

State Ex., Rel. Amanda Wilson Iler
121 E. Sixth Street.
Seaman Ohio 45679

Relator

VS.

Judge Brett M. Spencer
110 West Main Street
West Union Ohio 45693

&

Michael Farahay
1200 Mineral Springs Rd.
Peebles Ohio 45660

&

Judges of the Fourth Court of Appeals
14 South Paint Street.
Chillicothe Ohio 45601

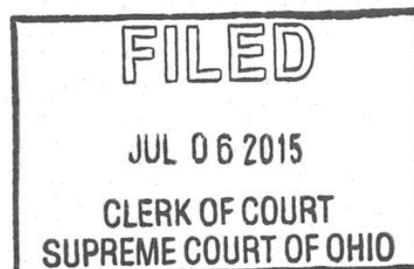
Respondents.

Case No. 2015-0146

Original Actions for Writs
of Habeas, Mandamus &
Prohibition

**RELATOR'S MOTION SEEKING DEFAULT &/OR IN THE
ALTERNATIVE REQUEST FOR RELIEF FROM CONDUCT THAT
CONSTITUTES CORRUPT ACTIVITY**

accompanied with certificate of service



<p>Amanda Wilson Iler 121 East Sixth St. Seaman Ohio 45679</p> <p>*Pro Se Relator</p>	<p>C. David Kelley (0026424) 110 West Main St. West Union Ohio 45693</p> <p>* Counsel to Respondent Judge Brett Spencer</p>
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	<p>Judges of the Fourth Court 14 South Paint Street Chillicothe Ohio 45601</p> <p>*Respondent(s)</p>

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was issued

By certified or regular u.s. mail to the following:

C. David Kelley

110 West Main St.

West Union Ohio 45693

Counsel to Respondent Judge Brett Spencer

Judges of the Fourth District Court of Appeals

14 South Paint Street

Chillicothe, Ohio 45601

Respondent(s)

My signature certifies the document(s) were issued, as indicated above

this 6th day of July , 2015.

7/06/2015 

Amanda Wilson Iler, Pro Se Relator

Original Action(s), Case No. 2015-0146

**RELATORS MOTION SEEKING DEFAULT&/OR IN THE
ALTERNATIVE REQUEST FOR RELEIF FROM CONDUCT
THAT CONSTITUTES CORRUPT ACTIVITY**

Addressing David Grimes and his arguments throughout his “Motion to Dismiss” filed 02/20/15, in this very case serves as yet another opportunity to show exactly why the 06/01/15 “Motion for Reconsideration” of Relator is *the only remedy that will ever be adequate* in comparison to the standard appeal, to any litigation resolution stemming from within and out of Adams Co. Courts.

Starting with a partial mention of definitions under R.C 2913.01

(A) "Deception" means knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact.

(B) "Defraud" means to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another.

(C) "Deprive" means to do any of the following:

(1) Withhold property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration;

(2) Dispose of property so as to make it unlikely that the owner will recover it;

(3) Accept, use, or appropriate money, property, or services, with purpose not to give proper consideration in return for the money, property, or services, and without reasonable justification or excuse for not giving proper consideration.

The intent to magnify that “Relator did not appeal” the Fourth Districts dismissal of 12/18/14 and that “the pending appeal would be the appropriate remedy” was the intentional

suggestion of res judicata to reduce the chances of any relief on behalf of Relator. And to delay the outcome knowing for “objecting” to the magistrate decision that M.F. was removed from everything she has ever known and the fourth district clearly shows on p.7, footnotes section, 2nd paragraph, “execution of the court’s March 18, 2014 Judgment was automatically stayed until the court ruled on the objections. . . .” and not one citing of the same Civil 53(E)(4)(c) or any mention of the Interim that was clearly malice and the court obviously knew how wrong it was and that’s why they concealed it from the appeal record.

(R.C. 2921.32(A)(1,2,4,5,6), R.C. 2921.52 to facilitate R.C.2905.01(A)(1) & (B)(1)(2)

“Under Ohio law, the doctrine of res judicata consists of the two related concepts of claim preclusion, also known as res judicata or estoppel by judgment, and issue preclusion, also known as collateral estoppel.” *Ohio ex rel. Boggs v. City of Cleveland*, 655 F.3d 516, 519 (6th Cir. 2011) (citations and internal quotation marks omitted).

Two (2) different avenues for the application of the doctrine of res judicata- *issue* preclusion and *claim* preclusion.

For *issue* preclusion to apply, a party must demonstrate that “the fact or issue” in question “was actually and directly litigated in the prior action.” *State ex rel. Davis v. Pub. Emps. Ret. Bd.*, 120 Ohio St. 3d 386, 392 (2008). So by virtue of applying Grimes theory of “not appealing” the prior dismissal was actually a judgment entered by default and to that is exactly the purpose for the next statement;

“In the case of a judgment entered by . . . default, *none of the issues is actually litigated.*” *Arizona v. California*, 530 U.S. 392, 414 (2000) (quoting Restatement (Second) of Judgments § 27 (1982)).

For *claim* preclusion to stand, there are four distinct elements to weigh before declared a “valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.”

- (1) a prior final, valid decision on the merits by a court of competent jurisdiction;
- (2) a second action involving the same parties, or their privies, as the first

(3) a second action raising claims that were or could have been litigated in the first action;

(4) a second action arising out of the transaction or occurrence that was the subject matter of the previous action. *Hapgood v. City of Warren* 127 F.3d 490, 493 (6th Cir. 1997)

1st element in *claim* preclusion, “final, valid decision on the merits” is broader than the issue preclusion requirement of “actual and direct litigation in the prior action”

As Grimes clearly indicates, default judgment was entered against Relator in the underlying prohibition action when no appeal was taken. “Ohio case law expressly recognizes that ‘[a] default judgment is a valid and final judgment upon the merits, and it *can* be, therefore, a proper bar to later claims for purposes of claim preclusion. *Chapman v. PNC Bank*, No. 1:11CV2229, 2012 WL 163040, at *4 (N.D. Ohio Jan. 18, 2012) (quoting *Stand Energy Corp. v. Ruyan*, No. C-050004, 2005 WL 2249107 (Ohio Ct. App. Sept. 16, 2005)); see *Morris v. Jones*, 329 U.S. 545, 550–51 (1947)

A judgment of a court, having jurisdiction of the parties and of the subject matter operates as *res judicata*, in the absence of fraud or collusion, even if obtained upon a default. (*Riehle v. Margolies*, 279 U.S. 218, 225 (1929)); *Astar Abatement, Inc., v. Cincinnati City Sch. Dist. Bd. of Educ.*, No. 1:11CV587, 2012 WL 481799.

“Under Ohio law, default judgments are judgments on the merits which can be attacked only on direct appeal. Default judgment, therefore, *can* act as a bar to alter claims under the doctrine of claim preclusion.” The major defeat that Grimes has to overcome is “*in the absence of fraud or collusion*” before he can begin to prevail under claim preclusion in his favor.

Another principle advanced in Ohio case law, that “[t]he binding effect of *res judicata* has been held not to apply when fairness and justice would not support it,” *Builders Dev. Group, L.L.C., v. Smith*, No. 23846, 2010 WL 3448574, at *3 (Ohio Ct. App. Sept. 3, 2010) (alteration in original and citations omitted)

Even if the failure to appeal construed as the triggering the application of *res judicata*, to disregard Relator’s claims, that have never been decided on the merits, and “[u]nder [such]

circumstances, rigid application of res judicata would defeat the ends of justice.” 2010 WL 3448574, at *3–4 (discussing situations where application of res judicata is manifestly unjust).

"Res judicata is not a shield to protect the blameworthy." *Davis v. Wal-Mart Stores, Inc.* (2001), 93 *Ohio St.*3d 488, 491.

Meaning, it's not a device to hide behind by stating "appeal was not taken" when it wouldn't have mattered when the deceptive yet intentional tampering and omitting of documents are known to only one party while falsely portraying, otherwise. It was one more attempt to protect the obvious and hopefully gain another deceptive win. Refer back to definitions of R.C. 2913. Point being, Adams Co has complete access to all records of a case, they transmit the record on appeal and the records are returned to them after a higher court discharges and returns the record of a case. A clever criminal will not openly commit an act that would intentionally deliver proof of their acts of tampering, obstructing, etc. There is no adequate remedy for anyone filing any action through such a court. Timing here is perfect since the records lie in the Fourth Court of Appeals to plead that if a remedy isn't granted now then the window of opportunity slams shut causing irreparable harm and the records being returned without interception is beyond a travesty. Another fraudulent win, further injury upon the intended victims, while purporting to be in the performance of their duties, when it is actually done in a methodological premeditated, step-by-step manner with the intent to deceive and to deprive a party of any and all rights. "What one does not know, one cannot contest". Unless anyone on behalf of Judge Brett Spencer or Adams Co intends to refute and overcome the required burden by filing exact copies of each and every single page filed in Writ case CA 999 and CA 994, then have the Judges of 4th district also validate they also recall those same exact documents, they have not met the burden, as the party asserting res judicata to bar this action. The party asserting it has the burden to prove the other party has had a fair opportunity to be heard entirely before they can prevail its barred under res judicata.

The fourth districts 06/15/2015 is exactly what I knew was being done. The CA 994 Entry of 07/10/2014 (attached herein) never existed, it was only posted to mislead an observer. Then the "amended" entry 07/23/15 was actually sent to 4th court but still a deceptive cover-up,

by amending it is presumed it's to supplement, modify or alter an *original*. You cannot amend what never existed and further amending is not a synonym for forgery or tampering.

Upon Relator's counsel directly speaking with the 4th district court on Aug 18, 2014 by phone it was concluded that there was no record or evidence in their appeal case CA 994 that there was ever an order for in camera interview transcript for appeal purposes, hence the online entry noting the "four copies" which is required for the appeal judges. R.C. 2913.05(A) and knowing an appellate court can only "review the record transmitted by the trial court". Relator is aware it is not public record and would be transmitted under seal unlike the hearing transcripts.

Once counsel confirmed it was truly absent, he called Adams County Juv. Division and demanded it be remedied. Apparently, to avoid any further calls on the status of transmitting what as timely ordered and paid for, Judge Brett Spencer mailed the letter the same date, located in 3/23/15 Vol. I as exhibit 'I' stating he "ignored" it and partly because Relator failed to guess accurately at his magistrate's misconduct and *unless* Judge Brett Spencer could confirm if any allegations were accurate... that was the most disgusting and obvious admission that he already knew about his magistrate cursing at M.F. and physically lunging at her like an animal then growling at her in an in camera interview as a means to intimidate her for attempting to even speak. Yet to further injure the case, Judge Brett Spencer deliberately says in his J.E. 06/26/2014 that he reviewed that same in camera interview and formulated exposure to DV yet he cannot explain that from 12/3/13 the court left that same child in the home with the mother undisturbed but ex parte removed her on 03/18/14 simply because the mother/Relator filed objections to the mag. decision. The appeals decision says automatic stay was granted to Relator since objections were filed timely and cite Juv R 40, et al yet that is not what Relator records show. The court enforced a R.C. 2921.52 sham process order depriving and severing parent from child and references both Civ. & Juv. Rules. The Court of Appeals never once mentions any civil rules nor the obsolete by it's 2006 amendment Civ. R. 53(E)(4)(c). Further if automatic stay had been granted then why does the court continuously deny the request for stay (see attachment #4 #5 also matches Journal of 20035123 in Exhibit A, page 33-36, that was filed on 3/23/15 in this action). ~~_____~~

What rule or law is there that a person has to 'guess' at misconduct in addition to ordering and paying for transcripts for an appeal? If my complaints of the Guardian Ad litem for

falsely portraying a child was neglected academically, who lied about speaking to school, teachers and these records he supposedly obtained from the school that denies any contact from an ad litem on behalf of M.F. have went unheard, then it is obvious the “guessing game invitation” for the transcripts are nothing but another power trip of somebody that has convinced himself that he is allowed to portray he has the power to which he doesn’t, it serves to obviously conceal his magistrate’s attempted assault and after all, whose ever going to believe any of this? No record of it, alone with no supervision and most generally officials in such a position don’t lie or become aggressive so how is she ever going to have her chance to tell what went on in there? No one will ever believe her, it’ll be assumed she is just ‘making that up. Notice though the magistrate never even hints that he ever inquired of DV with M.F. in camera but for some reason in the 2nd Judgment Entry of 6-26-2014 Judge Brett Spencer states he was able to formulate exposure to DV from his inspection of in camera interview. That served two malicious purposes. 1) he knew he was omitting it on appeal and knows the appeal court always says “they can only consider the record before them and if there is no record then they must assume there was no error and it was proper” 2) it had more weight to the prejudice against Relator, after all, he is a judge and “nonverbal” unarticulated conduct just makes more sense if he “tweaks” it using his position to advance all but the truth. Perhaps his ‘personal reasons’ for ignoring the ordering of the transcript are because he knows Relator’s objections were never about the child agreeing to DV because the magistrate never tried to even imply that, because it never happened. Actually the mag. decision totally conflicted with even the ad litem’s testimony in 11/5 when he failed to portray the relationship between Farahay and child was stable and insinuating M.F. would concur. The Magistrate Decision clarifies just the opposite, by stating child wanted to reside and stay with mother, far different of all the implied innuendo’s of the same GAL that abandoned the child in the final hearing.

It’s well established that a court cannot consider evidence that is not properly before it and now since there are 2 known claims, publicly of record/evidence tampering (Shuperts corrected transcripts from another Adams Co case, eerily involving both counsel Grimes and same judge) how simple to discredit such allegations would it have been to file an exact copy of the original appeal notice of CA 994 in this very action in an opposition motion, to which has not been attempted. The Court of Appeals and all onlookers would see the same document and

nothing would come as a surprise to anyone, especially if there has not been any deceptive alterations or omissions.

Regardless, the Judges own letter for “personal reasons” he was “ignoring” the request of the in camera interview for appeal purposes, that letter would not have been issued if it had been truly transmitted on appeal. Further it stated unless Relator guesses accurately at misconduct of a perverse magistrate’s behavior towards the child, then the child’s in camera interview just wasn’t available for a higher court to access it, citing no law to support it. There is no law or rule about Spencer’s personal reasons being a mechanism for denying a party transcripts for appeal purposes, or otherwise. Again emphasizing Spencer’s letter wouldn’t have ever existed let alone been mailed if the records were what they intend to portray, online. The only purpose of posting it online as mailed to higher court was to deceive and defraud. It was not meant to be ‘caught’. What was the purpose of trying to guess at misconduct to have him confirm it, he completely “ignored” the ad litem obvious wrongs and the opposing attorney for submitting grade cards knowing they were false but for some reason in order to have a higher panel of judges to inspect it, Relator was to allege certain misconduct, there is no rule or statute in obtaining transcripts a party must accurately guess at how perverse Schlueter acted alone with a child with no boundaries, (notice GAL does not offer records/report cards, he never had any contact with the actual school, he just said he did to aid the deception).

