he knows a hawk from a handsaw.[6])

The Administrative Judge of the Common Pleas Court, despite a conflict interest that warranted recusal (as is explained in the record,) denied the Appellant's motion to disqualify Judge Stokes. Appellant appealed to the 8th District Appellate Court, which dismissed for lack of jurisdiction. Appellant moved that the costs of the appeal be waived; motion was denied. Months later, pursuant to App. R. 14(B), Appellant moved that the decision on costs be reconsidered; denied. Appellant moved for an explanation of the

[6] - as Shakespeare wrote of Hamlet.

ruling; that too was denied. Appellant moved for leave to file a memorandum and exhibits in support of his request for reconsideration; motion denied.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1:

The Appellate Court rulings ignore the welcome standard set in *Maga v. Brockman, 185 Ohio App.3d 666, 2010-Ohio-38,* in which the 2nd District Court of Appeals affirmed, *"the court must construe the complaint in the light most favorable to the plaintiff, presume all of the factual allegations in the complaint to be true, and make all reasonable inferences in favor of the plaintiff."*

That standard – and the courts would well extend it to all pleadings - is also affirmed in *Mitchell v. Lawson Milk Co, (1988), 40 Ohio St.3d 190, 192, 532 N.E.2d 753.*

The Appellate Court's rulings appear to overlook completely the arguments and evidence – much less their somber and manifest weight - presented in support of the Appellant's motion for reconsideration of 30 July and the related motion of 8 August 2014. Such rulings bear the mark of being arbitrary, unreasonable, and unconscionable, and as such erode the public's confidence in the judiciary.

Proposition of Law No. 2:

The Appellate Court's rulings run contrary to Canon 1 of the Ohio Code of Judicial Conduct, ("a judge shall uphold the ... integrity of the judiciary,") and Jud. R. 1.2 ("...a judge shall act at all times in a manner that promotes public confidence in the ... integrity and impartiality of the judiciary.")

The appellate court's decisions compound the fact pattern, well established in the record, that from 1996 to 2006 the Appellant encountered a style of due process that is an embarrassment to the judiciary and could have informed Federal Judge F. Lee Sarokin's admonition, "*If trials* <u>are</u> *indeed searches for the truth rather than efforts* to *conceal it, full* and *fair disclosure* is *necessary* to *protect the accused from the awesome power of the state.*"

Careful examination of the record would show that the lower courts failed to rein in the predatory guardian-ad-litem who victimized his ward Genevieve, not by looting her last few remaining dollars, which he did too, but by denying her at every turn the companionship and advocacy and comfort of her son. And that malfeasance can be better understood in light of the fact that the Appellant was the only person friend or family member who had not turned their back on her.

Wholly ineffective was the assistance of counsel the Appellant contended with, in two related criminal cases which centered - after the veil is parted - on his mother's mistreatment in the nursing homes and her guardian's apathy in the face of it.

But to deem the assistance foisted upon her by the guardian-ad-litem as "ineffective" - would be to excuse the man his illegal acts and ethics violations, resolute stealthy, callous. He proved himself an ardent partisan of the nursing home lobby who cared not a whit about the "best interests of the ward standard."

The appellate court's rulings compound these constitutionally proscribed injustices; and again turn a deaf ear to the harm that befell a disabled woman in the nursing homes and her disabled son when he tried to protect her from further mistreatment. The rulings add to the studied disinterest with which her plight has been treated heretofore in the common pleas and appellate courts.

In accepting jurisdiction and weighing the merits of reversing the Appellate Court's decisions of 1 August and 11 August, 2014, this Court would affirm the fundamental liberty interest that families should enjoy, absent compelling reasons to the contrary, and help restore the public's trust in the courts. And it would send a cautionary message to guardians who ignore the abuse and neglect their wards suffer in the nursing homes.[7]

Reversing the Appellate Court's decision of 6 August 2014 – which ignores App. R. 14(B) and implies that it is the dismissal the Appellant is appealing, rather than the ruling on costs - would affirm both the standing of disabled petitioners, who have too long been barred from fair treatment in the courts, and the propriety of granting a disabled petitioner's request to enlarge the time, in light of extraordinary circumstances. (They are broached in his Motion to Clarify and Reconsider at pg 13 and ff.)

CONCLUSION

For these reasons, this case involves matters of public and great general interest and substantial constitutional questions. The appellant therefore requests this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully Submitted,

Hayes W. Rowan, Appellant, in *pro se*

APPENDICES ATTACHED:
Judgment entries; Poverty Affidavit

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[7] Eighty to one hundred disabled people die avoidable deaths each year in Ohio's long term care facilities. (Cincinnati Enquirer, 27 March 02, 1-C.)

Certificate of Service

Signor above affirms service to the Clerk of the Ohio Supreme Court, via USPS and mailed 12 Sept 2014, and to the 8th District Ohio Court of Appeals via electronic filing on 15 Sept 2014.

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Andrea Rocco, Clerk of Courts

CITY OF CLEVELAND

Appellee

COA NO. 100316

LOWER COURT NO. 2013 CRB 017219
SD-13-077218

CLEVELAND MUNI.

-vs-

HAYES W. ROWAN

Appellant

MOTION NO. 477161

Date 08/01/14

Journal Entry

Motion by appellant, pro se, for reconsideration is denied. The only fees waived are the filing fees.

COURT MAILED TO COUNSEL PER PARTIES CONSENT

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MARY J. BOYLE
Administrative Judge

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Andrea Rocco, Clerk of Courts

CITY OF CLEVELAND

Appellee

COA NO. 100316

LOWER COURT NO. 2013 CRB 017219 SD-13-077218

CLEVELAND MUNI.

-vs-

HAYES W. ROWAN

Appellant

MOTION NO. 477307

Date 08/06/14

Journal Entry

Motion for explanation of ruling is denied as moot. The appeal was dismissed in entry 471458 dated January 16, 2014 for lack of jurisdiction.

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Administrative Judge

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Andrea Rocco, Clerk of Courts

CITY OF CLEVELAND

Appellee

COA NO. 100316

LOWER COURT NO. 2013 CRB 017219
SD-13-077218

CLEVELAND MUNI.

-vs-

HAYES W. ROWAN

Appellant

MOTION NO. 477468

Date 08/11/14

Journal Entry

Motion by appellant, pro se, for leave to file memorandum and exhibits in support, instanter is denied as moot. The appeal was dismissed and journalized January 16, 2014.

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MARY J. BOYLE
Administrative Judge

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