

IN THE SUPREME COURT OF OHIO

CHRISTOPHER WENDT, *et al.*,

Plaintiffs-Appellees,

v.

CONSTANCE CLARK, *et al.*,

Defendants-Appellants,

Ohio Supreme Court Case No. 2014-2051

On Appeal from the Tuscarawas County Court of Appeals, Seventh District Court of Appeals

Court of Appeals Case No. 2012 CV 02 0135

MOTION TO STRIKE PORTIONS OF APPELLANTS' MEMORANDUM IN SUPPORT OF JURISDICTION

Paul Hervey (0063611)*

**Counsel of Record*

Jillian A. Daisher (0087051)

FITZPATRICK, ZIMMERMAN & ROSE CO., L.P.A.

P.O. Box 1014

New Philadelphia, OH 44663

pbh@fzrlaw.com

Counsel for Appellants, Constance Clark, Celia M. Dickerson, John L. Dickerson, Judith Dickerson, Raymond Dickerson, Richard H. Dickerson, Robert J. Dickerson, Ronald K. Dickerson, Wanda Dickerson, Misty Engstrom, Mary Louise Foster, Elaine F. Harris, and Deborah Snelson

David E. Butz (0039363)*

**Counsel of Record*

Matthew W. Onest (0087907), of KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO., L.P.A.

4775 Munson Street NW/P.O. Box 36963

Canton, Ohio 44735-6963

Phone: (330) 497-0700/Fax: (330) 497-4020

dbutz@kwgd.com; monest@kwgd.com;

Counsel for Appellees, Christopher and Veronica Wendt

I. PRELIMINARY STATEMENT

Appellants, Christopher and Veronica Wendt, respectfully request, under Supreme Court Rule of Practice 4.01(A), this Honorable Court to strike certain portion(s) of and attachments to the Memorandum in Support of Jurisdiction of Appellants, Constance Clark, Celia M. Dickerson, John L. Dickerson, Judith Dickerson, Raymond Dickerson, Richard H. Dickerson, Robert J. Dickerson, Ronald K. Dickerson, Wanda Dickerson, Misty Engstrom, Mary Louise Foster, Elaine F. Harris, and Deborah Snelson (“Dickersons”). Dickersons’ memorandum does not comply with this Court’s rules and requirements for jurisdictional memorandums in two ways. First, it exceeds the page limitation of 15 pages, including the presentation of a distinct proposition of law after the maximum allowed page. Additionally, it attaches materials in violation of the limitations regarding attachments to jurisdictional memorandums. As a result, Proposition of Law Number III and pages P55 through P69 of the memorandum’s appendix must be stricken and ignored.

II. LAW AND ARGUMENT

A. Proposition of Law Number III should be stricken because it is presented beyond the fifteen-page limit imposed by Supreme Court Rule of Practice 7.02(B).

The Rules of Practice of this Court expressly mandate that a memorandum in support of jurisdiction shall not exceed 15 numbered pages, exclusive of any table of contents and the certificate of service. S.Ct.Prac.R. 7.02(B). The substantive portion of Dickersons’ jurisdictional memorandum consists of 20 pages. Dickersons present Proposition of Law Number III as a separate and distinct proposition of law. (*See* Appellants’ Memorandum in Support of Jurisdiction, p. 17). Dickersons begin that proposition of law on page 17 and therefore present it in direct violation of S.Ct.Prac.R. 7.02(B). As a result, the Court should strike Proposition of

Law Number III and thereby decline to entertain whether to accept the issues presented therein.

B. Pages P55 through P69 of the appendix to Dickersons' jurisdiction memorandum should be stricken because they violate Supreme Court Rule of Practice 7.02(D)(3).

This Court delineates exactly what documents may be attached to a memorandum in support of jurisdiction. S.Ct.Prac.R. 7.02(D). When presenting a jurisdictional memorandum to this Court not involving a postconviction death penalty issue, an appellant must attach a date-stamped copy of the court of appeals' opinion and the judgment entry being appealed. S.Ct.Prac.R. 7.02(D)(1). An appellant may attach any other opinion or judgment **issued in the case** which he or she feels is relevant to the appeal. S.Ct.Prac.R. 7.02(D)(3). Other than those attachments, no other documents may be attached to the jurisdictional memorandum. S.Ct.Prac.R. 7.02(D)(3).

Here, Dickersons' jurisdictional memorandum contains five attachments, three which are appropriate and two which are not. Dickersons attach a trial court decision from the Harrison County Court of Common Pleas starting at P55 of their memorandum appendix. This judgment entry was not issued in this case and therefore was attached in violation of S.Ct.Prac.R. 7.02(D)(3). As a result, it should be stricken. Dickersons also attach a report from an Ohio State Bar Association committee starting at P65 of their memorandum appendix. This is not an opinion or judgment entry issued in this case and therefore was attached in violation of S.Ct.Prac.R. 7.02(D)(3). As a result, it should be stricken.

III. CONCLUSION

Dickersons' memorandum in support of jurisdiction violates two of this Court's Rules of Practice. It exceeds the fifteen-page limit and in doing so presents Proposition of Law Number III outside the allowed pages. As a result, that proposition of law should be stricken. In

addition, Dickersons' memorandum contains two attachments which violate this Court's rule on allowable attachments. They too should be stricken.

/s/David E. Butz

David E. Butz (0039363)*

**Counsel of Record*

Matthew W. Onest (0087907), of
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.

4775 Munson Street NW/P.O. Box 36963

Canton, Ohio 44735-6963

Phone: (330) 497-0700/Fax: (330) 497-4020

dbutz@kwgd.com; monest@kwgd.com;

*Counsel for Appellees, Christopher and Veronica
Wendt*

PROOF OF SERVICE

I hereby certify that a copy of the foregoing was sent via regular U.S. Mail this

23rd day of December, 2014, to:

Paul Hervey (0063611)*

**Counsel of Record*

Jillian A. Daisher (0087051)

FITZPATRICK, ZIMMERMAN & ROSE

CO., L.P.A.

P.O. Box 1014

New Philadelphia, OH 44663

pbh@fzrlaw.com

*Counsel for Appellants, Constance Clark,
Celia M. Dickerson, John L. Dickerson, Judith
Dickerson, Raymond Dickerson, Richard H.
Dickerson, Robert J. Dickerson, Ronald K.
Dickerson, Wanda Dickerson, Misty Engstrom,
Mary Louise Foster, Elaine F. Harris, and
Deborah Snelson*

/s/David E. Butz

David E. Butz (0039363)*

**Counsel of Record*

Matthew W. Onest (0087907), of

KRUGLIAK, WILKINS, GRIFFITHS

& DOUGHERTY CO., L.P.A.

*Counsel for Appellees, Christopher and Veronica
Wendt*