Simply put, the transcripts of Shuperts that were redone/corrected by another entity, were not even denied in this action, he can’t even just say the court accepted them and sent them to the Fourth Dist Court as they implied by stamping them to portray they were sent. Surely, they weren’t just stamped as a means to misrepresent that they truly issued them. A simple opposition by way of confirming that they were truly sent to 4th district as implied by the stamping. Another way to discredit Relator’s allegations of her altered transcripts is to allow the audio CD of hearings in M.F. underlying case to readily dispute allegations of transcripts being fabricated and then again for appeal purposes. You cannot amend anything without there being an original. Amend is not a synonym for tampering or forgery. The 07/09/2014 mailing in CA 994 was only posted to when it never existed, ever. Relator spoke directly with staff at the fourth dist. court of appeals and they have no reason to assert other than what they do or don’t have in a record. Emphasizing the letter issued by Judge Brett Spencer as Ex. ‘I’ in 3/23/15, it wasn’t denied for
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lack of payment and it also confirms that it was timely in ordering for appeal purposes, if the court really had sent the 4 copies of the order as indicated on the fraudulent entry of 07/10/15, there would be an entry of a deficiency mailed to the Relator, there is not an entry of any deficiency, which only magnifies that the appeal notice was altered and the online portrayal was only posted to deliberately further the scheme of willfully withholding them. Further if it had been sent, it would have been entered that the transcript was under seal, just like in appeal case 997 (attached as # 2 ^{available online also}) of a minor child's in camera interview that was sent. Again, there is no record or entry of any deficiency notice in case for M.F. His personal reasons for ignoring it are because he knows he blatantly obstructed justice by not allowing her testimony to be heard and by using his position as a judge with the knowledge that the reviewing court must assume his finding is proper when there is no record for them to consider. He knows very well what that magistrate said and did to M.F. and how illegal it was and if the truth would ever get out, they'd be exposed and facing felonies. He has every reason to hide it. He just was not expecting to be exposed. He never even tries to link the withholding of it to be "in the best interest" of M.F. which is what everything else is purporting to be about.

Better yet no injury done, to Tyler Cantrell, after all this litigation and allegations, to simply state a name or names in particular as to whom he spoke with as he verbally stated on the record, who/what teacher(s), state by their name and that is not so much to ask for. And when/where did he become qualified to "read" non-verbal body language/conduct. Surely if so qualified he wouldn't have to scheme for ad litem appointments, he would be employed gainfully with such impressive expertise. So, now is the perfect opportunity to discredit any allegations (esp. of the one that is "combative" and "deceitful" per entries of Adams Co) and show this court all papers/documents that were filed by Relator in the dismissed writ, so all involved clearly see that Relator had a fair chance to be heard and all issues were fairly considered. Otherwise, expect a request for a penalty for yet another criminal act done to delay and hinder the chance at Relator's justice. Every page/attachment that Adams Co sent to the fourth district that was filed in that action is required if any party asserts res judicata for this action, here. Plain and simple, if a party can't file an appeal notice without it being forged and altered, the chances of anything else being tampered, is even higher.

Ohio Constitution, Article I, Bill of Rights

1.01 Inalienable Rights

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

1.16 Redress in courts

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

To tamper, conceal, falsify, forge, omit and/or withhold pages filed is nothing short of willfully and knowingly violating Relator, all over again and certainly the right to redress as stated in Ohio Constitution (when earlier filing directly through Adams Co. to the district appeal court) in addition to the inalienable rights that keep getting trampled on. Worse, is for the same child that everyone claims to be ‘protecting’, which is the last thing on any of their minds, they don’t even want another judge to hear her without interception. Who is the deceptive one?

Search the entire R.C. 3109 and Sup. Rule 48, there’s nothing about “non-verbal” conduct analysis of any parent, in a court proceeding that simply refused to let an entire court room belittle and falsely pursue claims that a child was “drastically failing”. While personally being able to hear voice and tone inflections and see gestures or expressions, it is harder for a court reading only transcripts to gauge certain things but this is beyond the limits of reason. There’s nothing in Civ or Juv procedure rules that allow ad items to be a trier of fact or an expert on nonverbal evidence (especially without qualifications) in a court room without video cameras. It doesn’t take a genius to assault another person when they have no way to refute it with a video tape for another person trying to figure out who is lying and who isn’t. Anyone could have done that. An ad litem is not crafted with anything special to contrive that scenario. While it may appear that the mother must have done something to cause the ad litem to make a remark, let us imagine his non-verbal conduct as he cashed in \$500 and earning it by aiding claims that a child was being neglected educationally with all his pretend qualifications then after his spiel about “she could not pass tests later in high school’ go back and look at the grade card that he

never produced and tell a parent how that served M.F.'s best interest. His "she acted different" then read the ad litem in Highland Co who is not hiding her contacts or basing credibility over the phone by the sound of a voice or minimizing one side and overly magnifying the other. She made clear she was looking through the eyes of the child and it was genuine whether or not a person agreed with her conclusions she at least stated why or how she determined different things. She never asserted to have x-ray or night vision which is about the equivalent of the Adams County hired 'gun man' disguised with 'ability to read silent nonverbal cues yet he can't read a report card) as a guardian ad litem. False statement by innuendo and intentionally knowing without his part the court would not be able to misuse the demeanor tactic.

Absent his 'part' in the furtherance the court would have to find another device or method to "cash in". For five years no method was intact for a party to complain of an ad litem despite Sup R 48 since 2009, so one has to wonder how many unsuspecting parents, children and families have been victimized and how many thousands of dollars has the enterprise collected in the process...looking at the appeal cases from Adams Co on a yearly comparison, the lowest in the entire district and even more troubling is the child custody appeals. Virtually none. Who could guess that if you are able to fight off the pit bulls to even be allowed an appeal after the records change, people get banned from the courthouse for having transcripts corrected, they lose custody instantly for filing objections. More troubling is the records online from 2009-2014 look at the custody cases (dom. Relations) and how high the #'s for "appointing an ad litem" and locate just one where the ad litem didn't collect their fee after the first hearing (damage is done, here you earned it) and actually attended the later/final hearing(s). You will not find it unless someone changes it because they can't risk going up against someone like Relator or Jennifer Shupert. Sadly, most quit trying because of the expense, the retaliation and the excruciating pain and humiliation they have endured. Most people would rather shrivel up than to have another court formulate their first impression on them based on the language in Relator's 03/18/14 Mag. decision knowing it is not in their favor but all Relator asks is for this court to ponder the next sentence before allowing those ugly words to have any value regarding M.F. since she has had no voice in any of this.

“What others say about you doesn’t speak or define your character but is more reflective of the one doing the talking”

Adams County with their favored “deference to demeanor” is being construed as an attempt to serve as a false witness and fabricate evidence by writing a false communication with the intent to prejudice and sever any fair chance of Relator, to a higher court reviewing case regarding M.F. Apparently Adams County misconstrues deference to demeanor, as an assault weapon, regardless it still has to have some support and is not a freeway to intentionally make a false statement to hinder fairness of an overseeing court. It is a magistrate, an elected judge and ad litem all purporting to be in the performance of their duties but using their knowledge of the law and maliciously using it in a manner for which it is not intended, literally depriving a person of any right to refute what is invisible. Demeanor deference was their only hope to deflect the obvious misinformation and fraud they all participated in, hopefully to minimize their criminal acts and to crucify anyone that “gets in their way”. If you think this is a rare case, think again. This goes on and has been for some time, now. There is not any one finding by a judge that cannot be challenged, a finding has to have some sort of support or else every vindictive judge would insert adjectives of those they dislike just to be able to injure them. A parent loses custody for different reasons but can regain custody if the mitigating issues get resolved. What if every time it’s asserted that Relators nonverbal conduct is this or that, a parent and child are severed, by virtue of not being able to defend the invisible? No reunification because ‘Mommy’s issues aren’t resolved, her nonverbal body language tells us so”.

What does a judge look like rigging the appearance of issuing transcripts (online entry 07/10/14 of CA 994) then literally removing it from the original appeal notice and then claiming Relator is the deceptive one while he commits at least one known felony, he is rewarded by knowing the outcome. He is a danger to any person in involved in a court where he resides. Where is our justice? He has had his share as it is likely this is not by accident since he mailed a letter after learning the scheme of the “online journal” used to defraud didn’t work and contact was made then learned it was only a scheme to shield the withholding of a child’s testimony. And more disturbing is not one person has attempted to right any of this, not even the prosecutor, he shielded and helped delay and defend a judge against the same child they deprived of even having a voice. He has knowledge seeing he was served with every single document by Relator.

Where is the GAL that can read body language but cannot muster anything in her “best interests” and tell the truth that she was nothing below a ‘C’ in any class. None of which any individuals involved have any genuine credibility absent their elected or appointed positions. They are all each separate (likely intentionally separate firms so they can appoint the ad litem to carry out whatever scheme they have planned and its appearance would not work if they were within the same firm ‘appointing’ ad litem) but each serve to execute the pattern of corrupt activity that are, in fact, related to the same affairs of the “enterprise” to which they all serve and associate with.

The damage and proof of what the magistrate did is probably disposed of seeing a Judge is not going to allow his knowledge of that be exposed especially after his job of formulating exposure to DV knowing we couldn’t object to it because it was never stated until after the objections were filed and overruled, conveniently. Where is all these educated lawyers and none have submitted an affidavit to law enforcement when they all have the same knowledge and records but only Relator can see the obvious perjury, tampering, etc. Deference is not a tool to execute upon those they wish to harm, pretending to be done while performing their duties, certainly not a means to communicate false information and/or statements, either. There are ways to put on the record of nonverbal actions, a perfect example lies in Highland Co transcripts filed in 3/23/15 Vol. I exhibit ‘G’, pages 38, et al where the magistrate calls attention, on the record, to the party for ‘rolling his eyes’ and though there is no visual to review in those transcripts, she verbally specifies his inappropriate ‘silent but visual behavior’ and then when he responds (by apologizing) the audience, even if they are only reading the ‘cold written record’ is easily able to understand what only the magistrate could see. She did not sit in silence and then four months later call him spiteful adjectives that have no relevance or even a foundation and purport it to be demeanor evidence for discrediting his testimony, she states she found him less credible but anyone could easily see how she came to that conclusion, after reading the entire transcript, it reveals his own testimony was the cause of that. She didn’t assault him with names to drown out the other parties’ obvious misstatements or motives. That is not impartial or objective, in any sense. That is nothing short of false statements used to harm M.F. and the outcome of the appeal knowing an appellate court cannot gauge anything outside of the written record. They refused to answer or clarify the requested finding of facts and legal conclusions and those were specifically inquired in those. They had their chance and would have been the perfect

opportunity to specify anything but chose not to because they knew they would be omitting that before the appeal ever took place.

Consider the removing of the ad litem from the entire record and base the allegations from the motion of 04/11/2013 and discovery interrogatories (03/23/15, Vol. I, exhibits B & C) and then imagine the 1 teacher/tutor witness (related through marriage) and the ex-spouse and current girlfriend with the same testimony then proceed with the 2nd hearing as it is/was and if Tyler Cantrell was not in the case nor his claim at assessing Relator, what would the court have to base their findings if Tyler was absent to act as the 2nd attorney to the defendant? They would have nothing and is exactly why the initiating attorney always employs this routine. Their malicious combination of 2 or more persons to injure another person or property, in a way, not competent for one alone, resulting in actual damages. The magistrate could not have claimed Relator was combative or deceitful especially if Tyler Cantrell didn't utilize his unarticulated assessment of a parties silent nonverbal body cues. The defendant Farahay could not have made claims of DV without conspiring witness Matt Iler to corroborate each other's story. The intentional unlawful acts are obvious just between the records filed here in this case and their mismatching in the 4th district, further discussed throughout this document.

<https://www.fbi.gov/about-us/investigate/civilrights/federal-statutes#section242>

Title 18, U.S.C., Section 241, Conspiracy Against Rights

This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, (or because of his/her having exercised the same).

It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder his/her free exercise or enjoyment of any rights so secured.

Punishment varies from a fine or imprisonment of up to ten years, or both; and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an

attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title or imprisoned for any term of years, or for life, or may be sentenced to death.

Title 18, U.S.C., Section 242 Deprivation of Rights Under Color of Law

This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.

This law further prohibits a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause to be subjected any person to different punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such person being an alien or by reason of his/her color or race.

Acts under "color of any law" include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties. This definition includes, in addition to law enforcement officials, individuals such as Mayors, Council persons, Judges, Nursing Home Proprietors, Security Guards, etc., persons who are bound by laws, statutes ordinances, or customs.

Just because Relator may have a "little Adams County in her" after everything that has transpired, let it be known one more secret that they never thought would get out regarding ORC 2921.42 Having an unlawful interest in a public contract-make note of the online public records of Judge Brett Spencer's former law office real estate that he occupied as an attorney prior to his becoming an elected judge. It has been owned by him consistently since its purchase date, before and during his position as elected judge (public record attached) and with none other than the same attorney you will notice that is involved in my case that has been tainted apparently and then refer back to the Shupert case of those altered transcripts. It is he that has his dialect in those transcripts that were corrected and he also was served a copy of them by the opposing attorney in that case, see certificate of service. He was aware of their existence therefor he had first and

direct knowledge. He had to be familiar with all the case dockets as the attorney of M.F.'s record, seeing he delayed it stating he was new to case and needed time to file a brief. He knows what documents were in case record and that includes the omissions of "the record on appeal" of M.F. case. You know what he left out? He forgot to mention that the same mayor David Hughes (Relators boyfriend that the court is accusing of DV) was also David Grimes superior up until the termination of his position within the village. Grimes, while employed as mayor court magistrate, he took the Farahay appeal case while D. Hughes was still his boss/employer knowing that was clearly a conflict of interest and did so after the village reduced his contract pay but more so is the appearance that he very well may have contrived and solicited the litigation in both/either cases since he has done nothing to reveal the truth and in fact has knowledge of both cases and all conflicting statements by his clients but continues the pursuit and as if he isn't aiding fraud while being rewarded financially. (Attachments #10, 11, 12)

Startling, is his own writing, and signature, for *his* law address at the 231 N. Cross St. West Union Ohio 45693 which is clearly owned by the judge and was at the time Grimes was renting from him up until Grimes secured his current location. That has not once stopped Grimes from appearing in any case before Spencer when (before, during or after) he was renting from him. They can't change public records outside of Adams Co and the portions enclosed here are from Court of Claims, online and publicly accessible. Ignorance to the law is no defense and surely bar licensed credentials they did so, knowingly. (# 1 pertains to unlawful int. of

The Appeals Court Decision is more convincing and shows further unbelievable collusive and fraudulent conduct. Page 7, footnotes states "we observe that when filed her 03/21/14 objections, execution of the 03/18 judgment was stayed until the court ruled on the objections" per Juv. R. 40(D)(I) but what they fail to realize is March 21, 2014 is when M.F. was put with the same person she feared and was denied her only chance to tell in private to a trusted adult whose supposed to listen to her why she feared him and instead of that the court aligned to sink the person she seeks security in-her mother. And because she asked for the GAL to be held accountable but to date, nothing has been done.

