

IN THE SUPREME COURT OF OHIO

JAMES P. KUHN)	CASE NO. 2014-0601
)	
Appellant)	
)	
v.)	
)	
KELLY L. KUHN nka COTTLE)	
)	
Appellee)	

**APPELLEE'S MOTION TO STRIKE
APPELLANT'S MOTION FOR RECONSIDERATION**

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Counsel for Guernsey County Bar Association
Amicus Curiae

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Counsel for Appellee
Kelly L. Kuhn nka Cottle

The Appellee, Kelly L. Kuhn nka Cottle, moves this Court for an Order striking the Motion for Reconsideration filed by the Appellant, James P. Kuhn. For cause, Appellant has violated S.Ct.Prac.R.3.11(E).

On August 4, 2015, Counsel for Appellee received by regular U.S. Mail a document entitled *Amicus Curiae*, Guernsey County Bar Association, Memorandum in Support of Appellant Motion for Reconsideration. This is the first time that counsel for Appellee became aware that a Motion for Reconsideration had been filed by Appellant.

Counsel for Appellee immediately reviewed this Court' docket and determined the Motion for Reconsideration had been filed by Appellant on July 24, 2015, the same day the *Amicus Curiae* Memorandum was submitted. Though not impossible, it is highly unlikely the *Amicus Curiae* Memorandum could have been prepared without reviewing the Motion for Reconsideration, as the former referenced the latter though they were filed the same date. this suggests concerted action on the part of these parties.

Regardless, no Motion for Reconsideration was served upon Appellee's counsel by Appellant. A copy of same was immediately retrieved on-line and reviewed. Interestingly, though *Amicus Curiae* counsel *certified* that he served the Memorandum in Support upon Appellee's counsel by regular U.S. mail on July 24, 2015, the envelope in which the pleading was served is dated July 30, 2015.

Counsel for Appellee immediately telephoned counsel for Appellant, attempting to resolve this issue. The receptionist indicated counsel was in a meeting. Counsel for Appellee left his contact information. As of this writing – more than two (2) hours after the message was provided -- the telephone call has not been returned.

Another interesting fact surrounding service of the Motion for Reconsideration is that if, by chance, either counsel attempted to serve the pleadings by e-mail that would have been no more successful. Both counsel for Appellant and *Amicus Curiae* counsel note the wrong e-mail address for Appellee's counsel on their pleadings.

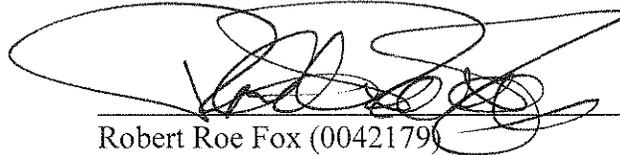
Appellee has always responded timely to any pleading filed in this matter, never requesting any extension to file a document herein. There is no reason whatsoever Appellee wouldn't have submitted a response to the Motion for Reconsideration had it been served.

Appellee originally argued that the subject matter of the appeal was not of great public interest. The Supreme Court of Ohio dismissed the appeal as improvidently allowed as this matter merely involved the property division of a bonus received several years into the parties' marriage. The respective Memorandums in support of the Motion for Reconsideration, reviewed by counsel for Appellee for the first time the day of this writing – August 4, 2015 – reveal a continued lack of any factual or legal support for the continuance of this matter.

An Affidavit in support of the facts contained herein is attached hereto and incorporated by reference.

Appellee respectfully requests that the Motion for Reconsideration filed by Appellant be stricken pursuant to S.Ct.Prac.R.3.11(E). Alternatively, Appellee asks for a reasonable extension to respond to Appellant's Motion for Reconsideration.

Respectfully Submitted,



Robert Roe Fox (0042179)

LEIBY HANNA RASNICK

TOWNE EVANCHAN PALMISANO & HOBSON, LLC

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(330) 253-2227

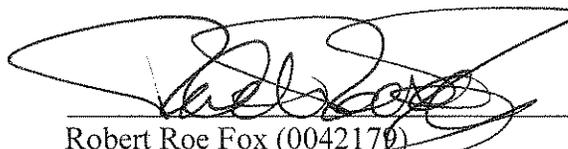
(330) 253-1261 – *facsimile*

rfox@neolaw.biz

Counsel for Appellee Kelly L. Kuhn nka Cottle

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon Ms. Stephanie L. Mitchell, Esq., 139 West Eighth Street, P.O. Box Cambridge, Ohio, 43725-0640, and Mr. Joel Blue, Esq., 819 Steubenville Avenue, Cambridge, Ohio, 43725, on this 4th day of August, 2015, via regular U.S. mail.



