

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL.)	CASE NO. 2015-1253
TROY HENDERSON,)	
)	
Appellant,)	
)	On Appeal from the Cuyahoga
vs.)	County Court of Appeals,
)	Eighth Appellate District
JUDGE KRISTIN SWEENEY, et al.,)	
)	Court of Appeals Case No. CA-15-102541
)	
Appellees.)	

**APPELLEES' MOTION TO STRIKE APPELLANT'S MOTION FOR LEAVE, OR IN
THE ALTERNATIVE, MOTION FOR LEAVE TO RESPOND TO THE MOTION FOR
LEAVE, INSTANTER**

TROY HENDERSON
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Appellant, Pro Se

TIMOTHY J. MCGINTY (0024626)
Prosecuting Attorney of Cuyahoga County

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*Counsel for Appellees Judge Kristin Sweeney,
Judge Jerry Hayes and Cuyahoga County Juvenile
Court*

requirement as he never signed his certificate of service and it does not specify the manner of service stating “A copy of the foregoing motion served on 29nd [sic] day of July 2015 via regular U.S. Mail and/or emailed upon parties’ counsel.” See 7/30/15 Motion for Leave, Certificate of Service. Counsel for Appellees never received any email service of this motion.

Moreover, this motion was not delivered to the office of Appellees’ counsel until August 5, 2015 over a week after Appellant claims to have served Appellees’ with the motion. Counsel for Appellees’ was on vacation until August 11, 2015 and upon return to the office and finding the Motion for Leave, which was received on August 5, 2015, prepared and filed the very next day on August 12, 2015 a Brief in Opposition to Appellant’s Motion for Leave. This was well within ten days of receipt of the motion.

Appellees’ Brief in Opposition to Appellant’s Motion for Leave on August 12, 2015, however, was rejected by the clerk filing with the reason provided that it was beyond ten days after the motion was filed. A copy of the Appellee’s Brief in Opposition is attached hereto as Exhibit A. Thus, Appellant’s improper service of this document has adversely affected Appellees by depriving them of the opportunity to respond to the motion. A party cannot be expected to file a response to a motion within ten days of the filing of the motion when it is not timely served on them. Here, justice warrants striking of the motion, or allowing Appellees’ Brief in Opposition to be submitted to the Court in response. Therefore, Appellees hereby request that this Court strike the Motion for Leave filed by Appellant in this matter as it does not contain a valid certificate of service and he did not properly serve it on Appellees, thereby depriving them of the opportunity to respond to the motion. Alternatively, Appellees request leave to file their Brief in Opposition, Instanter, which is attached hereto and incorporated herein, or for the Court to provide a new date for the Brief in Opposition to be filed.

Respectfully submitted,

TIMOTHY J. MCGINTY, Prosecuting Attorney
of Cuyahoga County

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PROOF OF SERVICE

This is to certify that today I caused the forgoing document to be electronically filed in accordance with the Court's Electronic Filing guidelines. Notice of this filing will be sent to the parties by operation of the Court's Electronic Filing system. Parties may access this filing through the system. A copy of this document is also being served by email this 13th day of August, 2015 upon:

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APPELLEES’ BRIEF IN OPPOSITION TO APPELLANT’S MOTION FOR LEAVE

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL.)	CASE NO. 2015-1218
TROY HENDERSON,)	
)	
Appellant,)	
)	
vs.)	
)	<u>APPELLEES’ BRIEF IN OPPOSITION</u>
JUDGE KRISTIN SWEENEY, et al.,)	<u>TO APPELLANT’S MOTION FOR</u>
)	<u>LEAVE</u>
)	
Appellees.)	

Appellees, Judge Kristin Sweeney, Judge Jerry Hayes and Cuyahoga County Juvenile Court, hereby submit their Brief in Opposition to Appellant’s Motion for Leave to file this appeal under R.C. 2323.52. Appellant has been declared a vexatious litigator in Cuyahoga County Common Pleas Court Case No. CV-13-803590, *Henderson v. Allamby, et al.*, for his abusive use of the legal system. Appellant has filed repeated frivolous lawsuits, including four separate writ actions against the Appellees in this matter. See Eighth Dist. No. CA-13-99605, *State ex rel. Troy Henderson v. Kristin Sweeney*; Eighth Dist. No. CA-15-102541, *State ex rel. Troy Henderson v. Kristin Sweeney, et al.*; Eighth Dist. No. CA-15-102681, *State ex rel. Troy Henderson v. Kristin Sweeney, et al.*; Eighth Dist. No. CA-15-102784, *State ex rel. Troy Henderson v. Kristin Sweeney, et al.* This appeal is another frivolous action by Appellant and leave to proceed should be denied by this Court.

In this matter, Appellant is claiming an appeal of right in his original action filed in the Eighth District, which was dismissed by the Court of Appeals on June 15, 2015. This Court, serving as the appellate court in this direct appeal from an original writ action, should deny Appellant’s motion for leave to appeal under R.C. 2323.52 because Appellant has failed to show any basis to support this frivolous appeal. Further, Appellant did not seek leave in the Eighth

District to file this appeal. This motion was not properly served on Appellee and fails to meet the requirements of showing that the application is not an abuse of process and that there are reasonable grounds for the application for leave to proceed as required under the statute. Here, there are no reasonable grounds to institute this appeal or proceed any further in this frivolous action and the Court should deny the Motion for Leave. R.C. 2323.52(F)(2) expressly provides that:

A person who is subject to an order entered pursuant to division (D)(1) of this section and who seeks to institute or continue any legal proceedings in a court of appeals or to make an application, other than an application for leave to proceed under division (F)(2) of this section, in any legal proceedings in a court of appeals shall file an application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are pending. **The court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application.** If a person who has been found to be a vexatious litigator under this section requests the court of appeals to grant the person leave to proceed as described in division (F)(2) of this section, the period of time commencing with the filing with the court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

R.C. 2323.52 (emphasis added).

There are no reasonable grounds to allow Appellant to pursue an appeal in this frivolous action. Appellant's writ action claiming that Appellees failed to rule on motions in an underlying Juvenile Court proceeding has no basis in reality. This appeal is yet another frivolous attempt by Appellant to stall the proceedings against him to pay child support for his minor child, which should not be tolerated by the Court. This Court needs to put an end to the repeated frivolous filings of Appellant, which do nothing but waste multiple courts and parties' time and resources.

There is no basis to support an appeal in this matter, thus there are no reasonable grounds to support leave to proceed and the Motion for Leave should be denied.

Respectfully submitted,

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