The greedy attorneys for years now have done anything they can to steal and rob her of a regular childhood in the appearance of a concerned father just trying to better her life through improper use of the court and to line each other's pockets.

Court of Claims, Publicly available cases: Estate of Shane Morgan Ohio Dept. of Transp.

of R.C. 2921.42

No mention of the Sham Process citing 53 (E)(4)(c) *Interim* order that Relator's documents show and they believe the initial Judgment Entry of 03-18-2014 was an independent and its own separate judgment that set forth the remedy but the Relator's version was the opposite, a copy/paste of the decision and hardly anything independent or separate. Then converted to an interim that had never existed but became "effective" by virtue of the filing of objections.

Then they say the 06-26-2014 "affirming" was adherence to the 03/18/14 Judgment and is not a final appealable order since the court had already entered its final Judgment subject to appeal but clearly Relator's 06-26-2014 is again captioned as Judgment Entry and signature page written by Judge Brett Spencer says it is a final appealable order (because they knew the 1st one 03-18-14 was *ONLY* a copy and paste and never a separate anything and per the J.E. the 6-26-14 was the 1st and only separate Judgment Entry aside from the mag. decision), it is what was feared, the court of appeals and Relator are not looking at the same documents. Explains the "amended" entry which was perfecting their of the courts errors to succeed. (See attachment, #1 incorporated w/ this filing)

Appeal Decision from 4th Court (attachment #9) P. 11 and 17 says there's not been a challenge to courts best interest findings, perhaps is why no mention of filed request for findings of facts and legal conclusions filed 03/24/14 which were treated as if never filed. They are "moot" per Schlueter, which is when they can't defend or overcome the 'one' they failed as an enterprise to finish off. They are also referenced in the Journal of 20035123 (p. of Exhibit 'A' filed in this action as #6) and attached herein this document to which they are apparently unable to answer or refute and is why they aren't mentioned anywhere.

P. 6 footnotes saying Relator didn't seek leave to file the supplemental objections thus noncompliance of Juv R 40 (D)(3)(b)-how is that when they are incorporated in 03/21/14 1st set of objections (p. 2, Section II and III of objections) and then the court acknowledges that request by the 2 distinct entries, #8 (2nd page) of #5 & #6 ^{objections} ^{a Hachpierrez} where they are clearly acknowledged by saying "they remain to be completed" (never did deny the requesting of leave to supplement objections) and just danced around them by not addressing them in its 06/26/2014 Judgment Entry but that is because they knew they were going to be "fixed" by apparently

doctoring the portion of my Objections filed 03/21/14 for appeal purposes knowing that outcome, if we hadn't properly sought leave for filing of supplemental objections.

Anything to make sure M.F. is not afforded any chance to expose the ad litem or magistrate. Sickening. Was that omission and deliberate tampering for the "record on appeal" in M.F. best interest? Why would a prosecutor even purport to defend Judge Brett Spencer when he has been served every filing in this action and not see the discrepancies? He knew there was a conflict and should not have aided let alone defended seeing he has a duty to seek justice for the victim of crime, which supersedes any civil defense. Actually, that same prosecutor has had one deputy call on his behalf attempting to "enforce" what he knows to be illegal and unenforceable. The call was initiated on 07/02/2015 by A.C.S.O. and per the "Order" of prosecutor David Kelley.

P. 13 of 4th Court of Appeals, says "trial court additionally indicated the child's in-camera interview led to believe DV had occurred in appellants home." Nothing saying the 4th Court of Appeals Judges inspected that same transcript of the in camera interview because Judge Brett Spencer "ignored" the ordering of it by altering the appeal notice that showed it was ordered, knowing that absent a record to review an appeal court must assume that a lower finding was proper or correct.

Further, considering the Highland Co GAL report filed 05/20/2015 in this action as a motion, exhibit "H", the Verizon phone records, report card of M.F. that was never offered by anyone in Adams County, only goes to show why perhaps the assessed demeanor of Relator does not change Farahay and Matt Iler's contradictory and conflicting statements. It certainly does not change their motives or character, either.

If this does not plead corrupt activities by its own accord then surely there is no such thing as justice, it's a mere figment we have been brainwashed into believing when it is just an illusion.

Further, Relator has been contacted by phone by several different sheriff deputies and per the deputy initiating each call, "per prosecutor David Kelley" that Relator is to return child to defendant/father immediately, etc and simply because if M.F. testifies without interception in Highland Co then Judge Brett Spencer will possibly have to explain why he insinuates exposure to DV after reviewing what he is withholding from any other judge to hear (her in camera

interview) and the Appeals Decision also clarifies p. 16, the trial court indicated per the in camera interview that DV may have occurred yet it obvious that if the in camera transcript been truly sent on appeal the statement would have also included that courts own interpretation, after their own inspection of the same. Nothing is mentioned except the trial courts "finding" knowing that it has to be assumed proper without a record for a reviewing court to assess.

pen
A.C.S.O.
deputies
personally
telling
this to
Relator
7/5/15
AJ

on 7/5/15 David Kelley, prosecutor, through the means of different deputies, has announced that he intends to have a search warrant to enter Relator's home if child is not returned to father yet that same prosecutor who has record of all the doc's of this and its underlying case(s) cannot "remedy" the contradicting/perjured testimony of Farahay or Matt Iler, or even the GAL that has become invisible nor the judge that tampered appeal records in an effort to rig the outcome. He purported to serve as counsel to judge in the writ case in 4th district when all he was doing was delaying any resolution with the knowledge that he was not administering justice by any means given he was aiding Judge Brett Spencer's fraudulent acts while furthering the injury to the victim, M.F. Yet, behind the curtain like the wizard of Oz, he is directing the show through ordering others to carry out acts-all that only serve to protect the judge that lied and to keep M.F. from being heard without interception. The same judge that obstructed and tampered documents wants to sign off on a search warrant in a civil case-to illegally withhold testimony of M.F. to cover their own prior false statements. Sure would be nice if they'd issue a warrant to recover the documents that were altered for appeal purposes but that would not serve the interests of the enterprise nor the affairs of it.

No opposition or response of any type has been submitted since the initial Motions to Dismiss despite Relator's subsequent filings/requests in this action after those motions and they have had adequate time to act, Relator now moves this court to provide any type of relief and on behalf of the clear issues that, in no way could have been preserved for appeal since Relator cannot even get unaltered documents sent for appeal purposes.

07/06/2015 Motion Default/Relief from Conduct that constitutes corrupt activities

Amanda Wilson Iler

July 6, 2015

Amanda Wilson Iler, Relator

121 E. Sixth St. Seaman Ohio 45679

Ph: 937-779-6637

AJ

1

Adams County Common Pleas Court

Journal Entries: CA994

Plaintiff:

Wilson, Amanda

Defendant:

Farahay, Michael

01/05/2015

- MAGISTRATE'S ORDER FILED. (COURT STRIKES REPLY BRIEF OF APPELLANT FILED 12/29/14.)
- NOTICE OF ENTRY AND COPIES FILED.
- COPY OF MAGISTRATE'S ORDER, COPY OF NOTICE OF ENTRY MAILED TO JON C. HAPNER AND DAVID E. GRIMES BY REGULAR U.S. MAIL.
- ENTERING JOURNAL - EACH PAGE
- ISSUING WRITS, ORDERS, NOTICES, EXCEPT SUBPEONA
- POSTAGE CHARGED

12/29/2014

- REPLY BRIEF OF APPELLANT AND CERTIFICATE OF SERVICE FILED. (FILED BY JON C HAPNER, ATTY FOR APPELLANT)
- FOUR COPIES OF REPLY BRIEF OF APPELLANT MAILED TO FOURTH DISTRICT COURT OF APPEALS BY REGULAR US MAIL.
- POSTAGE CHARGED

12/23/2014

- MAGISTRATE'S ORDER FILED. (THE COURT DENIES THE MOTION TO FILE REPLY BRIEF.)
- NOTICE OF ENTRY AND COPIES FILED.
- COPY OF NOTICE OF ENTRY AND COPY OF MAGISTRATE'S ORDER MAILED TO JON HAPNER AND DAVID GRIMES BY REGULAR US MAIL.
- ENTERING JOURNAL - EACH PAGE
- ISSUING WRITS, ORDERS, NOTICES, EXCEPT SUBPEONA

12/18/2014

- POSTAGE CHARGED

12/17/2014

- MOTION FOR LEAVE TO FILE REPLY BRIEF AND CERTIFICATE FILED. (FILED BY JON C HAPNER, ATTY FOR APPELLANT)

- FOUR COPIES OF MOTION FOR LEAVE TO FILE REPLY BRIEF MAILED TO FOURTH DISTRICT COURT OF APPEALS BY REGULAR US MAIL.
- POSTAGE CHARGED
- THIS FILE MAILED TO COURT OF APPEALS VIA UPS.

12/02/2014

- POSTAGE CHARGED

12/01/2014

- REPLY BRIEF OF DEFENDANT - APPELLEE MICHAEL FARAHAY AND CERTIFICATE OF SERVICE FILED. (FILED BY DAVID E GRIMES, ATTY FOR DEF)
- FOUR COPIES OF REPLY BRIEF OF DEFENDANT -APPELLEE MICHAEL FARAHAY MAILED TO FOURTH DISTRICT COURT OF APPEALS BY REGULAR US MAIL.

10/09/2014

- MAGISTRATE'S ORDER FILED.
BECAUSE APPELLANT DID NOT COMPLY WITH THIS COURTS PREVIOUS ORDER AND BECAUSE THE ISSUE IS MOOT, THE COURT DENIES THE MOTION TO DENY EXTENSION OF TIME.
- NOTICE OF ENTRY AND COPIES FILED.
- COPY OF MAGISTRATE'S ORDER, COPY OF NOTICE OF ENTRY MAILED TO THE FOLLOWING BY REGULAR U.S. MAIL: JON HAPNER AND TANYA DRINNON
- FOUR COPIES OF MAGISTRATE'S ORDER MAILED TO THE FOURTH DISTRICT COURT OF APPEALS
- ENTERING JOURNAL - EACH PAGE
- ISSUING WRITS, ORDERS, NOTICES, EXCEPT SUBPEONA
- POSTAGE CHARGED

10/06/2014

- MOTION TO DENY EXTENSION OF TIME AND CERTIFICATE FILED. (FILED BY JON C HAPNER, ATTY FOR APELLANT)
- FOUR COPIES OF MOTION TO DENY EXTENSION OF TIME MAILED TO FOURTH DISTRICT COURT OF APPEALS BY REGULAR US MAI.
- POSTAGE CHARGED

10/02/2014

- MAGISTRATE'S ORDER FILED. (MICHAEL FARAHAY MOTION FOR EXTENSION OF TIME TO FILE BRIEF GRANTED. SHALL BE FILED ON OR BEFORE 12/1/14.)

- NOTICE OF ENTRY AND COPIES FILED.
- COPY OF MAGISTRATE'S ORDER, COPY OF NOTICE OF ENTRY MAILED TO JON C. HAPNER, TANYA DRINNON, DAVID E. GRIMES, TYLER E. CANTRELL, JOHN B. CALDWELL BY REGULAR U.S. MAIL.
- POSTAGE CHARGED
- ENTERING JOURNAL - EACH PAGE
- ISSUING WRITS, ORDERS, NOTICES, EXCEPT SUBPEONA

09/26/2014

- APPELLEE'S MOTION REQUESTING AN EXTENSION OF TIME TO FILE BRIEF AND CERTIFICATE OF SERVICE FILED. (FILED BY DAVID E GRIMES, ATTY FOR DEF)
- FOUR COPIES OF APPELLEE'S MOTION REQUESTING AN EXTENSION OF TIME TO FILE BRIEF MAILED TO FOURTH DISTRICT COURT OF APPEALS BY REGULAR US MAIL.
- POSTAGE CHARGED

09/18/2014

- MAGISTRATE'S ORDER FILED. (THE COURT DENIES THE REQUEST AT THIS TIME FOR ORAL ARGUMENTS AS IT DOES NOT COMPLY WITH THIS COURT'S LOC.R. 12.)
- NOTICE OF ENTRY AND COPIES FILED.
- COPY OF NOTICE OF ENTRY AND COPY OF MAGISTRATE'S ORDER MAILED TO JON C HAPNER AND TANYA DRINNON BY REGULAR US MAIL.
- ENTERING JOURNAL - EACH PAGE
- POSTAGE CHARGED

09/15/2014

- REQUEST FOR ORAL ARGUMENT AND CERTIFICATE OF SERVICE FILED. (FILED BY JON C HAPNER, ATTY FOR APPELLANT)
- FOUR COPIES OF REQUEST FOR ORAL ARGUMENT MAILED TO FOURTH DISTRICT COURT OF APPEALS BY REGULAR US MAIL.
- POSTAGE CHARGED

09/05/2014

- BRIEF OF APPELLANT AND COPIES FILED. (FILED BY JON C. HAPNER, ATTORNEY FOR APPELLANT.)
- APPENDIX OF APPELLANT BRIEF AND COPIES FILED.
- FOUR COPIES OF BRIEF OF APPELLANT, FOUR COPIES OF APPELLANT BRIEF MAILED TO FOURTH DISTRICT COURT OF APPEALS, 14 S. PAINT ST., #38, CHILLICOTHE, OH 45601 BY PRIORITY MAIL.

08/15/2014

- TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES, NUMBER LISTING OF DOCUMENTS IN RECORD, CERTIFICATE OF TRANSMITTAL, TRANSCRIPT OF HEARING 11/5/13, TRANSCRIPT OF HEARING HELD 12/3/13, TRANSCRIPT OF HEARING HELD 7/12/11, ALL ORIGINAL PAPERS RECEIVED FROM CLERK, ADAMS COUNTY JUVENILE COURT, ADAMS COUNTY, OHIO AND FILED.
- NOTICE OF TRANSMISSION OF RECORD AND COPIES FILED.
- FOUR COPIES OF NOTICE OF TRANSMISSION OF RECORD MAILED TO THE FOURTH DISTRICT COURT OF APPEALS BY REGULAR U.S. MAIL.
- COPY OF NOTICE OF TRANSMISSION OF RECORD MAILED TO THE FOLLOWING BY REGULAR U.S. MAIL: JON HAPNER, TANYA DRINNON, JOHN CALDWELL, AND TYLER CANTRELL
- ISSUING WRITS, ORDERS, NOTICES, EXCEPT SUBPEONA
- POSTAGE CHARGED

07/23/2014

- AMENDED ADULT CASE DOCKET FILED.
- FOUR COPIES OF AMENDED ADULT CASE DOCKET MAILED TO THE FOURTH DISTRICT COURT OF APPEALS BY REGULAR U.S. MAIL

07/10/2014

- FOUR COPIES OF NOTICE OF APPEAL WITH JUDGMENT ENTRY FILED ON 6/26/14, FOUR COPIES OF CIVIL DOCKET STATEMENT, FOUR COPIES OF REQUEST FOR TRANSCRIPT OF IN CAMERA CONFERENCE, FOUR COPIES OF ORDER TO COURT REPORTER, FOUR COPIES OF ADULT CASE DOCKET WITH REPORT FORM C ATTACHED MAILED TO THE FOURTH DISTRICT COURT OF APPEALS BY REGULAR U.S. MAIL.

