

ORIGINAL

IN THE SUPREME COURT OF OHIO

JAMES P. KUHN
APPELLANT,

CASE NO. 2014-0601

v.

KELLY L. KUHN NKA COTTLE,
APPELLEE

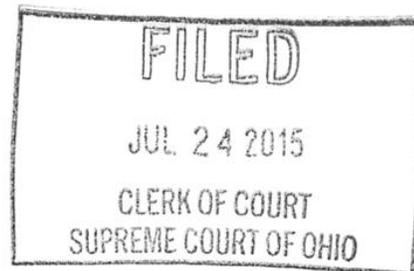
MOTION OF APPELLANT, JAMES P. KUHN FOR RECONSIDERATION

STEPHANIE L. MITCHELL (0073628)
TRIBBIE, SCOTT, PLUMMER & PADDEN
139 WEST EIGHTH STREET
P. O. BOX 640
CAMBRIDGE, OHIO 43725-0640
TELEPHONE: (740) 432-6322
FACSIMILE: (740) 439-1795
EMAIL: stephanie.mitchell@tspplaw.org

ATTORNEY FOR APPELLANT,
JAMES P. KUHN

ROBERT ROE FOX (0042179)
388 SOUTH MAIN STREET
SUITE 402
AKRON, OHIO 44311
TELEPHONE: (330) 253-2227
FACSIMILE: (330) 253-1261
EMAIL: rfoxatneolaw.biz

ATTORNEY FOR APPELLEE,
KELLY L. KUHN NKA COTTLE



Now comes Appellant James P. Kuhn by and through counsel, Attorney Stephanie L. Mitchell, and pursuant to rule 18.02 of the Rules of Practice of the Supreme Court of Ohio, moves this honorable court for reconsideration of its decision of July 14, 2015 wherein the Court dismissed this case as having been improvidently accepted.

Appellant respectfully urges the Court to reconsider this finding as the Fifth District court of appeals ruling contained an obvious error as is pointed out in paragraph 5 of Justice Kennedy's dissenting opinion. That obvious error cried out for review by this Court as there have been countless leases signed over recent years in Ohio affecting not only this case but countless future divorce cases in the State of Ohio. This court has the authority and ability to correct this error by ordering a judgement reversing the decision of the appellate court and reinstating the original decision of the trial court.

Unless this court choses to reconsider its decision to dismiss and find that the appeal was improvidently accepted, it would be failing to correct an error of the court of appeals. Appellee urged this Court to find that no issue of great public interest existed in this matter and, by its dismissal; this Court appears to have been persuaded by that argument. However, while domestic relations cases do offer wide discretion to courts and generally deal with well settled principals of law, some of which were addressed previously in this matter, this case also presented a novel issue that does, in fact, rise to the level of an issue of great public interest. The ownership interest in real estate and the impact of oil and gas leases related to that real estate during divorce proceedings is an issue that literally affects thousands of married couples throughout the state of Ohio. To leave this issue unanswered leaves both married individuals and leasing companies in a state of confusion on how to draft and execute such documents. And this

issue is not limited to oil and gas leases, but could extend to pipeline agreements, easements, water line agreements, rental agreements...any written document regarding real estate that could generate payment to the landowner and/or his/her spouse. At this point the questions remain. How should those documents be drafted? Should the non-owner spouse be included for dower purposes? Should the document specifically identify that the signature is for the purposes of dower only and, if it does not, does the non-owner spouse's signature upon the document create an ownership interest in that property and/or the proceeds generated from that property? These questions should have been answered by the statutes of Ohio related to marital property and passive/active income, but they were not by virtue of the Fifth District Court of Appeals decision which appears to be in direct contravention of those statutes. As such, this decision leaves unanswered many, many questions that could affect many, many cases now pending and still to come. For example, the situation at issue in this case was not unique. Over the past several years thousands of oil and gas leases have been signed. Millions of dollars in bonus payments have been paid to land owners, some married, some not, some jointly owned property and some individually owned, for those oil and gas leases. Some land owners have deposited and held on to their bonus payments, others have spent the money before the ink on the check was dry. However, if those bonus monies were paid during the period of a marriage and a divorce is thereafter filed by the parties it appears now that both parties to that divorce – whether joint owners of the real estate or not – are entitled to equal shares of the bonus payment, even where the real estate is not determined to be a marital asset. These unanswered questions are sure to create chaos and confusion in domestic relations courts across the state.

Failure to correct the error essentially establishes that all oil and gas lease related proceeds are marital income regardless of the facts presented in future cases. Passive income statutes relative to separate property in domestic cases would become null and void according to the decision of the Fifth District Court of Appeals in this case.

Conclusion

For the foregoing reasons, Appellant respectfully requests that this Honorable Court reconsider its decision to dismiss this appeal and determine the case on its merits as set forth within the dissent of Justice Kennedy.

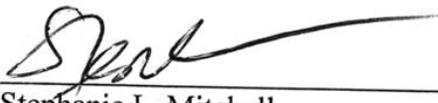
Respectfully submitted,



Stephanie L. Mitchell
TRIBBIE, SCOTT, PLUMMER & PADDEN
COUNSEL FOR APPELLANT,
JAMES P. KUHN

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a true copy of the foregoing MOTION FOR RECONSIDERATION upon Counsel for Defendant-Appellee, Attorney Robert Roe Fox, 388 South Main Street, Suite 402, Akron, Ohio 44311 by regular U.S. Mail; postage prepaid this 24th day of July 2015.



Stephanie L. Mitchell
TRIBBIE, SCOTT, PLUMMER & PADDEN
COUNSEL FOR APPELLANT,
JAMES P. KUHN