Robert Roe Fox (0042179)

Counsel for Appellee Kelly L. Kuhn nka Cottle

AFFIDAVIT OF KRISTINA V. FOX

I, Kristina V. Fox, being first duly sworn, depose and state as follows:

1. I am 18 years of age and under no legal disability;
2. I am a paralegal in the law firm of Leiby, Hanna, Rasnick, Towne, Evanchan, Palmisano & Hobson, LLC, and have been so employed since June, 2013;
3. One of my main duties as a paralegal in the office is the daily opening and date-stamping of the mail received by Attorney Robert Roe Fox;
4. No other person in the office is authorized to open the mail for Attorney Fox;
5. On August 4, 2015, upon opening the day's mail, I noticed a document entitled *Amicus Curia*, Guernsey County Bar Association, Memorandum in Support of Appellant Motion for Reconsideration filed in the matter styled *James P. Kuhn v. Kelly L. Kuhn nka Cottle*, filed with the Supreme Court of Ohio, Case No. 2014-0601;
6. No cover letter accompanied the document sent by the Guernsey County Bar Association;
7. I immediately date-stamped the first and back pages of the document, true and accurate copies of which is attached hereto as Exhibits A and B and incorporated by reference;
8. I further maintained the envelope in which we received the Memorandum in Support filed by the Guernsey County Bar Association which shows a postmarked date of July 30, 2015, a true and accurate copy of which is attached hereto as Exhibit C and incorporated by reference;
9. A review both the Motion for Reconsideration and Memorandum in Support filed by *Amicus Curiae* indicate an incorrect e-mail address for Attorney Fox;

10. I immediately brought this to the attention of Attorney Fox, both of us reviewing the Supreme Court docket relative to same and determining for the first time a Motion for Reconsideration had been filed by Appellant;

11. August 4, 2015, was the first date that we were made aware that the Appellant, James P. Kuhn, had filed a Motion for Reconsideration with the Supreme Court of Ohio;

12. Attorney Fox immediately telephoned counsel for Appellant in order to ascertain why service had not been made as certified in the Motion for Reconsideration in this matter;

13. The receptionist answered the telephone, indicating that counsel for Appellant was in a meeting but would return the call;

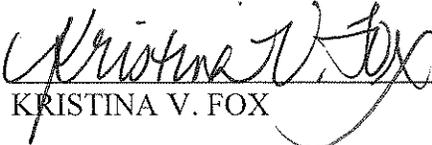
14. As of this writing approximately two (2) hours later that telephone call has not been returned;

15. I specifically deny that this office received service of the Motion for Reconsideration and had same occurred I would have been the person to have first seen it and date stamped it;

16. This office has timely responded to all documents filed by Appellant in this matter; and

17. This office has never sought an extension of time to respond to documents filed by Appellant.

FURTHER AFFIANT SAYETH NOT.


KRISTINA V. FOX

STATE OF OHIO)
)
COUNTY OF SUMMIT) SS

Sworn to before me and subscribed in my presence this 4th day of August, 2015.

Lauretta J. Fulton

NOTARY PUBLIC

My Commission Expires: *3-11-2018*



Laurretta J. Fulton
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 03/11/2018

IN THE SUPREME COURT OF OHIO

JAMES P. KUHN
APPELLANT,

CASE NO. 2014-0601

v.

KELLY L. KUHN NKA COTTLE,
APPELLEE

AMICUS CURIAE, GUERNSEY COUNTY BAR ASSOCIATION, MEMORANDUM IN
SUPPORT OF APPELLANT MOTION FOR RECONSIDERATION

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EMAIL: joelmbblue@gmail.com

PRESIDENT, GUERNSEY COUNTY
BAR ASSOCIATION

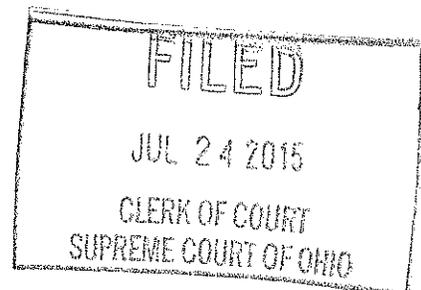
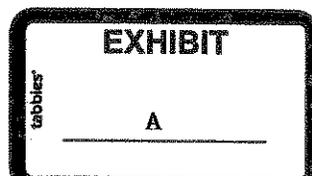
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EMAIL: rfoxatneolaw.biz

ATTORNEY FOR APPELLEE,
KELLY L. KUHN NKA COTTLE

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RECEIVED

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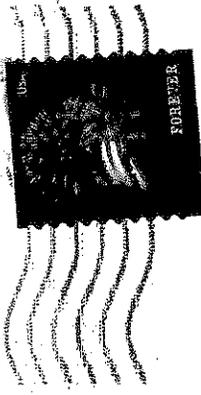
EXHIBIT

Robbles

B

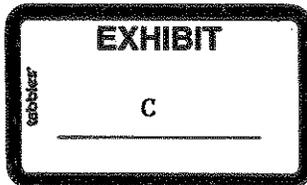


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