07/09/2014

- CASE FILED
- DEPOSIT - RECEIPT NO. 2141881 IN THE AMOUNT OF \$ 148.00 HAPNER & HAPNER
- NOTICE OF APPEAL WITH JUDGMENT ENTRY FILED ON 6/26/2014 RECEIVED FROM CLERK, JUVENILE COURT, ADAMS COUNTY, OHIO AND FILED. (CASE NO. 20035123)
- CIVIL DOCKET STATEMENT FILED.
- REQUEST FOR TRANSCRIPT OF IN CAMERA CONFERENCE FILED.
- ORDER TO COURT REPORTER FILED.
- ADULT CASE DOCKET RECEIVED AND FILED.

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#2

Adams County Common Pleas Court

Journal Entries: CA997

Plaintiff:

Imo: T.T.T Jr

Defendant:

Imo: T.T.T Jr

entry for sealed transcript of in-camera record on appeal

04/29/2015

- THIS FILE MAILED TO FOURTH DISTRICT COURT OF APPEALS.

04/24/2015

- SEALD TRANSCRIPT OF IN-CAMERA INTERVIEW FILED.
- NOTICE OF TRANSMISSION OF SUPPLEMENTAL RECORD AND COPIES FILED.
- FOUR COPIES OF NOTICE OF TRANSMISSION OF SUPPLEMENTAL RECORD MAILED TO FOURTH DISTRICT COURT OF APPEALS, 14 S. PAINT ST., #38, CHILLICOTHE, OH 45601 BY REGULAR U.S. MAIL.
- COPY OF NOTICE OF TRANSMISSION OF SUPPLEMENTAL RECORD MAILED TO BARBARA A. MOORE AND JAY WILLIS BY REGULAR U.S. MAIL.
- POSTAGE CHARGED
- ISSUING WRITS, ORDERS, NOTICES, EXCEPT SUBPEONA

04/17/2015

- ENTRY FILED. (MOTION FOR PREPARATION OF TRANSCRIPT OF CHILD INTERVIEW GRANTED.)
- NOTICE OF ENTRY AND COPIES FILED.
- COPY OF NOTICE OF ENTRY, COPY OF ENTRY MAILED TO JAY S. WILLIS AND BARBARA MOORE BY REGULAR U.S. MAIL.
- POSTAGE CHARGED
- ENTERING JOURNAL - EACH PAGE
- ISSUING WRITS, ORDERS, NOTICES, EXCEPT SUBPEONA
- COPY OF ENTRY PERSONALLY HANDED TO SHERRI BOWMAN, COURT REPORTER.

12/22/2014

- WAIVER OF ORAL ARGUMENT, CERTIFICATE OF SERVICE FILED. (FILED BY JAY S. WILLIS, ATTORNEY FOR TERRANCE THOMAS.)
- FOUR COPIES OF WAIVER OF ORAL ARGUMENT MAILED TO FOURTH DISTRICT COURT OF APPEALS, 14 S. PAINT ST., #38, CHILLICOTHE, OH 45601 BY REGULAR U.S. MAIL.
- POSTAGE CHARGED

12/17/2014

- REPLY BRIEF OF APPELLANT, TERRANCE THOMAS AND CERTIFICATE OF SERVICE FILED. (FILED BY JAY S WILLIA, ATTY FOR APPELLANT)

#3

Adams County
Court of Common Pleas
Juvenile Division

FILED
ADAMS COUNTY
COURT OF COMMON PLEAS
JUVENILE DIVISION
2014 MAR 24 AM 10:07
Bates
JUDGE

Amanda Wilson Iler

VS

Michael Farahay

Juvenile Case: 20035123

In Re: M.F. minor child

REQUEST FOR FINDINGS OF FACT & CONCLUSIONS OF LAW

(5 pages)

Amanda Wilson Iler, plaintiff and mother of minor child M.F., having acknowledged the March 18, 2014 Magistrate Decision & Judgment Entry, also dated March 18, 2014, requests finding of facts and legal conclusions as they will be needed to frame more specific objections once the other transcript (of final hearing 12/03/14) is completed and filed

The language on last page of the '*Decision*' conflicts with the basic function and purpose. The document is clearly captioned as a Decision and references Rules of Juvenile Procedure, which I agree is correct, both parents have not ever been married and never subject to shared/joint parenting provisions, etc but below the waiver clause a new paragraph states that if I timely file objections the Decision is converted to an Interim Order per Juv R 40 (4)(e)(ii) which never existed prior but the filing of objections subjects me and a child to an ex-parte/emergency custody interim that was never in existence and only after nearly five months of a court leaving the case pend??

The *Decision* says since their "dissolution" but we have never been married and never had shared/joint anything in regards to M.F. which is the basis for my belief that the 3109.04(E) standard would not apply. 3109.04 (B) and 3109.04 (F) are more likely to be the right standard in this case. The defendant/ father was only recv'ing a modified *parenting time order* under 3109.051 and again we never had any mediation, etc. Perhaps I am wrong but I believe 3109.04 (E) to apply to shared parenting provisions and am seeking a consideration before legal efforts are wasted, seeking clarification, if it is proper or not.

The 03-18-2014 '*Judgment Entry*' is clearly captioned as that, the very first page, first line states "The Court Adopts the Magistrate Decision as the judgment of the court" and then the last page of it says objections are to be in compliance with the Civil Rules (not exact wording but in summary) and the waiver clause and the paragraph under it mirror the Mag. Decision, except Judgment Entry adopts "the decision and same is effective fourteen days after the filing" which defeats the purpose of adopting it the same day, so which is it "adopted" 03/18/14 or fourteen days out? Then it cites Civil R 53 which is comparative to Juvenile R 40 regarding magistrates.

Further the *Judgment Entry* of 03/18/14 is literally word ^{for} ~~off~~ word, a copy and paste of Decision, with only the last page being different but regardless there has never been any document captioned as a magistrates 'Order', which is what an Interim would be under. But now it is issued with and as a final outcome (dispositive, which clearly contradicts an interims purpose in magistrate's scope of "orders" that need not be adopted by court or judge).

I filed objections 03/21/2014 (actually I filed them in person but my counsel wrote/typed them) and it also requested the supplementing upon the last transcript being completed and per the current Juvenile Rules that acts as a vehicle to an automatic stay and unlike the expired/obsolete. 53 (E)(4)(c) the court referred to, it already entered a "judgment" and the language in either Juv 40 or Civ 53, it denotes by use of the word "**OR**" meaning one or the other and clarifies the procedure and purpose of each, the court cannot retaliate and then claim it's in her best interests but fail to explain a 4 month wait to decide if a child is in imminent danger, that would be child endangerment if they truly believed any as portrayed with foul language. A false statement, in the least. Inserting adjectives does not make anything true or have more weight.

So, what am I objecting to the Interim, Decision or the court adopting it-and what date if I object to the courts adoption of decision since its either 03/18 or the 14 days later.

And is it Civil or Juvenile that I proceed under, because it's both, but it's not? It cannot be subject to both procedure rules.

While I am a bit confused as to the Magistrate's harsh language, after very little appellate research, it is clear that he is utilizing the old "deference to demeanor" for the cold record on appeal but that is part of this request. Deference to demeanor is not a "challenge less" freebie to communicate false information as an attempt to prejudice the appeal. I am seeking the court to specify with articulation of its "combative" so that I at least be given a fair chance at properly refuting/objecting, as that's the intent of this request. I was insulted when the GAL tried the stunt he did and expected the magistrate to control him but he remained silent and allowed that conduct despite its appearance. My silence was respect for the court or else I would have answered the invitation of the GAL that apparently has no boundaries.

Further it reflects on him that he left a child that he deems "better off" and her "welfare" requires it, etc etc and his Decision further proves my point as far as the ad litem, the magistrate admits and states the child wished to remain with her mother and obviously having the interview on 12/03/14 he left the child w/ her mother, completely undisturbed, for months while case remained pending, which really laughs at and minimizes the ad litem's "she acted different" when he inquired of DV or exposure to fighting and all the "suggestive" tactics he so failed at. Tylers testimony in 11/5 really seems questionable now after the magistrate decision even admits the opposite of what Tyler was trying to imply. Yet, the court lashes out at me and without any articulation.

Despite the Mag. Decision actually confirming the Ad Litem incompetence and months later, now it is the Plaintiff, whose the "deceptive one" and per the Decision his 'becoming so convinced' was implied from the Nov.5 hearing –if that was really the case, that would have been the appropriate time to enter an Interim, "to grant immediate relief as justified" as there was still a future hearing and it would have made the magistrate's being so damn convinced a little more believable. The filing of objections does not create or warrant "immediate relief justified" and an Interim is not to be used as assault weapon claiming a legal error, it is a pre-dispositive order not a final and only makes the verbal attack on me looks like he is purporting to magnify that he "believes" the defendant all while he is purporting to be doing so, performing within his scope and duty for judging credibility or aka "deference to demeanor" when he's only trying to deprive me on the appeal case, higher up. And, why? Because I refuse to let a professional man steal from a child when he lied and did so, knowingly. So in all fairness, please specify the use of fabricating evidence with only written language so at least I know if I was standing on my head or climbing the walls in the court room because whatever I was doing didn't warrant any mentioning in either hearing and was not bad enough to show the court intercepted on behalf of the same child that now is an ex parte custody kid but only if her mother files objections.

While the majority reference and cite Ohio Sup. R 48 there is one statute that everyone seems to ignore, ORC 2151.281 (B)(1):

"The Guardian Ad Litem so appointed shall not be the attorney responsible for presenting the evidence alleging that the child is an abused or neglected child and shall not be an employee of any party in the proceeding"

His assessing of my "nonverbal conduct" is clearly an attempt to present evidence alleging exactly what ORC 2151.281 says is not allowed. I was not on trial and he is not a trier of fact nor qualified to imply skills he doesn't possess. Was that in M.F.'s best interest and how other than to advance the defendant whose spoken words that keep changing in the case are way louder than my invisible nonverbal anything. The magistrate knew on 12/3/14 after his interview with M.F. that Tyler lied, lied and lied but then nearly 4 months later recalls only my nonverbal behavior. I wonder what Tyler's non-verbal behavior looked like as he was collecting that \$500 knowing he was never to be held accountable for his fraudulent conduct.

So, Sup. R 48, ORC 3109.04 etc , no where does the duties or performances even suggest an ad litem is qualified to interpret nonverbal conduct in a court room with no video cameras, further even it did mention that (it doesn't) where did he obtain such impressive credentials or skills to literally interpret and read non-verbal body language, just curious if the Supreme Court GAL trainings certified him or where he obtained such valuable skills? Did the court appoint him to analyze such silent nonverbal conduct because I don't believe it had anything to do with M.F. other than to promote his "ability to detect DV" which is odd because I cant seem to locate any other GAL who can see "the past" like he can and just from his assessment of academic grades that just didn't exist. Failing? She was not below a C in any subject yet he rambles about how

she just doesn't get tutored and falls in the cracks. He even says he obtained records from her school but conveniently cannot speak a name of anyone in particular he had contact with-re: school faculty/staff. No notes to reference and was paid by the court without being forced to prove he did anything except aid fraud. Her grade card shows he failed at telling the truth. "Deceptive" was the GAL and its very obvious seeing his own step child attends the same exact school as M.F. yet he can't name one name or offer one record that he "obtained" from the school that has no record of his contact. Trust me, I have inquired. I can also be refuted if he believes this information to be incorrect and I don't hear him saying anything, which tells me what I already know.

While the court *listed* factors under best interest 3109.04 (F) it failed to actually consider anything outside of its conjectured theories, where I was literally faulted by GAL for working 1st shift "after she gets home at 5:30" per Tyler, so what shift would be preferred? 2nd or 3rd shift? She is babysitting her younger brother (inflammatory) but the father has a child whose toddler age but because he has a teacher within his married family, that makes it a sin for her to have an attachment to her lifelong sibling Caleb but the toddler in the defendants home will ensure she attends Harvard? He attempted to magnify the paternal grandparents recently relocating to Ohio as a positive but fails to even mention the maternal family that has been consistently involved and even attended court on M.F.'s behalf. Tyler's weak attempts to minimize any past injury that M.F. has been subjected to as father continues to emotionally wreak havoc by belittling her academic achievements or struggles of a child he supposedly is better suited to parent and no one can see how that actually be the cause of her school anxiety? So, according to Tyler, since a teacher is in defendants family and he wished she was failing so they could play that part in full then a person with a nurse or doctor in their family cannot ever have a terminal medical condition like cancer or diabetes? Appears to be more friends than parent child relationship? His report asserts that but he never can say why he thinks that or how he reached that conclusion. Other than to only advance the defendants side, there is no other reason for his vile tactics. Anyone can provide trash talk in written form and is not what the court intended the ad litem to provide. My daughter deserves an explanation and it is in her "best interest" seeing as her and I both gave Tyler several documents and information that he seems to have 'forgot' on the stage and even prior to the very first hearing. I even faxed him a report card and he never even offers it but asserts she's slumping etc etc hardly oversight or anything innocent. Further if he was so for the child and really believed his own ability to read nonverbal conduct-why didn't he file a motion of any type based on exposure? He abandoned her in 12/3 and has no explanation as to why.

The basics to drafting the written reports in GAL capacity or testifying is to BE ACCURATE. Use of descriptive statements and words are allowed as long as objective, factual and relevant. Inflammatory characterization is not within the realm of GAL capacity.

Inflammatory Example:

Mr. Bob Smith, the father, is the town alcohol/drunk.

Though you may feel that way, that sentence in no way serves a child's best interest, regardless, let the audience form their own conclusions based on factual information you provide.

Descriptive but factual example:

Mr. Bob Smith, the father, was convicted of DUI in 2011, 2009 and in 2005. Recently, 3 months ago, he was charged with Reckless Op. He has not attended or scheduled any drug or alcohol screenings or services.

The audience can still infer without the unnecessary inflammatory characterizations.

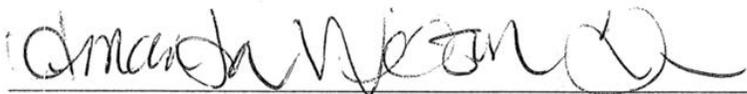
Conclusions and or recommendations, whether or not the audience agrees or not, sustain credibility just by simple articulation as to the method reached.

