

**IN THE SUPREME COURT OF OHIO**

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

CASE NO. 2015-0363

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

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**MOTION FOR SANCTIONS WITH MEMORANDUM IN SUPPORT**

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3. The Would-be Intervening Respondent/Appellant and her counsel raised an issue on appeal for which they clearly and unambiguously lack standing.

/s/ Richard W. Landoll  
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## **MEMORANDUM**

### **SUMMARY OF ARGUMENT**

Appellant S.F., and her counsel, have engaged in sanctionable conduct in the following ways:

1. Falsely stated to this Court that the Virginia order of June 5, 2012 has been vacated<sup>2</sup>;
2. Falsely stated to this Court that S.F. and her counsel were unaware of the filing of the Complaint for Writ of Prohibition until after judgment had been entered; and
3. Raised an issue on appeal for which they clearly and unambiguously lack standing.

### **STATEMENT OF THE CASE**

This is an appeal of right from judgments entered on January 14, 2015, in which the Eighth District Court of Appeals denied Appellant's Motion to Intervene and Emergency Motion

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<sup>2</sup> It is worth noting that resources were unnecessarily expended in the Court of Appeals when Appellant S.F. filed her postjudgment motion for relief and stated that the June 5, 2012 had been vacated and that Appellee N.G. committed fraud by not bringing this to the Court's attention. As a result of this filing, the Court of Appeals took immediate action and stayed its original order granting the request for a writ of prohibition. After full briefing, the Court of Appeals found that the Virginia court did not, as claimed by Appellant S.F., vacate said order and lifted the stay. Tremendous resources were expended addressing Appellant S.F.'s verifiably false claim that the June 5, 2012 order had been vacated. It was a very serious accusation and it was false.

for Relief from Order (Appellants Supp. 13-118) (Appellant's App. 4). Appellant sought postjudgment intervention in Relator-Appellee, N.G.'s ("N.G." or "Appellee") original action in prohibition.

On March 2, 2015, S.F. filed a Notice of Appeal. S.F. failed to name all parties and perfect service on all parties. S.F. filed her merit brief on May 5, 2015. N.G. filed a motion to dismiss and a motion to strike on May 29, 2015. N.G. filed his merit brief on June 3, 2015 and S.F. filed her reply brief on July 14, 2015.

## FACTS

### **A. Appellant S.F.'s False Statements Regarding the June 5, 2012 Virginia order.**

In filing and prosecuting her Appeal with this Court, Appellant S.F. and her Counsel made the following false statements regarding the Virginia order of June 5, 2012:

1. The Circuit Court of Arlington County **dismissed the Virginia Litigation** (S.F. Merit Brief. P. 3) (emphasis added).
2. Ultimately, the Virginia court vacated the July 15, 2013 Visitation Order, **dismissed the case, and conceded jurisdiction to Ohio courts.** (S.F. Merit Brief P. 3)(emphasis added).
3. At no time during the course of the proceedings relating to the Writ was the Eighth District informed of the May 23, 2014 **dismissal of the Virginia Litigation** (S.F. Merit Brief P. 3)(emphasis added).
4. Critically, neither N.G. nor Judge Floyd, at any time during the proceedings relating to the Writ, brought to the Eighth District's attention (...) such (...) the May 23, 2014

