

ORIGINAL

IN THE SUPREME COURT OF OHIO

JAMES P. KUHN  
APPELLANT,

CASE NO. 2014-0601

v.

KELLY L. KUHN NKA COTTLE,  
APPELLEE

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APPELLANT'S MEMORANDUM IN RESPONSE TO APPELLEE'S MOTION TO STRIKE  
AND APPELLEE'S REVISED MOTION TO STRIKE

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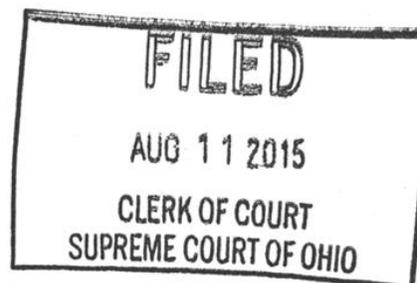
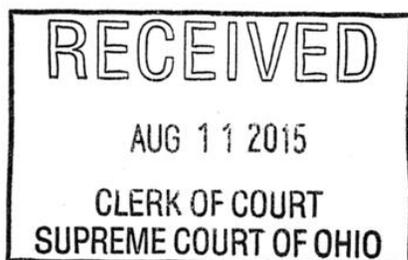
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KELLY L. KUHN NKA COTTLE



Now comes Appellant, James P. Kuhn, by and through undersigned counsel and respectfully requests the Court deny Appellee's Motion to Strike as filed on August 4, 2015 and revised on August 6, 2015. Undersigned counsel states that a copy of the Motion for Reconsideration as filed by Appellant was sent to Appellee via regular mail, postage prepaid on the 24<sup>th</sup> day of July, 2015, being the same day said motion was filed with this Court. Counsel cannot speak for the U.S. mail service to explain why the copy did not reach Appellee's counsel.

As to Appellee's Counsel's various statements within the motion to strike and revised motion to strike, undersigned counsel attempted to rectify this situation by immediately contacting Attorney Fox after review of his voice mail message and advising that there would be no objection to an extension of time to respond to the Motion for Reconsideration.

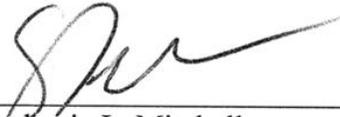
On the date in question, August 4, 2015, undersigned counsel was fully scheduled for the day with multiple client conferences and court appearances. Attorney Fox left one voice mail message and otherwise failed to advise any of undersigned's staff that there was any urgency to his call. At approximately 4:00 p.m., undersigned was able to check voice mail messages for the first time on that date and, as stated above, immediately then contacted Attorney Fox. Undersigned advised that she was unsure why the copy had not reached him. Undersigned is concerned with Attorney Fox's reference to the voice mail message. In that voicemail message, undersigned most likely did state that she "thought" the copy had been sent by email and regular mail, but when stated in such a way the meaning is taken entirely out of context. Undersigned is certainly well aware of the

requirement to serve pleadings on opposing counsel and/or parties. Thus, the voice mail message was not a suggestion that undersigned believed the pleading had been sent, but that undersigned believed that the copy had been sent to Attorney Fox BOTH by regular mail and by email. Upon reviewing the pleading that is not accurate and a copy of the same was sent only by regular mail as stated above.

Contrary to Appellee's assertion, Appellant has argued since the time of filing his Memorandum in Support of Jurisdiction that this matter involves an issue of great public interest. This position has not changed and Appellee's attempts to use single words or phrases out of context are disheartening. Appellant continues to believe this matter is one of great public interest and as such a decision on the merits of the case should be reached as set forth within the Motion for Reconsideration.

Based upon the foregoing, Appellant respectfully requests that this honorable court deny Appellee's motion to strike as Appellant complied with the service requirements as set forth in Ohio law by mailing a copy of the pleading to opposing counsel. What happened to the pleading after being placed in the mail box is unknown. However, a remedy exists for Appellee, and that is simply to allow additional time to respond to the Motion for Reconsideration.

Respectfully submitted,



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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 MEMORANDUM IN RESPONSE OF MOTION TO STRIKE 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 and via email at [rfox@neolaw.biz](mailto:rfox@neolaw.biz) and upon President of the Guernsey County Bar Association, Attorney Joel Blue, 814 Steubenville Ave., Cambridge, Ohio 43725, by placing a copy in his mailbox at the Guernsey County Courthouse this 10<sup>th</sup> day of August, 2015.

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