"It appears to be more of a friend relationship more so than a mother daughter relationship and I came to opinion after interviewing Dr. Doolittle, the foster parents and several visits where I was directly able to watch their interactions. I found that after she was told she was not allowed to stay out past her curfew, instead of Mom adhering and reinforcing the rules, she pacified her by promising a reward later if she would just do it to get the case plan going".

There is something sinister about him and then the assault that professionals in a team effort just ran on an innocent kid, yet I am the villain? Perhaps get better GAL's or expect to keep getting offended by anyone that actually sticks up for the one kid that the whole court is trying to destroy.

Those who have nothing to hide, well, have nothing to hide. Your character speaks more of who you are of how you act when you think no one is looking, not in the image you paint when you know there are onlookers.

Amanda Wilson Iler (plaintiff) 03/24/2014 filed in person by A.I. 

 3/24/2014

Please issue Findings/Conclusions to counsel of record, Jon Hapner.

Thank you.

Juv. Case 20035123

Re: M.F.
(DOB: 5/20/2000)

"Request for findings of fact and legal conclusions" 03/24/14 certificate of service provided at time of filingw/ each exact copy of this doc.

#4

IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION
ADAMS COUNTY, OHIO

AMANDA WILSON,
nka Iler

CASE NO. 20035123

Plaintiff

VS.

JOURNAL ENTRY

MICHAEL FARAHAY

Defendant.

FILED
ADAMS COUNTY PLEAS
COURT OF COMMON PLEAS
JUVENILE DIVISION
2014 APR -4 PM 3:51
Eberts
JUDGE

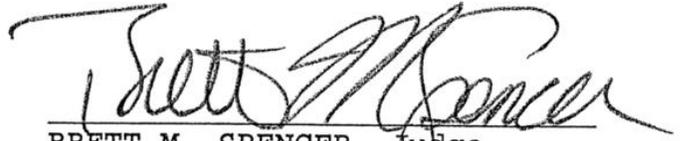
The within matter came on for hearing on the 3rd day of April, 2014, pursuant to a Motion to Stay Magistrate's Decision. Appearing before the Court came the plaintiff, accompanied by her counsel, Bruce S. Wallace, and the defendant, accompanied by his counsel, Tanya M. Drinnon.

The Court finds, pursuant to the Court's adoption of the magistrate's decision and Civ. R. 53(E)(4)(c), that the magistrate's decisions as to custody, residential and parenting status of the parties, the child support order and visitation has been declared an interim order, pending decision on the objections filed herein. Further, said interim order shall remain in effect for 28 days from the date of said entry, but may be extended for good cause shown.

The clerk shall cause a copy of this entry to be served upon the parties and/or their counsel.

APPROVED:

April 4, 2014


BRETT M. SPENCER, Judge

#4

IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION
ADAMS COUNTY, OHIO

AMANDA WILSON,
nka Iler

CASE NO. 20035123

Plaintiff

VS.

JOURNAL ENTRY

MICHAEL FARAHAY

Defendant.

FILED
ADAMS COUNTY
COURT OF COMMON PLEAS
JUVENILE DIVISION
2014 APR -4 PM 3:51
Ebert M. Jones
JUDGE

The within matter came on for hearing on the 3rd day of April, 2014, pursuant to a Motion to Stay Magistrate's Decision. Appearing before the Court came the plaintiff, accompanied by her counsel, Bruce S. Wallace, and the defendant, accompanied by his counsel, Tanya M. Drinnon.

The Court finds, pursuant to the Court's adoption of the magistrate's decision and Civ. R. 53(E)(4)(c), that the magistrate's decisions as to custody, residential and parenting status of the parties, the child support order and visitation has been declared an interim order, pending decision on the objections filed herein. Further, said interim order shall remain in effect for 28 days from the date of said entry, but may be extended for good cause shown.

The clerk shall cause a copy of this entry to be served upon the parties and/or their counsel.

APPROVED:

April 4, 2014


BRETT M. SPENCER, Judge

#5

IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION
ADAMS COUNTY, OHIO

FILED
ADAMS COUNTY
COURT OF COMMON PLEAS
JUVENILE DIVISION

2014 MAY 13 PM 3:15

AMANDA WILSON
nkd iler

CASE NO. 20035123

Brett M. Spencer
JUDGE

Plaintiff

VS.

JOURNAL ENTRY

MICHAEL FARAHAY

Defendant.

The Court, having reviewed the within matter, finds that plaintiff has filed a request for finding of facts and conclusions of law, as well as objections to the magistrate's decision, which all remain to be completed. The Court finds, for good shown, that the interim should be extended, and IT IS THEREFORE ORDERED that the interim order shall remain in full effect for an additional 28 days.

The clerk shall cause a copy of this order to be served upon all counsel.

APPROVED: MAY 13, 2014

Brett M. Spencer
BRETT M. SPENCER, Judge

#4

COURT OF COMMON PLEAS
JUVENILE DIVISION
ADAMS COUNTY, OHIO

FILED
ADAMS COUNTY PLEAS
COURT OF COMMON PLEAS
JUVENILE DIVISION
2014 MAY 14 AM 12:32
BOBBS JUDGE

In Re. Mackenzie Farahay

Amanda Wilson (nka Iler)
Plaintiff

: CASE NO. 20035123

v.

:

Michael Farahay
Defendant

:

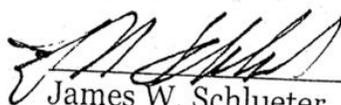
Magistrate's Order

The Magistrate finds that he included findings of fact and conclusion of law in his decision of record under the heading entitled "Findings of fact and conclusions of law on the issue of allocation of parental rights and responsibilities."

Therefore the request for same is moot.

The plaintiff shall pay the Court costs of regarding her request for findings of fact and conclusions of law and this Order within 60 days.

Date: 5/14/2014


James W. Schlueter
Magistrate

If you object to this Order, a written motion to set aside this Order must be filed within ten days of the filing of the Order. The Motion must comply with Civ. R. 53(D)(2)(b) or the corresponding Juvenile Rule of Procedure 40 (D)(2)(b). The Filing of a Motion to set aside does not stay the Order so made according to Civ. R. 53 and Juv. R. 40.

To the Clerk: Serve a copy of this Magistrate's Order on parties and counsel of record according to the Civil Rules of Procedure.

Disclaimer

attachment #7
pursuant to
R.C.
2921.42

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CAMA database last updated 6/18/2015 5:47:00 PM.

website

www.adamscountyauditor.org

Adams County, Ohio

Population 28,550
Parcels 21,958

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2 ½% Tax Reduction
Board of Revision
Budget Commission
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Chief Fiscal Officer
Cigarette Dealer's License
Conveyance Fees
Destroyed Property
Dog License
Estate Tax
Homestead Exemption
Lodging Excise Tax
Manufactured Homes
Valuation
Vendor's License
Weights & Measures

David Gifford
Adams County Auditor

Address:
110 West Main Street, Room 104
West Union, OH 45693-1396
Phone: (937) 544-2364
Fax: (937) 544-1016
Hours: Mon-Fri, 8:00AM-4:00PM



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Announcements

Beginning **December 1st, 2013**, dog licenses for 2014 will be able to be registered online at: <http://www.doglicenses.us/OH/Adams/>
Dog License information has changed for 2014. Click [here](#) for answers to frequently asked questions.

Welcome to the Adams County Auditor's Website!

To begin using the system, click on the Search link above, or simply use the QuickSearch feature at the top of the page. First time users can access the Online Auditor Help at any time by clicking the Help link above. Before using AccuGlobe Internet Edition, please review our browser compatibility information in the help pages.

Links to surrounding county Auditor websites:

Scioto County
Pike County
Brown County
Highland County

CAMA database last updated 6/18/2015 5:47:00 PM.

Search

Owner Search

Last Name: *

First Name:

[Reset the form.](#)

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 Adams County, Ohio: Online A... Adams County, Ohio: Online A...

Search Results [10 Results](#) [Back](#)



 Click the parcel number to view details for that property.

Parcel	Owner	Property Address	Land Use	Acres
117-33-19-001.000	SPENCER BRETT M	231 N CROSS ST	499	0.054
141-00-00-062.000	SPENCER BRETT M & KRATZER VICKI LYNN	CLAYTON Pike	101	70.02
141-00-00-063.000	SPENCER BRETT M & KRATZER VICKI LYNN	CLAYTON PIKE	101	0.54
156-00-00-012.002	SPENCER BRETT M &/OR SHERRI M	CLAYTON Pike	100	16
156-00-00-015.000	SPENCER BRETT M &/OR SHERRI M	10 CLAYTON PIKE	512	15.19
156-00-00-029.000	SPENCER BRETT M &/OR SHERRI M	2334 BROWN HILL RD	101	29.558
156-00-00-053.000	SPENCER BRETT M &/OR SHERRI M	5005 SR 41	101	82.23
156-00-00-054.000	SPENCER BRETT M &/OR SHERRI M	SR 41	101	16.58
116-00-00-049.000	SPENCER BRETT M ETAL	SR 125	101	101.41
188-00-00-012.000	SPENCER BRETT M ETAL	CATTAIL RUN CR	101	6.88

CAMA database last updated 6/18/2015 5:47:00 PM.

Data For Parcel 117-33-19-001.000

Base Data

Parcel: 117-33-19-001.000
 Owner: SPENCER BRETT M
 Address: 231 N CROSS ST



Tax Mailing Address

Tax Mailing Name: SPENCER BRETT M
 Address: 10 CLAYTON PIKE
 City State Zip: MANCHESTER OH 45144

Owner Address

Owner Name: SPENCER BRETT M
 Address: 10 CLAYTON PIKE
 City State Zip: MANCHESTER OH 45144

Geographic

City: VILLAGE OF WEST UNION
 Township: TIFFIN TOWNSHIP
 School District: ADAMS CO/OHIO VALLEY SD
 Tax District: M21 ADAMS CO/OHIO VALLEY SD - TIFFIN TWP - WEST UNION

Legal

Legal Acres:	0.054	Homestead Reduction:	NO
Legal Description:	ACRES: 0.05400W UNION ADDITION INLOT 76 36 FT FRONT	2.5% Reduction:	NO
Land Use:	499 - OTHER COMMERCIAL STRUCTURES	Foreclosure:	NA
Neighborhood:		Board of Revision:	NO
Number Of Cards:	1	New Construction:	NA
Annual Tax (Does not include delinquencies.):	\$1,048.34	Divided Property:	NA
Map Number:	11733		

Notes

Notes: Deed Volume/Page: 0026/0459

Data For Parcel 117-33-19-001.000

Sales Data

Parcel: 117-33-19-001.000
Owner: SPENCER BRETT M
Address: 231 N CROSS ST



Sales

Sale Date	Sale Price	Seller	Buyer	No. Of Properties	Valid Sale	Land Only Sale	Deed Type	Conveyance Number
7/8/1996	\$0.00	Unknown	SPENCER BRETT M	1	UNKNOWN	N		765

CAMA database last updated 4/24/2015 5:46:58 PM.

Data For Parcel 117-33-12-005.000

Base Data

Parcel: 117-33-12-005.000
Owner: GRIMES DAVID E &/OR ALISA M
Address: 108 E MULBERRY ST



Tax Mailing Address

Tax Mailing Name: GRIMES DAVID
E
Address: 33 DECATUR
PIKE
City State Zip: WINCHESTER
OH 45697

Owner Address

Owner Name: GRIMES DAVID
E
Address: 33 DECATUR
PIKE
City State Zip: WINCHESTER
OH 45697

Geographic

City: VILLAGE OF WEST UNION
Township: TIFFIN TOWNSHIP
School District: ADAMS CO/OHIO VALLEY SD
Tax District: M21 ADAMS CO/OHIO VALLEY SD - TIFFIN TWP - WEST UNION

Legal

Legal Acres:	0.118	Homestead Reduction:	NO
Legal Description:	ACRES: 0.11800W UNION ADDITION INLOT 90 PART	2.5% Reduction:	NO
Land Use:	447 - OFFICE BLDGS - 1 & 2 STORIES	Foreclosure:	NA
Neighborhood:		Board of Revision:	NO
Number Of Cards:	1	New Construction:	NA
Annual Tax (Does not include delinquencies.):	\$1,305.56	Divided Property:	NA
Map Number:	11733		

Notes

Notes: Deed Volume/Page: 0297/0773

Data For Parcel 117-33-12-005.000

Sales Data

Parcel: 117-33-12-005.000
Owner: GRIMES DAVID E &/OR ALISA M
Address: 108 E MULBERRY ST



Sales

Sale Date	Sale Price	Seller	Buyer	No. Of Properties	Valid Sale	Land Only Sale	Deed Conveyance Type	Deed Number
5/21/2007	\$78,750.00	GRIMES DAVID E	GRIMES DAVID E	1	YES	N		595
5/21/2007	\$78,750.00	WILSON CHARLES H JR	GRIMES DAVID E	1	YES	N		1
1/2/1998	\$48,971.00	WILSON DAVID D	WILSON CHARLES H JR	1	YES	N		5
5/23/1975	\$0.00	Unknown	WILSON DAVID D	1	UNKNOWN	N		0

CAMA database last updated 4/24/2015 5:46:58 PM.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, OHIO
JUVENILE DIVISION

2014 MAR 21 PM 3:29
COURT OF COMMON PLEAS
ADAMS COUNTY, OHIO
JUVENILE DIVISION
BOSTON JUDGE

Amanda Wilson (nka Iler)

Plaintiff,

vs.

Michael Farahay,

Defendant.

*

* Case No. 20035123

* **OBJECTIONS TO MAGISTRATE'S
DECISION**

*

*

Now comes the Plaintiff and objects to the Magistrate's Decision filed in this case on March 18, 2014.

1. The decision is against the manifest weight of the evidence.
2. The decision fails to establish facts on which a decision may be based.
3. The "concerns" about domestic violence lack a finding of any domestic violence in fact, and no actual facts establishing domestic violence were made.
4. The allegations alleging domestic violence are based on hearsay testimony.
5. The Magistrate's finding of domestic violence in the Plaintiff's home ignores the fact that the significant other, a public official, also denied any domestic violence.
6. There was never any finding of any specific instance wherein the child was ever in any danger.
7. The testimony by the GAL is contrary to his written report, and also fails to establish any domestic violence.
8. Any finding by the GAL or the Court that the child is lacking in school work ignores the direct testimony of the teachers.

9. By statute, 3109.04 (E)(1)(a) there is a presumption to retain the party having custody unless a modification is in the best interest of the child and there has been a change of circumstances. In this case a change of circumstances has not been established.

10. A reading of the Magistrate's Decision seems to indicate that he does not believe the mother, and intends to punish her for her lack of credibility. This is not a change of circumstances.

11. There is no evidence that a change of circumstances is in the best interest of the child, and/or the mother's behavior has adversely affected the child.

