

**IN THE SUPREME COURT OF OHIO**

THE STATE OF OHIO, EX REL. N.G., )  
 )  
 Relator/Appellee, )  
 )  
 v. )  
 )  
 CUYAHOGA COUNTY COURT OF )  
 COMMON PLEAS )  
 JUVENILE DIVISION, ET AL., )  
 )  
 Respondents/Appellees )  
 )  
 -And- )  
 )  
 S.F., )  
 )  
 Would-be Intervening )  
 Respondent/Appellant )

CASE NO. 2015-0363

On Appeal from the Cuyahoga Court of Appeals, Eighth Appellate District Case No. CA-14-101425

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**MOTION TO STRIKE WITH MEMORANDUM IN SUPPORT**

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## MEMORANDUM

This is an appeal from judgments entered by the Eighth District Court of Appeals in an original action in prohibition. Appellee is the defendant in the underlying Cuyahoga County Court of Common Pleas Juvenile Division civil proceeding to which the prohibition action relates. The prohibition respondents were, appropriately, the Court of Common Pleas and the Hon. Alison Floyd, the judge assigned to the underlying proceeding. Appellant was not a party to the prohibition action.

The Court of Appeals proceeded to hear and determine the cause on its merits. The court issued a writ of prohibition preventing respondents from unlawfully exercising jurisdiction. Judgment was entered against the respondent court and judge on September 30, 2014.

Would-be intervening respondent/Appellant (“Appellant”), the plaintiff in the underlying Juvenile Court Common Pleas proceeding, moved to intervene postjudgment in the prohibition action. Appellant also filed an emergency motion for relief from order. The Court of Appeals properly denied both motions. The order denying intervention and emergency relief was entered on January 14, 2015.

Appellant filed a notice of appeal to this Court on March 2, 2015 and failed to name one of the parties, to wit: The Court of Common Pleas of Cuyahoga County, Juvenile Division and the Hon. Alison Floyd. Instead, appellant only named Relator-Appellee as a party to the instant appeal.<sup>2</sup> Appellant’s merit brief was filed May 5, 2015 . Relator-Appellee N.G. now files his motion to strike.

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<sup>2</sup> Upon information and belief, counsel for the Hon. Alison Floyd contacted counsel for Appellant regarding the omission the day after the 45 day period in which to appeal expired. Counsel for Hon. Alison Floyd has entered an appearance in the instant matter by requesting a continuance.

## **Appellant's Defective Notice of Appeal**

Appellant failed to properly name a party in her notice of appeal and hence, failed to properly serve same. The parties in the prohibition case, from which Appellant appeals, were:

1. N.G., the relator and
2. Cuyahoga County Court of Common Pleas, Juvenile Division and the Hon. Alison Floyd, the respondent.

However, Appellant only names Relator, N.G. in her Notice of Appeal.<sup>3</sup> Rule 6.01 and Rule 3.07 of the Rules of Practice of the Supreme Court of Ohio provide for the manner in which a Notice of Appeal as a matter of right must be filed.<sup>4</sup> These rules provide the minimum requirements for the Notice of Appeal. At a minimum, it is required that a person bringing the appeal actually name the parties to the judgment from which they are appealing. Appellant S.F. has failed to meet even this most basic of requirements.

While this Court reviews defects in the notice of appeal under a substantial compliance standard, *Spencer v. Freight Handlers*, 131 Ohio St.3d 316; 2010-Ohio-2138 ¶14 following *Fisher v. Mayfield*, 30 Ohio St.3d 8, 505 N.E.2d 957 (1987) paragraph one of the syllabus, failing to name a party in the notice of appeal and serve same is not such a defect. Rather, such a failure means that Appellant has not properly filed her notice of appeal within the proscribed 45 day period. Such a requirement is jurisdictional in nature and cannot be waived by one party.

It is anticipated that Appellant will argue that, even though she omitted a party in the notice of appeal, she nonetheless served the omitted party upon learning of the omission. This would not cure the defect as Appellant waited until the 45<sup>th</sup> day in which to file her Notice of

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<sup>3</sup> While counsel for the unnamed party, Cuyahoga County Court of Common Pleas, Juvenile Division and the Hon. Alison Floyd has made an appearance, the defect is still present.

<sup>4</sup> S.Ct.Prac.R. 3.07 states: (B) Name of appellees. The cover page of a notice of appeal shall also provide the name of each appellee in the appeal before the Supreme Court.

Appeal and any service past that date would not constitute a properly filed and perfected Notice of Appeal.<sup>5</sup>

S.Ct.Prac.R. 3.11 provides that all documents presented for filing be served on all parties and contain a certificate of service which states the manner of service and identifies all parties served.<sup>6</sup> When taken together, the rules provide that service shall be perfected **before** the filing of the certificate of service.

Appellant's certificate of service does not contain any mention of service of respondents Hon. Alison Floyd and the Cuyahoga County Court of Common Pleas, Juvenile Division, because Appellant did not serve respondents prior to filing the Notice of Appeal. Any attempt by Appellant to serve respondents past the 45 day deadline, would be untimely.

For the reasons stated above Appellant's notice of appeal was fatally defective. Any attempt to cure would be untimely. Accordingly, Appellant's notice of appeal should be stricken in its entirety, and her appeal dismissed.

Respectfully submitted,

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*Counsel for Respondent/Appellee N.G.*

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<sup>5</sup> S.Ct.Prac.R. 3.13(B)(1) provides: The revised document shall be filed within the time permitted by these rules for filing the original document...

<sup>6</sup> S.Ct.Prac.R. 3.11 states in pertinent part: (B)(1)(a) ... [W]hen a party ... files any document with the Clerk of the Supreme court, that party ... shall also serve a copy of the document on all parties to the case. (D)(1)(a) ... [A]ll documents presented for filing with the Clerk shall contain a certificate of service. The certificate of service shall state the date and manner of service and identify the names of the persons served ...

**CERTIFICATE OF SERVICE**

Pursuant to S.Ct.Prac.R. 3.11(B)(1), a true copy of the foregoing Motion to Strike with Memorandum in support was served this 29<sup>th</sup> Day of May 2015 by email upon:

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