**Order of Dismissal from the Virginia Litigation** (S.F. Merit Brief p. 7)(emphasis added).

5. The Circuit Court of Arlington County issued an Order of Dismissal dated May 23, 2014, wherein the court **dismissed all litigation in Virginia due to Ohio's finding of home state jurisdiction** (S.F. Merit Brief p. 12)(emphasis added).
6. For example, Appellee N.G. never introduced to the Eighth District in the Writ Proceedings a copy of the May 23, 2014 Dismissal Order ("Dismissal Order") entered by the Circuit Court of Arlington County, which unequivocally recognized Ohio as the children's home state and **dismissed all on-going litigation in Virginia**. (S.F. Reply Brief p.5)(emphasis added).
7. This Dismissal Order should have been dispositive to the Eighth District's consideration of the case, as it showed that the highest court in Virginia to consider the issue of jurisdiction determined **that Virginia did not have jurisdiction over the case**, and in doing so, dismissed all litigation in Virginia. (S.F. Reply Brief p. 5).
8. It is inaccurate to characterize this as a voluntary dismissal of Ms. Fekadu's appeal; rather, the Circuit Court of Arlington County **dismissed the entire case from Virginia for lack of subject matter jurisdiction** (S.F. Reply Brief p.5)(emphasis added).
9. Assuming arguendo that the June 5, 2012 custody order was the initial determination in this matter, **Virginia relinquished jurisdiction** when the Arlington Circuit Court entered the Dismissal 18 Order on May 23, 2014. (S.F. Reply brief p.17-18)(emphasis added).
10. **Virginia determined it no longer had jurisdiction**, as Ohio was the children's home state, when it entered the Dismissal Order. (S.F. Reply Brief p. 18)(emphasis added).

11. At the time the Dismissal Order was granted, on May 23, 2014, **Virginia determined that it lacked jurisdiction** in the case thereby deferring to Ohio's determination of home state jurisdiction. (S.F. Reply Brief p. 19)(emphasis added).

The plain truth is that the June 5, 2012 order is not, nor ever has been, vacated. Virginia never conceded jurisdiction to Ohio courts. In fact, S.F. and her counsel have NEVER quoted any specific language contained in any order that supports their assertion. The June 5, 2012, order remains in effect and enforced by the Virginia courts. N.G. filed an Emergency Motion to **Enforce** this order in Virginia. Said order was granted by the Virginia court and, on September 9, 2014, the Virginia court issued an Order directing the Appellant S.F. to return the children to Appellee N.G. forthwith. Attorney Dubyak, counsel for Appellant S.F., has made this erroneous argument to Judge Floyd as well as the Eighth District Court of Appeals and has not been successful. He now makes the same argument to this Court. However, no evidence supporting the false assertion that the June 5, 2012 order was somehow vacated has been, or could be, provided to this Court.

**B. Appellant S.F.'s False Statements Regarding Appellant S.F.'s and her Counsel's Knowledge of the Filing of the Complaint for Writ of Prohibition.**

Appellant S.F. knowingly made false statements of fact as to when she became aware of the filing of the Complaint for Writ of Prohibition. In filing and prosecuting her Appeal with this Court, Appellant and her Counsel made the following statements regarding when S.F. and her Counsel became aware of the Complaint for Writ of Prohibition:

1. As soon as S.F.<sup>3</sup> became aware of the Writ, and all proceedings leading to it, she filed a Motion to Intervene and Emergency Motion for Relief from Order (...) on or about October 23, 2014. (S.F. Merit Brief pp. 3-4).
2. S.F.'s Combined Motion was timely as it was submitted a mere week after S.F., and her counsel, learned that the Eighth District granted the Writ. (S.F. Merit Brief p.4).
3. S.F. did not learn of the Writ until after it was granted (S.F. Merit Brief p.4).
4. S.F. timely filed her Combined Motion merely one week after learning of the Writ (S.F. Reply Brief p.2)
5. S.F. filed her Combined Motion to intervene and vacate the Writ a mere week after she learned that the Writ was granted. (S.F. Reply Brief p.8)
6. It is true that Virginia counsel for Appellee N.G. represented to the Arlington Domestic Relations Court in August 2014 that N.G. had filed a complaint seeking the Writ in Ohio, and that S.F.'s Virginia counsel had conferred with her Ohio counsel regarding the matter(...) (S.F. Reply Brief p.8)
7. The explanation for S.F.'s decision to intervene in October 2014 is simple. That was the first time she, or her Ohio counsel, had evidence of the Writ Proceedings. (S.F. Reply Brief pp.8-9).
8. Thus, there was no way for S.F. to have reasonably known that the Writ Proceedings were ongoing, and intervened at any point sooner than when she did in October 2014 (S.F. Reply Brief p.9)

The verifiable truth is that both Ohio and Virginia counsel for Appellant S.F. had actual knowledge of the filing of the Complaint for Writ of Prohibition no later than May 23, 2014, in

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<sup>3</sup> S.F.'s reply brief refers to S.F. by her full name in contravention to the rules of superintendence, as such the citations from her brief have been altered so that her initials are used conforming with all documents submitted by N.G.

which the matter was discussed in open court in Virginia, as S.F. and her counsel acknowledge in their Reply Brief. This is approximately four (4) months prior to judgment being entered and the Writ being issued. Said knowledge is verified via the transcript from the May 23, 2014 hearing in Virginia as well as Appellant S.F.'s Reply Brief.