II.

Plaintiff says that the transcript for the November 5, 2013 hearing has been filed and it will be necessary to obtain a copy of the December 3, 2013 hearing and she requests an extension to obtain a transcript of the December hearing, and the right to supplement these objections with the second transcript.

III.

Plaintiff moves for a stay of the change of custody order, pursuant to Civil Rule 53 (D)(3)(1), which provides for an automatic stay.

Hapner & Hapner

By: _____

Jon C. Hapner
Jon C. Hapner (0003017)
Attorney for Plaintiff
127 N. High Street
Hillsboro, Ohio 45133
(937) 393-3487
(937) 393-5388 (FAX)

#9

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ADAMS COUNTY

COURT OF APPEALS
FILED
ADAMS COUNTY
CLERK OF COURTS
2015 JUN 15 PM 1:41

Longfellow

AMANDA WILSON,	:	
Plaintiff-Appellant,	:	Case No. 14CA994
vs.	:	
MICHAEL FARAHAY,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellee.	:	

APPEARANCES:

COUNSEL FOR APPELLANT: Jon C. Hapner, 127 North High Street,
Hillsboro, Ohio 45133

COUNSEL FOR APPELLEE: David E. Grimes, 108 East Mulberry
Street, West Union, Ohio 45693

CIVIL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED:
ABELE, J.

This is an appeal from an Adams County Common Pleas Court, Juvenile Division, judgment that modified a prior decree allocating parental rights and responsibilities between Amanda Wilson, plaintiff below and appellant herein, and Michael Farahay, defendant below and appellee herein.

Appellant assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE DECISION OF THE COURT IS AGAINST THE
MANIFEST WEIGHT OF THE EVIDENCE."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED IN CONSIDERING THE
DEFICIENT REPORT OF THE GAL."

THIRD ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED IN NOT PERMITTING THE PLAINTIFF TO SUGGEST QUESTIONS FOR THE IN CAMERA INTERVIEW."

Appellant and appellee's relationship resulted in the birth of one child, M.F., born May 20, 2000. After the parties' relationship ended in 2003, appellant filed a complaint to establish child support. Since that time, appellant remained the child's residential parent and appellee visited the child. Between 2008 and 2011, appellee requested various modifications to the parties' parenting arrangement, but the court retained appellant as the child's residential parent.

On April 11, 2013, appellee filed a motion to modify the prior order that designated appellant the child's residential parent. Appellee asserted that a change in circumstances had occurred because appellant is not able to provide a stable environment for the child, that appellant's behavior does not provide a good example for the child, and that the child's school progress has rapidly declined.

On November 4, 2013, the guardian ad litem filed his report and, at that juncture, recommended that appellant remain the residential parent as long as she enrolls the child in a tutoring program. On November 5 and December 3, 2013, the magistrate held a hearing to consider appellee's motion. Appellee testified that he would like to be the child's residential parent because he has

concerns about her safety while living with appellant and because she is not performing well in school.

Matthew Iler testified that he and appellant were married, but divorced in January 2013. He stated that appellant and the child currently live with David Hughes. Iler explained that appellant returned to his house twice since the parties divorced due to "domestic problems in the household" and that he has observed bruises on appellant's back and arms.

Chase Gleason, who dates appellant's ex-husband, Matt Iler, testified that she has also observed bruises on appellant's arm. Gleason also explained that appellant sent her text messages that stated:

"He was gritting his teeth and talking like the devil. The other day both kids unfortunately witnessed him holding me down on the ground and literally ripping my hair out of my scalp, because I disrespectfully talked to him in an unacceptable manner. [Appellant's son] said * * * that's my mom and you're not supposed to be mean to her. * * * I've never been so humiliated in my life to know my kids who see me as strong and independent to be weak and helpless."
* * * *

[M.F.] came in the bedroom and whispered[,] I fucking hate him. I didn't even scold her for saying a bad word. She never talks like that, and she needed to release it."

Tyler Cantrell, the child's guardian ad litem, testified that he initially recommended that the court retain appellant as the child's residential parent, but that appellant's "body language" and "overall reactions" displayed during the hearing caused him to change his opinion. He stated that although he initially could

not determine whether physical altercations had occurred in appellant's home, appellant's behavior during the hearing caused him to conclude that they had. Cantrell stated that he is concerned about violence in the home and its impact upon the child's well-being. He thus believed that the trial court should designate appellee the child's residential parent. The guardian ad litem further explained that the child is ordinarily "very open" with him, but when he asked about domestic violence she acted "noticeably different."

Appellant testified that since September 2012, she and the child have lived with David Hughes. She denied, however, that any domestic violence occurred in her home and further claimed that she did not send the text messages to Gleason and that they were "falsified."

David Hughes testified and also denied that any domestic violence occurred in the home.

On March 18, 2014, the magistrate recommended that the trial court designate appellee the child's residential parent. The magistrate determined that a change in circumstances occurred:

"The child is older, the mother has had changes in her living situation regarding her relationship, and moving twice to a another residence, there are concerns about domestic violence occurring in her household and there is a continuing problems [sic] in the judgment of the Magistrate regarding [appellant]'s combative attitude, dishonesty and other issues regarding the care, control and welfare of the child."

The magistrate found that appellant's testimony regarding her relationship with Hughes is "dishonest" and that appellant "has significant relationship problems with her live in friend and that domestic violence has occurred in the home thereby making it, in addition to everything else, an unsafe environment for the child." The trial court adopted magistrate's decision that same day.

On March 21, 2014, appellant filed eleven objections to the magistrate's decision.¹ Appellant additionally noted that the

¹Appellant's objections stated:

1. The decision is against the manifest weight of the evidence.
2. The decision fails to establish facts on which a decision may be based.
3. The 'concerns' about domestic violence lack a finding of any domestic violence in fact, and no actual facts establishing domestic violence were made.
4. The allegations alleging domestic violence are based on hearsay testimony.
5. The Magistrate's finding of domestic violence in [appellant]'s home ignores the fact that the significant other, a public official, also denied any domestic violence.
6. There was never any finding of any specific instance wherein the child was ever in any danger.
7. The testimony by the GAL is contrary to his written report, and also fails to establish any domestic violence.
8. Any finding by the GAL or the Court that the child is lacking in school work ignores the direct testimony of the teachers.
9. By statute, R.C. 3109.04(E)(1)(a)[,] there is a presumption to retain the party having custody unless a modification is in the best interest of the child and there has been a change of circumstances. In this case a change of circumstances has not been established.
10. A reading of the Magistrate's Decision seems to indicate that he does not believe the mother, and intends to punish her for her lack of credibility. This is not a change of

November 5, 2013 transcript had been filed, but that the December 3, 2013 transcript had not yet been prepared. On May 9, 2014, appellant filed seven supplemental objections.²

On June 26, 2014, the trial court overruled appellant's eleven objections filed on March 18, 2014. The trial court rejected appellant's claims that the evidence fails to show that domestic violence occurred in her home. The court found "ample evidence of domestic violence," and that this violence constituted a substantial change in circumstances. The court noted that both

circumstances.

11. There is no evidence that a change of circumstances is in the best interest of the child, and/or the mother's behavior has adversely affected the child."

² Appellant's supplemental objections state:

"1. The actions of the GAL in changing his position is in conflict with the child's position, thereby depriving her of a voice in the matter and denying her representation.

* * * *

3. The admission of the text message without verification was hearsay, and error.

4. The finding that a change of circumstances is in the best interest of the child is lacking in evidence and is insufficient to be determined.

5. Any finding of domestic violence in the child's home lacks sufficient evidence in that (1) none was established; (2) no showing was made or established that the child ever saw any; (3) no showing that the child was ever harmed or in danger of any domestic violence.

6. The Magistrate's finding on the credibility of the mother ignores the direct testimony of the significant other, who is a public official.

7. The Magistrate erred in refusing to address the questions proposed to be asked of the child during the in camera interview."

appellant and her current boyfriend denied any domestic violence and that appellant claimed that Chase Gleason's text messages were "falsified evidence." The court found, however, that appellant is the "less credible witness" based upon her "combative attitude" displayed at trial. The court thus determined that domestic violence did occur in appellant's home, and that the child witnessed the domestic violence. According, the court overruled appellant's eleven objections and "affirmed" the magistrate's decision.³ This appeal followed.

³ It is well-established that a trial court cannot merely adopt a magistrate's decision, but must enter its own separate and independent judgment that sets forth "the outcome of the dispute and the remedy provided." Harkai v. Scherba Indus., Inc., 136 Ohio App.3d 211, 218, 736 N.E.2d 101 (9th Dist. 2000). In the case at bar, the trial court immediately entered a judgment that adopted the magistrate's March 18, 2014 decision and that set forth the outcome of the dispute and the remedy provided.

Furthermore, we observe that when appellant filed her March 21, 2014 objections, execution of the court's March 18, 2014 judgment was automatically stayed until the court ruled on the objections and vacated, modified, or adhered to the judgment it previously entered. Juv.R. 40(D)(4)(I). The trial court's June 26, 2014 decision ruled on appellant's objections. Additionally, the court stated that it "affirmed" the magistrate's decision, thus implicitly indicating its adherence to its March 18, 2014 judgment. Thus, even though the court's June 26, 2014 decision that overruled appellant's objections and stated that it "affirmed" the magistrate's decision is not a final, appealable order, the court already had entered a final judgment subject to appeal.

We also note that the trial court did not address appellant's May 9, 2014 supplemental objections. As we explain, infra, however, appellant's supplemental objections did not comply with Juv.R. 40(D)(3)(b). Thus, because appellant's supplemental objections did not comply with Juv.R. 40(D)(3)(b), the trial court was not obligated to rule upon them. Consequently, the absence of a ruling on appellant's supplemental

I

In her first assignment of error, appellant argues that the trial court's decision to modify the prior order regarding parental rights and responsibilities is against the manifest weight of the evidence. In particular, she asserts that the record does not show that a change in circumstances occurred so as to warrant a modification.

A

STANDARD OF REVIEW

Appellate courts generally review trial court decisions regarding the modification of a prior allocation of parental rights and responsibilities with the utmost deference. Davis v. Flickinger, 77 Ohio St.3d 415, 418, 674 N.E.2d 1159 (1997); Miller v. Miller, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988). Consequently, absent an abuse of discretion, we will not disturb a trial court's decision to modify parental rights and responsibilities. Davis, 77 Ohio St.3d at 418. "'Abuse of discretion' has been defined as an attitude that is unreasonable, arbitrary or unconscionable." AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp., 50 Ohio St.3d 157, 161, 553

objections does not affect the finality of the trial court's judgment. We also note that at least one court has indicated that a court's failure to rule on timely filed supplemental objections does not affect the appealability of an otherwise final judgment. Miller v. Miller, 9th Dist. Medina No. 10CA0034-M, 2011-Ohio-4299, 18, citing App.R. 4(B)(2).

N.E.2d 597 (1990), citing Huffman v. Hair Surgeon, Inc., 19 Ohio St.3d 83, 87, 482 N.E.2d 1248 (1985). "It is to be expected that most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary." Id. "A decision is unreasonable if there is no sound reasoning process that would support that decision. It is not enough that the reviewing court, were it deciding the issue de novo, would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result." Id.

In Davis, the court more specifically defined the standard of review that applies in custody proceedings as follows:

"Where an award of custody is supported by a substantial amount of credible and competent evidence, such an award will not be reversed as being against the weight of the evidence by a reviewing court. (Trickey v. Trickey [1952], 158 Ohio St. 9, 47 O.O. 481, 106 N.E.2d 772, approved and followed.)' [Bechtol v. Bechtol (1990), 49 Ohio St.3d 21, 550 N.E.2d 178, syllabus].

The reason for this standard of review is that the trial judge has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page. As we stated in Seasons Coal Co. v. Cleveland (1984), 10 Ohio St.3d 77, 80-81, 10 OBR 408, 410-412, 461 N.E.2d 1273, 1276-1277:

'The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony. * * *

* * *

* * * A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence

submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not. The determination of credibility of testimony and evidence must not be encroached upon by a reviewing tribunal, especially to the extent where the appellate court relies on unchallenged, excluded evidence in order to justify its reversal.'"

Id. at 418-419.

Additionally, deferring to the trial court on matters of credibility is "crucial in a child custody case, where there may be much evident in the parties' demeanor and attitude that does not translate to the record well." Id. at 419. Furthermore, "custody issues are some of the most difficult and agonizing decisions a trial judge must make. Therefore, a trial judge must have wide latitude in considering all the evidence." Id. at 418. As the Ohio Supreme Court long-ago explained:

"In proceedings involving the custody and welfare of children the power of the trial court to exercise discretion is peculiarly important. The knowledge obtained through contact with and observation of the parties and through independent investigation can not be conveyed to a reviewing court by printed record."

Trickey, 158 Ohio St. at 13. Thus, this standard of review does not permit us to reverse a trial court's decision if we simply disagree with it. We may, however, reverse a trial court's custody decision if the court made an error of law, if its decision is unreasonable, arbitrary, or unconscionable, or if substantial competent and credible evidence fails to support it. Davis, 77 Ohio St.3d at 418-419, 421 (explaining "abuse of

discretion standard" and stating that courts will not reverse custody decisions as against the manifest weight of the evidence if substantial competent and credible evidence supports it, courts must defer to fact-finder, courts may reverse upon error of law, and trial court has broad discretion in custody matters).

B

LEGAL STANDARD GOVERNING CUSTODY MODIFICATION

R.C. 3109.04(E)(1)(a)⁴ governs the modification of a prior custody decree and states:

The court shall not modify a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that the modification is necessary to serve the best interest of the child. In applying these standards, the court shall retain the residential parent designated by the prior decree or the prior shared parenting decree, unless a modification is in the best interest of the child and one of the following applies:

(I) The residential parent agrees to a change in the residential parent or both parents under a shared parenting decree agree to a change in the designation of residential parent.

(ii) The child, with the consent of the residential parent or of both parents under a shared parenting decree, has been integrated into the family of the person seeking to become the residential parent.

⁴ The parties have not raised any issue as to whether R.C. 3109.04(E)(1)(a) applies in the case at bar and appear to agree that there was a prior court order allocating parental rights and responsibilities.

(iii) The harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.

The statute thus creates a strong presumption in favor of retaining the residential parent and precludes a trial court from modifying a prior parental rights and responsibilities decree unless the court finds all of the following: (1) a change occurred in the circumstances of the child, the child's residential parent, or a parent subject to a shared-parenting decree, (2) the change in circumstances is based upon facts that arose since the court entered the prior decree or that were unknown to the court at the time of the prior decree; (3) the child's best interest necessitates modifying the prior custody decree; and (4) one of the circumstances specified in R.C. 3109.04(E)(1)(a)(I)-(iii) applies. In re Brayden James, 113 Ohio St.3d 420, 2007-Ohio-2335, 866 N.E.2d 467, ¶14; accord Sites v. Sites, 4th Dist. Lawrence No. 09CA19, 2010-Ohio-2748, ¶17. Thus, the threshold question in a parental rights and responsibilities modification case is whether a change in circumstances has occurred.

