

ORIGINAL

IN THE SUPREME COURT OF OHIO

CARLEAN DATES,	:	
	:	Case No. 2015-0238
Relator,	:	
	:	Original Action in
v.	:	Mandamus
	:	
OHIO FIRST DISTRICT COURT OF	:	
APPEALS et al.,	:	
	:	
Respondents.	:	

**RESPONDENT DAVID A. WALLACE'S
MOTION TO STRIKE PETITIONER CARLEAN DATES'
DEMAND FOR RECONSIDERATION AND FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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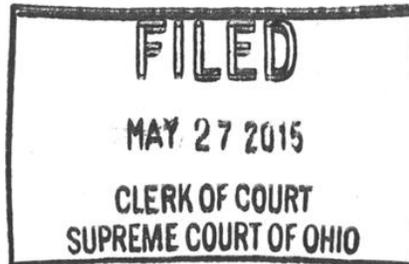
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Petitioner Carlean Dates' Demand for Reconsideration and Findings of Fact and Conclusion of Law ("Motion for Reconsideration") should be stricken because Ms. Dates failed to properly serve it on counsel of record for Respondent David A. Wallace, as required by the Supreme Court of Ohio Rules of Practice. The Motion for Reconsideration is also without merit on its face.

Rule 3.11(B)(1)(a) of the Supreme Court of Ohio Rules of Practice provides that any party who files a document must "serve a copy of the document on all parties to the case." *See* S.Ct.Prac.R. 3.11(B)(1)(a). This Rule also expressly provides that "[s]ervice on a party represented by counsel **shall** be made on counsel of record." *Id.* (emphasis added).

The Certificate of Service attached to Ms. Dates' Motion for Reconsideration makes clear she did not comply with this Rule as to Mr. Wallace's counsel of record. The Certificate of Services states that Ms. Dates mailed a copy of the Motion for Reconsideration to "Carpenter Lipps & Leland LLP" but did **not** mail the Motion for Reconsideration specifically to undersigned counsel of record, who appeared in the case on behalf of Mr. Wallace nearly three months ago, on March 6, 2015. Carpenter Lipps & Leland LLP has nearly 30 attorneys in addition to the specified counsel of record for Mr. Wallace. Simply sending the Motion for Reconsideration to undersigned counsel's law firm generally is **not** sending it to ***counsel of record***. Indeed, undersigned counsel did not in fact ever receive a service copy of the Motion for Reconsideration from Ms. Dates. Rather, undersigned counsel first learned of the Motion for Reconsideration on May 26, 2015 when they received a copy of Respondent Ohio First Appellate Court of Appeals' Memorandum in Opposition to Ms. Dates' Motion for Reconsideration on that date (and then obtained a copy of the Motion for Reconsideration from

the Court's website). The failure to properly serve the Motion for Reconsideration prejudiced Mr. Wallace, because he was unable to timely file a response to the Motion.

Under Rule 3.11(E) of the Supreme Court of Ohio Rules of Practice, "[w]hen a party...fails to serve a party or parties to the case in accordance with division (B) of this rule, any party adversely affected may file a motion to strike the document that was not served." *See* S.Ct.Prac.R. 3.11(E)(1). "If the Supreme Court determines that service was not made as required by this rule, it may strike the document or, if the interests of justice warrant, order that the document be served and impose a new deadline for filing any responsive document." *See* S.Ct.Prac.R. 3.11(E)(2). Under these Rules, Ms. Dates' Motion for Reconsideration should be stricken as to Mr. Wallace for failure of proper service.

Ms. Dates' Motion for Reconsideration is otherwise meritless. The Ohio Supreme Court has explained that reconsideration is a mechanism to "correct decisions which, upon reflection, are deemed to have been made in error." *Buckeye Cmty. Hope Found. v. Cuyahoga Falls*, 82 Ohio St. 3d 539, 541, 697 N.E.2d 181, 183 (1998) (quoting *State ex rel. Huebner v. W. Jefferson Village Council*, 75 Ohio St.3d 381, 383, 662 N.E.2d 339, 341 (1995)). Ms. Dates' Motion for Reconsideration does not provide *any* reason why this Court's dismissal of her Complaint for Writ of Mandamus ("Complaint") was "made in error." Rather, it simply restates the allegations within the four corners of her Complaint, allegations which this Court correctly determined were legally insufficient to state a mandamus claim under Ohio law against Mr. Wallace.

Mr. Wallace also notes that Ms. Dates *never* filed a substantive response to his March 6, 2015 Motion to Dismiss, nor did she request leave of this Court to do so. Rather, Ms. Dates filed only a Motion to Strike Mr. Wallace's Motion to Dismiss, claiming Mr. Wallace failed to serve her with a copy of the Motion to Dismiss. However, as set forth in Mr. Wallace's response to

Ms. Dates' Motion to Strike, Mr. Wallace (unlike Ms. Dates now) *did* in fact properly serve Ms. Dates with his Motion to Dismiss. This Court agreed when it denied Ms. Dates' Motion to Strike. Ms. Dates provides no new arguments now as to why the denial of her Motion to Strike was "made in error." Mr. Wallace fully incorporates in this Motion the arguments in his Motion to Dismiss and in his Response to Ms. Dates' Motion to Strike.

As such, Mr. Wallace respectfully requests the Court strike Ms. Dates' Motion for Reconsideration as to Mr. Wallace due to her failure to serve his counsel of record in the manner required by the Supreme Court of Ohio Rules of Practice. In the alternative, Mr. Wallace requests that the Court order Ms. Dates to serve her Motion for Reconsideration properly, i.e., directly and specifically on his undersigned counsel record, and that the Court provide a new deadline for a formal response to her Motion for Reconsideration.

In any event, Ms. Dates' Motion for Reconsideration provides no legal or factual basis for the relief Ms. Dates requests. Thus, her Motion for Reconsideration should be denied.

Respectfully submitted,



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David A. Wallace

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Respondent David A. Wallace Motion to Strike Petitioner Carlean Dates' Demand for Reconsideration and Findings of Fact and Conclusion of Law has been served upon the following, via U.S. Mail, postage prepaid, this 27th day of May, 2015:

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