

ORIGINAL

IN THE SUPREME COURT OF OHIO

LISA PIRKEL

CASE NO. 2014-1964

Appellant

Vs

On Appeal from the
Court of Appeals
Ninth Judicial District
Lorain County Court of
Common Pleas

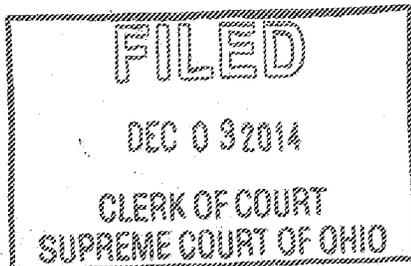
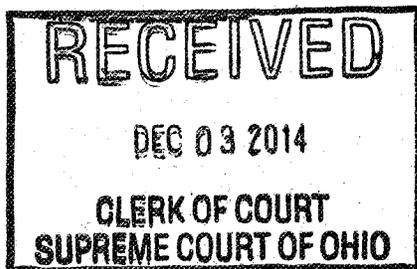
THEODORE PIRKEL

Appellee

APPELLEE'S MEMORANDUM IN OPPOSITION TO JURISDICTION

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APPELLEE'S POSITION AS TO WHY THIS CASE
DOES NOT PRESENT A QUESTION OF PUBLIC OR GREAT GENERAL INTEREST

Lisa Pirkel and Ted Pirkel, the natural parents of two children and were divorced in the Lorain County Court of Common Pleas, Domestic Relations Division. The Divorce Decree provided that Lisa Pirkel be awarded sole legal custody of the parties two minor children and that Theodore (Ted) Pirkel be awarded visitation with the children. At no time thereafter has the custody held by Lisa Pirkel been modified. There has not been issued in this matter a Shared Parenting Plan. Ted Pirkel has not had, since the divorce was granted, a custodial interest in his children.

Appellant mistakenly believes that the right of Ted Pirkel to time with his children is governed by R.C. 3109.04 and that therefore he is subject to the same requirements of proof as those who wish to modify the terms of an existing Shared Parenting Plan. The provisions of 3109.05 control the rights of visitation for non-custodial parents.

This Court should not accept jurisdiction in this matter as the issue has been previously addressed and decided by this court in *Braatz v. Braatz*, (1999) 85 Ohio St.3d 40, 706 N.E. 2d 1218. Appellant is not presenting a new issue but is asking that this Court reverse it's prior position. Appellee respectfully submits that there is no legitimate basis presented by Appellant to warrant a review and reversal of the holding in *Braatz*. Appellant is likewise asking that this Court declare R.C. 3109.051 to have no application to the determination of visitation for non-custodial parents. Again, there is no basis for doing so.

Appellant unfortunately fails to recognize the legal distinction between custody and visitation. This Court provided the explanation of the difference when in the case, *In re Gibson* (1991), 61 Ohio St. 3d 168 it said,

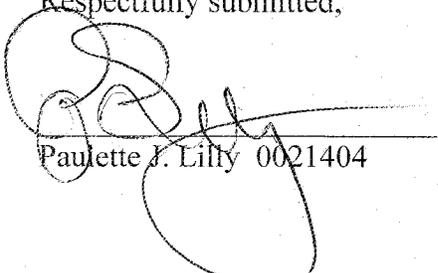
“visitation and custody are related but distinct legal concepts. ... in other words, visitation is granted to someone who does not have ‘custody’. Although a party exercising visitation rights might gain **temporary physical control** over the child for that purpose, such control does not constitute ‘custody’ because the legal authority to make fundamental decisions about the child’s welfare remains with the custodial parent and because the child eventually must be returned to the more permanent setting provided by that party. (Emphasis added)

The Ninth District Court of Appeals, in its review of the trial Court decision properly recognized as the existing authority this Court’s holding in *Braatz* and cited a number of cases that properly followed the *Braatz* decision. There is no reason for this Court to revisit its prior decision or to rewrite statutes that have been clearly and repeatedly interpreted to be consistent with this Courts prior opinion.

CONCLUSION

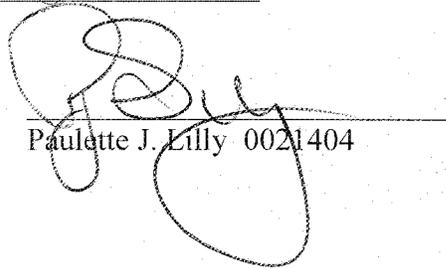
Appellee therefore respectfully requests that the Ohio Supreme Court reject and deny Appellant’s request that it accept jurisdiction over this case.

Respectfully submitted,


Paulette J. Lilly 0021404

CERTIFICATE OF SERVICE

A true copy of the foregoing was sent to Jonathan Rosenbaum, counsel for Appellant to 230 – Third Street, Suite 101, Elyria, Ohio 44035 on the December 1, 2014 and a copy was also emailed on said date to jerosenbaum@windstream.net



Paulette J. Lilly 0021404