In the case sub judice, appellant limits her argument to the trial court's change-in-circumstances finding (and does not specifically challenge the court's best interest finding or its R.C. 3109.04(E)(1)(a)(iii) finding). We, therefore, limit our review to the trial court's change-in-circumstances finding.

C

CHANGE IN CIRCUMSTANCES

The change in circumstances requirement is intended "to spare children from a constant tug of war," and "to provide some stability to the custodial status of the children," even if the nonresidential parent shows that "he or she can provide a better environment." Davis, 77 Ohio St.3d at 418, quoting Wyss v. Wyss, 3 Ohio App.3d 412, 416, 445 N.E.2d 1153 (1982). The change in circumstances requirement also is intended "to prevent a constant relitigation of the issues raised and considered when the trial court issued its prior custody order." Price v. Price, 4th Dist. Highland No. 99CA12, 2000 WL 426188, *2 (Apr. 13, 2000).

Because a child needs stability, parents should not "view final orders allocating parental rights and responsibilities as subject to easy revision as the child's life develops." Averill v. Bradley, 2nd Dist. Montgomery No. 18939, 2001 WL 1597881, *5 (Dec. 14, 2001). Easy revision of final orders allocating parental rights and responsibilities conflicts "with the principle of finality that attaches to all final orders, even those that may be modified." Id. Furthermore, "[i]t perpetuates instability into the child's life" and "promotes antagonisms between the child's parents." Id. It also "treats the court as a kind of supernumerary third parent that is available to resolve disputes which the parties should resolve themselves." Id. Thus, a party

seeking to reallocate parental rights and responsibilities carries a significant burden to show that a change in circumstance has occurred. See Fisher v. Hasenjager, 116 Ohio St.3d 53, 2007-Ohio-5589, 876 N.E.2d 546, ¶33 (explaining that change in circumstance standard is "high"). Appellate courts must not, however, "make the threshold for change so high as to prevent a trial judge from modifying custody if the court finds it necessary for the best interest of the child." Davis, 77 Ohio St.3d at 420-421. Accordingly, the change need not be "substantial," but it must be more than "slight or inconsequential." Id. at 417-418; Bragg v. Hatfield, 152 Ohio App.3d 174, 2003-Ohio-1441, 787 N.E.2d 44, ¶23 (4th Dist.) ("The change must be significant—something more than a slight or inconsequential change."). A change in circumstances must be one of consequence—one that is substantive and significant—and it must relate to the child's welfare. Davis, 77 Ohio St.3d at 418; In re D.M., 8th Dist. Cuyahoga No. 87723, 2006-Ohio-6191, ¶35, quoting Rohrbaugh v. Rohrbaugh, 136 Ohio App.3d 599, 604-05, 737 N.E.2d 551 (7th Dist., 2000) (explaining that a change in circumstance generally means an event, occurrence, or situation that materially affects a child's welfare); Beaver v. Beaver, 143 Ohio App.3d 1, 10, 757 N.E.2d 41 (4th Dist., 2001), quoting Holtzclaw v. Holtzclaw, Clermont App. No. CA92-04-036 (Dec. 14, 1992) ("Implicit in the definition of changed circumstances is that the change must relate to the

welfare of the child.'"). Additionally, the change in circumstances must be based upon facts that have arisen since the prior allocation or that were unknown at the time. R.C. 3109.04(E)(1)(a); Brammer v. Brammer, 194 Ohio App.3d 240, 2011-Ohio-2610, 955 N.E.2d 453, ¶17 (3rd Dist.).

Initially, we observe that appellant does not dispute that domestic violence occurring in a residential parent's household may constitute a change in circumstances. Theurer v. Foster Theurer, 12th Dist. Warren Nos. 2008-06-074 and 2008-06-083, 2009-Ohio-1457, ¶¶3 and 46 (upholding trial court's finding that marital difficulties, including domestic violence, constituted a change in circumstances); In re Gentile, 5th Dist. Stark No. 2006CA00123, 2006-Ohio-5684, ¶30 (concluding that trial court did not abuse its discretion by concluding domestic violence constituted change in circumstances). Instead, appellant challenges the trial court's finding that domestic violence occurred in her home and that this domestic violence constituted a change in circumstances. She contends that the record does not contain sufficient credible evidence to establish that domestic violence occurred in her home. She further argues that even if the evidence shows that one domestic violence incident occurred, this one incident is insufficient to establish a change in circumstances.

After our review of the record, we do not agree with appellant that the evidence adduced during the trial court proceeding fails to support the court's finding that domestic violence occurred in her home. The trial court based its finding upon testimony from appellant's ex-husband and her ex-husband's girlfriend, both of whom testified that they observed appellant's bruises. Appellant's ex-husband stated that since his January 2013 divorce from appellant, appellant had returned to his home twice due to "domestic problems." The ex-husband's girlfriend also stated that appellant sent her a text message describing a domestic violence incident that the child had witnessed.⁵

The trial court additionally indicated that the child's in camera interview led it to believe domestic violence had occurred in appellant's home. The court also referred to appellant's demeanor during the hearing to support its finding. The court noted that appellant and her boyfriend both denied that domestic violence occurred in the home, but the court specifically discredited appellant's testimony. Moreover, appellant's demeanor during the hearing caused the guardian ad litem to change his recommendation. The guardian ad litem initially recommended that

⁵ Although appellant asserts the message constitutes hearsay, she has not raised an assignment of error challenging the court's consideration of this evidence or any argument explaining whether she believes the statement is inadmissible hearsay evidence. We therefore decline to address this particular issue.

the court maintain appellant as the residential parent based upon his inability to ascertain whether domestic violence actually occurred, but during the hearing he testified that appellant's courtroom demeanor led him to believe that domestic violence had indeed occurred. The guardian ad litem thus recommended that the court designate appellee the child's residential parent, even knowing that the child wished to remain with appellant. Obviously, he must have observed something significant about appellant's behavior that caused him to reverse his position.

Furthermore, although appellant claims that the record shows, at most, one isolated domestic violence incident, her ex-husband testified that since their January 2013 divorce, appellant returned to his house twice due to "domestic problems." Additionally, the ex-husband's and his girlfriend's testimony indicate that they observed appellant's bruises on more than one occasion. The trial court thus could have rationally concluded that more than one domestic violence incident occurred in appellant's home. Moreover, we find nothing in the record to indicate that the trial court failed to engage in a sound reasoning process when it determined that a change in circumstances had occurred. Consequently, the court did not abuse its discretion by modifying the prior custody order.⁶

⁶ We again note that appellant has not challenged the trial court's best interest or R.C. 3109.04(E)(1)(a)(iii) findings on appeal.

Appellant nevertheless asserts that a change in circumstances requires a showing that a child is in danger and that the evidence in the case sub judice fails to show that the alleged domestic violence placed her child in danger. To support her assertion, appellant cites Gardini v. Moyer, 61 Ohio St.3d 479, 575 N.E.2d 423 (1991). Gardini held:

"Pursuant to former R.C. 3109.04(B)(1)(c), a party seeking a modification of custody must show that some action by the custodial parent presently endangers the child or, with a reasonable degree of certainty, will manifest itself and endanger the child in the future if the child is not removed from his or her present environment immediately."

The version of R.C. 3109.04(B) that Gardini considered stated:

"(1) * * * [T]he court shall not modify a prior custody decree unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child, [or] his custodian * * * and that the modification is necessary to serve the best interest of the child. In applying these standards, the court shall retain the custodian * * * designated by the prior decree, unless one of the following applies:
* * *

(c) The child's present environment endangers significantly his physical health or his mental, moral, or emotional development and the harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child."

Id. at 483-84, quoting former R.C. 3109.04(B)(1)(c). The current statute (R.C. 3109.04(E)) does not contain the same language as former R.C. 3109.04(B)(1)(c). Therefore, we do not agree with appellant that a change in circumstances always requires a finding

that the child's present environment endangers the child's physical health or mental, moral, or emotional development. We further observe that even though R.C. 3109.04(E)(1)(a) does not require a finding that the child's present environment endangers the child, we believe that the trial court in the case at bar could have rationally determined that a child who witnesses a parent being physically abused suffers emotional trauma.

Additionally, we point out that the trial court's decision rested largely upon its belief that appellant's ex-husband and his girlfriend were more credible than appellant. Because the trial court was in the best position to observe the witnesses, including their voice inflection and demeanor displayed during the trial, we must defer to its credibility assessment and cannot simply substitute our judgment for the trial court's. Appellant's courtroom demeanor obviously spoke words, as the guardian ad litem's changed recommendation indicates. Her courtroom demeanor is something we simply cannot gauge from the written record. For this reason, we will not second-guess the court's determination that appellant's denials of domestic violence were not credible and that domestic violence did indeed occur in her home.

Accordingly, based upon the foregoing reasons, we hereby overrule appellant's first assignment of error.

II

For ease of analysis, we jointly consider appellant's second and third assignments of error. In her second assignment of error, appellant asserts that the court erred by considering the guardian ad litem's report because the report is deficient. Appellant argues that the report is deficient because the guardian ad litem did not timely file the report, did not discuss the child's school activity with school personnel, and did not discuss "the situation" with appellee or other adults. Within her second assignment of error, appellant further contends that the court erred by failing to appoint counsel for the child. Appellant argues that the court should have appointed counsel for the child once the guardian ad litem made a recommendation contrary to the child's wishes. In her third assignment of error, appellant argues that the court erred by declining to use her suggested questions during the court's in camera interview with the child.

Initially, we point out that appellant did not raise these specific arguments in compliance with Juv.R. 40(D)(3). Juv.R. 40(D)(3)(I) requires a party to file any objections to a magistrate's within fourteen days of the decision. The rule permits a party to file supplemental objections, but only with leave of court. Juv.R. 40(D)(3)(iii); Beasley v. Beasley, 4th Dist. Adams No. 06CA821, 2006-Ohio-5000, ¶¶13-14 (construing substantially similar Civ.R. 53 and explaining that a court may

grant leave to supplement objections upon request). Additionally, objections must be "specific" and a party must "state with particularity all grounds for objections." Juv.R. 40(D)(3)(b)(ii). The failure to timely file specific objections and to state with particularity all grounds for objection results in a waiver of those particular issues on appeal. Juv.R. 40(D)(3)(iv); State ex rel. Muhammad v. State, 133 Ohio St.3d 508, 2012-Ohio-4767, 979 N.E.2d 296, ¶13 (noting that party waives argument on appeal if party failed to specifically raise issue in objections to magistrate's decision); Walters v. Walters, 9th Dist. Medina No. 12CA0017-M, 2013-Ohio-636, ¶15 (explaining that a party's failure to raise a particular issue when objecting to a magistrate's decision results in a waiver of that issue on appeal); McClain v. McClain, 4th Dist. Athens No. 10CA53, 2011-Ohio-6101, ¶7. See State v. Awan, 22 Ohio St.3d 120, 122, 498 N.E.2d 277 (1986) (explaining that appellate courts "will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court.").

In the case at bar, appellant did not timely file an objection that challenged the magistrate's failure to appoint counsel for the child, or the magistrate's decision to decline to consider appellant's proposed questions for the in camera

interview with the child. Although she did raise these issues in her May 9, 2014 supplemental objections, she did not seek leave of court to file those supplemental objections. Thus, her supplemental objections did not comply with Juv.R. 40(D)(3)(b). Additionally, appellant did not, at any time, raise a specific objection to the guardian ad litem's allegedly deficient report. Consequently, absent plain error, appellant cannot raise these issues on appeal.

Appellate courts recognize plain error "with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." State v. Landrum, 53 Ohio St.3d 107, 111, 559 N.E.2d 710 (1990), quoting State v. Long, 53 Ohio St.2d 91, 372 N.E.2d 804 (1978), paragraph three of the syllabus. For the plain error rule to apply, the trial court must have deviated from a legal rule, the error must have been an obvious defect in the proceeding, and the error must have affected a substantial right. E.g., State v. Barnes, 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002).

In the case sub judice, appellant has not suggested that we review her second and third assignments of error using a plain error analysis. We decline to do so sua sponte. Cooke v. Bowen, 4th Dist. Scioto No. 12CA3497, 2013-Ohio-4771, ¶37 (4th Dist. Scioto); accord State v. Arnold, 9th Dist. Summit No. 24400, 2009-Ohio-2108, ¶8 ("[T]his Court will not construct a claim of

plain error on a defendant's behalf if the defendant fails to argue plain error on appeal.").

Accordingly, based upon the foregoing reasons, we hereby overrule appellant's second and third assignments of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

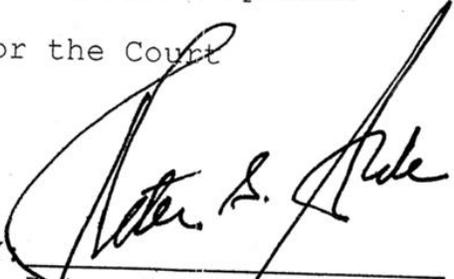
The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Adams County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hoover, P.J. & Harsha, J.: Concur in Judgment & Opinion

For the Court

BY 
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

10

IN THE COURT OF COMMON PLEAS OF HIGHLAND COUNTY, OHIO

Amanda Iler,

Plaintiff,

vs.

Matthew Iler,

Defendant.

*



* Case No. 12-DR-184

*** DEFENDANT'S ANSWERS TO
* PARENTING INTERROGATORIES**

*

Pursuant to Rule 33 and 34 of the Ohio Rules of Civil Procedure, Matthew Iler is required to respond in writing in twenty-eight (28) days under oath to the following:

1. Instructions for answering:

(1) All information which is in possession of control or within the possession or control of the attorney is to be divulged.

(2) Please be reminded that all the answers must be made separately and fully and that an incomplete answer or an evasive answer is failure to answer.

(3) You are under a continuing duty to supplement your response with respect to any question directly addressed as to the identity and location as to any person expected to be called as an expert witness, the subject matter upon which said expert is to testify, and to correct or supplement any answers which you know or later learn to be incorrect or incomplete.

1. State the name, address and social security number of the person answering these interrogatories.

ANSWER: Matthew Iler, 380 Broadway Street, Seaman Ohio 45679

2. Set forth precisely and concisely the grounds for your motion based on the change of circumstances.

ANSWER: Plaintiff has denied visitation. Domestic Violence in Plaintiff's household. Plaintiff lost custody of her other children. Plaintiff is brainwashing the child.

3. Set forth name and relationship of every person residing in your home.

ANSWER: Oldest son, Nathaniel & Girlfriend, Chase Gleason

4. Set forth the name, address and telephone number of every witness you intend to call at the hearing on change of circumstances.