**C. Despite Clearly and Unambiguously Lacking Standing, Appellant S.F. Has Attempted to Appeal the Underlying Judgment Granting the Writ.**

Appellant S.F. has appealed the court of appeals order granting the writ of prohibition.

1. S.F. Notice of appeal filed March 2, 2015.
2. S.F. Merit Brief filed May 5, 2015
3. S.F. Reply Brief filed July 14, 2015

Appellant S.F. has been advised of the impropriety of this portion of her appeal. In Appellee N.G.'s **unopposed** motion to dismiss, Appellee N.G. provided red-letter law as to why Appellant S.F. lacks standing to challenge the granting of the writ. Despite such, Appellant S.F. still maintains her appeal of the underlying judgment.

**History of the Underlying Case**

The history of the underlying case has been recited in Appellee N.G.'s Merit Brief.

## LAW AND ARGUMENT

Appellee N.G. seeks sanctions based on the following conduct:

- (1) Statements made to this Court by Appellant S.F. and her counsel that the June 5, 2012 order in Virginia has been vacated are not warranted under law or fact. Virginia has recently enforced the June 5, 2012 order and to argue to an Ohio court that Virginia has dismissed or vacated the order in not founded in law or a good faith attempt to expand or modify the law. Despite being advised of the sanctionable nature of this conduct, Appellant S.F. and her counsel have continued to argue these verifiably false claims to this Court.
- (2) Statements made to this Court by Appellant S.F. and her Counsel that they did not know of the existence of the Complaint for Writ of Prohibition until October 16, 2014 are not only verifiably false, but are sanctionable as well. Despite being advised of the sanctionable nature of this conduct, Appellant S.F. and her counsel have continued to argue these verifiably false claims to this Court.
- (3) Arguments set forth by Appellant S.F. seeking to appeal the original granting of the writ are not grounded in law and fact.

S.Ct.Pract.R. 4.03 provides:

(A) Supreme Court Sanction. If the Supreme Court, sua sponte or on motion by a party, determines that an appeal or other action is frivolous or is prosecuted for delay, harassment, or any other improper purpose, it may impose appropriate sanctions on the person who signed the appeal or action, a represented party, or both. The sanctions may include an award of attorney fees, costs or double costs, or any other sanction the Supreme Court considers just. An appeal or other action shall be considered frivolous if it is not reasonably well-grounded in

fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

Further, Rule 11 of the Ohio Rules of Civil Procedure states, in pertinent part, that an attorney must sign each pleading or motion and that such signature “constitutes a certificate by the attorney or party that the attorney or party has read the documents; that to the best of the attorney’s or party’s knowledge, information and belief that there is good ground to support it; and that it is not interposed for the purpose of delay.” If an attorney willfully violates Rule 11, that attorney “may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule” upon either motion of a party or court.

Appellant S.F. and her counsel run afoul of both S.Ct.Pract.R. 403(A) and Civ.R. 11 in the following ways:

1. With knowledge of its falsity, Appellant S.F. maintains that her postjudgment motion to intervene was filed timely since she was unaware of the Complaint for Writ of Prohibition prior to judgment being rendered.

### **CONCLUSION**

**WHEREFORE**, for the reasons set forth above, Relator respectfully requests that this Honorable Court deny Intervening Respondent’s Combined Motion to Intervene and Emergency Motion for Relief from Order; order sanctions be imposed against Appellant S.F. Mother and her counsel, Attorney Robert J. Dubyak and Attorney Christina C. Spallina, and set this matter for hearing on the determination of appropriate sanctions.

Respectfully submitted,

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*Counsel for Respondent/Appellee, N.G.*

### **CERTIFICATE OF SERVICE**

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

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