ANSWER: Chase Gleason, 380 Broadway Street, Seaman Ohio 45679

Don Iler, (Father)

5. List any and all prior convictions for theft, unauthorized use of property, falsification and similar crimes of dishonesty since the age of 18 years together with all the other persons living in your household or being called as witness on your behalf.

ANSWER: n/a

6. State the name and address of your current employer.

ANSWER: GKN Aerospace

7. Do you use or intake alcoholic beverages? If so, how much and how often?

ANSWER: 4 beers a month

8. Are you prescribed any medications? If so, who prescribes the medications and where do you fill the prescriptions?

ANSWER: n/a

11

IN THE COURT OF COMMON PLEAS OF HIGHLAND COUNTY, OHIO

Amanda Iler

* CASE 12-DR-194

Plaintiff,

*

PLAINTIFF'S ANSWERS TO
SECOND SET OF PARENTING
INTERROGATORIES

vs.

*

Matthew Iler,

*

Defendant.

Pursuant to Rule 33 and 34 of the Ohio Rules of Civil Procedure, Amanda Iler is required to respond in writing in twenty-eight (28) days under oath to the following:

1. Instructions for answering:

(1) All information which is in possession of control or within the possession or control of the attorney is to be divulged.

(2) Please be reminded that all the answers must be made separately and fully and that an incomplete answer or an evasive answer is failure to answer.

(3) You are under a continuing duty to supplement your response with respect to any question directly addressed as to the identity and location as to any person expected to be called as an expert witness, the subject matter upon which said expert is to testify, and to correct or supplement any answers which you know or later learn to be incorrect or incomplete.

*PLAINTIFF'S ANSWERS TO SECOND SET OF INTERROGATORIES

1. State the name, address and social security number of the person answering these interrogatories.

ANSWER:

Amanda R. Iler DOB: 11-11-1979
121 E. Sixth St.
Seaman Ohio 45679

Social Security Number: Omitted just as Mr. Iler's was on his interrogatory, that was sworn and signed with date of Aug. 29th, 2014

2. List all lay witnesses. For each give name, address and brief summary of anticipated testimony.

ANSWER:

Appointed GAL, Allyce Snyder

Keith and/or Connie Burchett (long-term daycare provider to children)
235 Vine St.
Seaman Ohio 45679

Anticipated testimony would be relevant to the knowledge of the 'relationship' quality, or rather the lack of, between Matt Iler and even his father, Don Iler, with respect to Caleb Iler.

Mackenzie Farahay
1200 Mineral Springs Rd.
Peebles Ohio 45660

Anticipated testimony is to relevant to how an elected judge in Adams Co is using his position as a judge to mislead and obstruct justice as well as these "implied" allegations from Matt Iler and Michael Farahay-how they conspired the case in Adams Co well in advance and since no one will come fwd w/ the truth then she has this one opportunity to be heard and confront those lying by testifying.

David Hughes
121 E. Sixth St.
Seaman Ohio 45679

Anticipated testimony would be relevant to the knowledge of the 'relationship' quality, or rather the lack of, between Matt Iler and even his father, Don Iler, with respect to Caleb Iler. Also, his knowledge of the case in Adams County that is the only basis for this case, here and now.

3. List all expert witnesses. For each give name, address and brief summary of anticipated testimony. Please attach any reports and a curriculum vitae.

ANSWER: N/A

4. List all prescribed medications taken in the last five (5) years. For each list drug, doctor prescribing, and reason for taking.

ANSWER:

Object to this answer for several reasons. Privacy (HIPAA) and it's apparent from transcripts of Highland Co, Aug 05, 2013 (p 40 lines 14-18) and Highland Co. Guardian Ad Litem report (p. 6, 2nd paragraph) that both parties (Amanda Iler and David Hughes) have readily agreed and participated in drug screenings, with clean results, every time. Despite the attempt on appeal case CA994 to imply that at end of hearing of 12/3/13 that David Hughes & Amanda Iler refused to take urinalysis-the urine tests were done and "off the record" after the hearing to which were both affirmed as clean, also. Actually it was the opposing party that didn't submit to any testing as they left the court house immediately after both hearings in Adams County. Besides it is irrelevant to Matt Iler's claim of 'domestic violence' per interrogatory answer # 2 also dated Aug. 29, 2014. Implying on the appeal case only makes Adams Co look more damaged and less competent-to send a child home w/ a parent being accused of being an addict is questionable and a liability issue if they knew of such an allegation and still sent child(ren) home w/ out investigating such. Further Mr. Iler's "drug" claims as presented in G.A.L. report in Highland Co-see page last paragraph p 8 thru p 9), he states the mother had prescription drug abuse back while he was married to her and yet he didn't voice those same concerns or allow them to surface when divorce complaint was filed, he never objected to sole custody being vested with Amanda Iler when Temp. Order dated 10/10/2012 was issued in Highland Co,(Ex. J in Volume III) nor any time until recently, which as a parent is questionable if that same parent claims to be 'concerned' for their child.

5. Attach all your cell phone records from April of 2013.

April 2013 cell phone records were provided to opposing counsel on 05/14/2015 and acknowledged on the record in Highland County Ohio.

6. Identify all your cell phone numbers in the past five (5) years and each service provider.

ANSWER:

Objection to this answer. Redundant request seeing as the counsel has access to the only other numbers associated w/ Amanda Iler, (counsel is attorney for the case in which they were submitted) the other prior numbers were provided to case CA994/20035123 and attached to document dated 05/02/2014 in Adams Co when attempting to submit doc's that were previously handed to G.A.L. but never mentioned by him. All cell #'s have been Verizon Wireless, never any other provider. And again irrelevant regarding to claims of 'domestic violence'. Cell #'s and/or service providers have no correlation to allegations of DV.

7. Has any employer in the last five (5) years taken any sort of disciplinary action against you? For any such occurrence, identify the employer, date and reason for the action.

ANSWER:

Yes, because David Kelley's documented \$2.00 postage was coming up "short" and his falsified his certificate of service in Court of Appeals case CA999.

Publicly accessible, it is incorporated in Volume II in Original Action Case 2015-0146, the online journal in Adams Co, it's noted as "postage charged" yet his service cert. recv'd by Amanda Iler, clearly says postage pre-paid, but prior to that David Kelley recv'd an e-mail communication that demanded he issue what he falsified in signing he had made proper service-scorned he had that email and other public records that were faxed to the attorney general's office by Amanda Iler, re: Adams county court cases and he had info fwd to employer for misuse of fax machine. Totally irrelevant to allegations of domestic violence but nonetheless answered.

8. Specify how Matt has used Caleb as a tool for litigation.

ANSWER:

He has watched Mr. Farahay use litigation as a means to thwart control by use of improper use of court filings and though it is wrong on every level he is mimicking the same pattern expecting to be rewarded with custody of a child that he and his entire family have all but shunned despite his attempt to portray to GAL that they have a good relationship. Never involved in any schooling or even been to a Dr visit but claims he is suited better for a child, the only thing he can do is bad mouth and make up false allegations and claim it's all in the child's best interest. He is alienating his first child from its mother and has been for some time and actually expects an outsider to not see through his attempt to obtain custody is guised as control to punish the mother for his perceived wrongs.

9. Attach any potential exhibits to be used at a hearing in this matter?

ANSWER:

You can expect transcripts of 20035123 in Adams Co and Highland Co 12-DR-194 as well as any/all exhibits used in either case. Additionally phone records of Matt Iler for month of June 2013 that contradict his statements of how many times he had contact w/ Mr Farahay prior to court hearing(s).

10. List all of your children. For each state name of child, name of father, the court that determined custody and the current custody arrangement.

ANSWER:

Christian is oldest and despite this question being an attempt to humiliate me by implying she lost this child, it will be noted that Mr Farahay was also involved in that case and that child is/was victim of the child trafficking that sadly occurs in Adams Co over and over and thru conspired GAL appointments of the initiating attorney. Much like Mr. Farahay's recruitment of Mr. Iler in Adams Co. case re: Mackenzie. Similar to the Shupert case re: Kate.

Mackenzie (pending appeal) & Caleb.

Plaintiff's Answers to second set of parental interrogatories

Amanda Iler
Amanda Iler

State of Ohio)
)ss:
County of Adams)

Amanda Iler, being first duly sworn, deposes and says that she has read the foregoing Interrogatories, and the answers contained therein are true as she verily believes.

Sworn to and signed before me this 19th day of May, 2015.

Pamela Tong
Notary Public
Pamela Tong
Notary Public, State of Ohio
My Commission expires Oct. 3, 2016

#12

RECORD OF PROCEEDINGS

Minutes of SEAMAN VILLAGE COUNCIL

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held JANUARY, 7

20 13

Present: Leigh Ann Sims, Robert Wright, Trina Sparks, Bill Shelby, Josh Burns, David Merfert.
 Also Present: Bill Shreffler, Village Administrator; Matt Windle, Lisa Rothwell, Attny.
 Mayor Hughes Presiding.

Minutes were read. Motion to Approve Minutes by David Merfert, seconded by Bill Shelby. Roll call vote: All-Yes. Motion carried. Treasurers report was discussed. Motion to Approve Treasurers Report by Ms. Sims, seconded by Mr. Burns. Roll call vote: All-Yes. Motion carried.

Mayors Court Report was discussed. Motion to Approve Mayors Court by Mr. Burns, seconded by Ms. Sparks. Roll call vote: All-Yes. Motion carried.

On behalf of Chief Crawford who was home ill on this Meeting date, Mayor Hughes asked for a Motion to Approve the renewal of the Police Dept. Auxiliaries being: Guy Sutton, Margaret Edwards, Patricia Bailey and Patrick Glassburn. Motion to Approve renewal of Police Auxiliaries by Ms. Sims, seconded by Mr. Burns. Roll call vote: All-Yes. Motion carried.

Committee's for 2012 was motioned to stay the same and carry over for the 2013 year by Ms. Sims, seconded by Mr. Shelby. Roll call vote: All-Yes. Motion carried.

Committee's are as follows:
 Zoning -Chairman-Ms. Sims, Mr. Merfert, Mr. Wright.
 Police-Chairman-Mr. Wright, Ms. Sims, Mr. Burns.
 Equipt & Maint.-Chairman-Mr. Burns, Mr. Merfert, Mr. Wright.
 Records-Chairman-Ms. Sparks, Ms. Sims, Mr. Shelby.
 Finance-Chairman-Mr. Shelby, Mr. Wright, Ms. Sparks.
 Building-Chairman-Mr. Merfert, Mr. Shelby, Mr. Burns.

Motion to go into Executive Session to discuss Personnel and Finance by Mr. Burns, seconded by Mr. Wright. Roll call vote: All-Yes. Motion carried. Time in 8:15 P.M. Motion to return to regular session by Mr. Burns, seconded by Mr. Merfert. Roll call vote: All-Yes Motion carried. Time out of Executive Session 8:50 P.M.

Mayor Hughes asked for a Motion to change the Mayors Court from twice a month to once a month with a salary for the Magistrate of \$3600.00 per year and offer the job to David Grimes and if not accepted to advertise the job. Motion by Mr. Merfert, seconded by Ms. Sims. Roll call vote: All-Yes. Motion carried.

Mayor Hughes asked for a motion due to financial restraints to allow all of the Veterinarian bills for the K-9 Unit to be paid by the K-9 fund. Also to cut any travel with the K-9 except when on duty in the Village and required training. Motion by Mr. Burns, seconded by Mr. Wright. Roll call vote: All-Yes. Motion carried.

Discussion on Cell Phone Plans and current contract options. Mr. Merfert volunteered to look into this with the Mayor by the next meeting.

Ordinance 2013-1 was presented: AN ORDINANCE FOR THE USE OF THE BASIC CODE 2013 EDITION. Motion by Mr. Merfert, seconded by Ms. Sims to:
 SUSPEND THE RULES GOVERNING THE READING OF THE ORDINANCE ON THREE SEPARATE OCCASIONS AND DECLARING IT AN EMERGENCY. Seconded by Mr. Sims. Roll call vote: All-Yes: Motion carried.

Motion to Accept Ordinance 2013-1 and use the Basic Code 2013 Edition by Ms. Sims, seconded by Mr. Merfert. Roll call vote: All-Yes. Motion carried. Mayor Hughes declared Ordinance 2013-1 adopted.

Present: Robert Wright, Trina Sparks, William Shelby, David Hancock, David Merfert.

Also present: Chief Phillips, Sgt. Windle and Village Solicitor-Lisa Rothwell, Paul Hannah-editor for the Peoples Defender.

Mayor Hughes Presiding.

Motion to excuse the absence of council member Leigh Ann Sims by Mr. Merfert, seconded by Mr. Wright. Roll call vote: All-Yes. Motion carried.

Motion to approve the minutes by Mr. Shelby, seconded by Mr. Hancock. Roll call vote: All-Yes. Motion carried.

Motion to approve the treasurer's report and pay the bills by Mr. Merfert, seconded by Ms. Sparks. Roll call vote: All-Yes. Motion carried.

Mayors Court Report was reviewed by council. Motion to approve Mayors court report by Mr. Wright, seconded by Mr. Hancock. Roll call vote: All Yes. Motion carried.

Mayor Hughes gave the floor to Chief Phillips to discuss any items he may have. Chief Phillips presented the proposed contract from Highland County Sherriff's Dept. to house prisoners at a rate of \$55.00 per day (24 HR period) included would be: Seaman to pay any and all extra fee's while prisoner is housed by Highland County Sheriff's Dept. A set fee of \$25.00 for escort by Life Squad to the emergency room plus any and all medical cost. These costs would be added to the housing monthly invoice. Discussion followed as to these fee's would be added to the fines and cost of offender owed to the Village of Seaman as stated in Ordinance# 2013-3 passed by Seaman Village council on June 03 2013. Motion to sign and accept the on a yearly basis Housing Agreement to begin on January 01/2015 thru December 31/2015 by Mr. Hancock, seconded by Mr. Shelby. Roll call vote: All-Yes. Motion carried.

Mayor Hughes took a moment to discuss the recent Seaman Police Dept.'s continued actions and arrests in the village due to the increase in drug use and distribution.

Motion to enter Executive session at 7:40pm by Mr. Merfert, seconded by Mr. Wright. Roll call vote: All-Yes. Motion carried.

Motion to return to regular session at 7:59pm by Ms. Sparks, seconded by Mr. Hancock. Roll call vote: All-Yes. Motion carried.

Motion to not renew Magistrate David Grimes contract and hire Barbara Moore as Village Magistrate under terms of current contract as Grimes by Mr. Merfert, seconded by Mr. Sparks. Roll call vote: All-Yes. Motion carried.

Motion to keep the same committee members and president of council in place for the 2015 yr. by Ms. Sparks, seconded by Mr. Wright. Roll call vote: All-Yes. Motion carried.

President of Council – David Merfert
Village of Seaman Committees 2015 as follows:

FINANCE

Chairman-Shelby, Wright, Sparks.

ZONING