

SUPREME COURT OF OHIO

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|--|---|--------------------------------------|
| THE STATE OF OHIO ex rel. | : | |
| DOUGLAS C. BARTON | : | |
| Relator, Pro Se | : | Supreme Court Case No: |
| 437 Warwick Place | : | |
| Fairborn, OH 45324 | : | 2014-2241 |
| Relators, | : | |
| vs. | : | |
| KEESHA A. BARTON | : | Case No. 2013-DR-0207 |
| and | : | Court of Appeals No. 2014-CA-0046 |
| TIMOTHY CAMPBELL | : | |
| (Personal & Professional Capacity) | : | Case No. 2013-DV-0193 |
| and | : | Court of Appeals No. 2014-CA-0021 |
| STEPHEN HURLEY | : | |
| (Personal & Professional Capacity) | : | |
| and | : | |
| Greene County Domestic Relations Court, | : | |
| et. al. | : | |
| and | : | |
| Charles Slicer | : | |
| and | : | MOTION FOR RELIEF OF JUDGMENT |
| David McNamee | : | |
| and | : | |
| Ohio 2nd District Court of Appeals | : | |
| Respondents, | : | |

Now comes the Relator Douglas C. Barton, Pro Se: to Motion for Relief of Judgment from the decision granting Dismissal entered on 3/11/15 . Pursuant to Federal Rules of Civil Procedure Rule 60(b)(1)(3)(4)(6) and Ohio Rules of Civil Procedure 60(B)(1)(3)(4)(5) this **Motion for Relief from a Judgment** is made.

Memorandum of Support for MOTION FOR RELIEF FROM A JUDGMENT

The Supreme Court of Ohio (Chief Justice O'Conner, Justice Pfeifer, Justice O'Donnell, Justice Lanzinger, Justice Kennedy, Justice French, Justice O'Neill) is alleged to have committed FRAUD UPON THE COURT on Jan 9th 2015 because of their unconscionable scheme(s) to make misrepresentation(s), corruption of a court official and judicial fraud through the court system. Their failure to give proper consideration to an original action filed by Relator (pro se); a Writ of Mandamus and Prohibition with primary basis of claim being no adequate remedy at law due to FRAUD UPON THE COURT. Their failure to give due consideration demonstrates an unconscionable abuse of discretion¹ when no discretion was available. *"An order that exceeds the jurisdiction of the court, is void, or voidable, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. (See Rose v. Himely (1808) 4 Cranch 241, 2 L ed 608; Pennoyer v. Neff (1877) 95 US 714, 24 L ed 565; Thompson v. Whitman (1873) 18 Wall 457, 21 L ed 897; Windsor v. McVeigh (1876) 93 US 274, 23 L ed 914; McDonald v. Mabee (1917) 243 US 90, 37 Sct 343, 61 L ed 608. U.S. v. Holtzman, 762 F.2d 720 (9th Cir. 1985)"*; the filing of the alternative writ(s) was an attack on the validity of the judgment of the trial court due to FRAUD UPON THE COURT. As such it was an independent action (collateral attack) on the trial court's fraudulent order. The officers of this court dismissal of the action without proper consideration is a direct concealment of the fraudulent actions of the trial court; their action(s) are clear and convincing evidence to have conducted FRAUD UPON THE COURT. Their actions have caused great harm to Relator.

¹ *Orner v. Shalala*, 30 F.3d 1307 (10th Cir. 1994) held that **"when the rule providing for relief from a void judgment is applicable, relief is not discretionary, but is mandatory."**

The Second District Court of Appeals (Judge Fain, Judge Hall, Judge Welbaum) is alleged with particularity to have committed FRAUD UPON THE COURT on Mar 9th 2015 because of their unconscionable scheme(s) to make misrepresentation(s), through the court system. Their denial of the motion for attorney fees and costs contradicts their order; "Pursuant to R.C. 2323.51(B)(1), a court may award reasonable attorney fees to any party in a civil action adversely affected by frivolous conduct. The statute further provides that "frivolous conduct" includes conduct that satisfies any of the following: (i) It is obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay of needles increase in the cost of litigation. Their actions demonstrate FRAUD UPON THE COURT due to inequality before the law, the Defendant made similar claim and was awarded fees. And when taken in the context of this full document the frivolous intent, means of harassment, and to maliciously injure Relator.

The Second District Court of Appeals (Judge Froelich, Judge Hall, Judge Welbaum) is alleged with particularity to have committed FRAUD UPON THE COURT on Mar 9th 2015 because of their unconscionable scheme(s) to make misrepresentation(s), through the court system. **"The assertion of federal rights, when plainly and reasonably made, are not to be defeated under the name of local practice."** *Davis v. Wechler*, 263 U.S. 22, 24; *Stomberg v. California*, 283 U.S. 359; *NAACP v. Alabama*, 375 U.S. 449. These 3 individuals granted a motion to strike Relator's Appellant's Brief due to exceeding 35 pages; their arbitrary limit of 35 pages was not sufficient to document the extreme amount of errors, many of them federal rights². An objection to the motion to strike was also filed, the individuals (Judge Froelich, Judge Hall,

² See attached filed stamped copy Appellant's Brief from 2014-CA-0046.

Judge Welbaum) then did grant motion to strike Appellant's Brief. Their granting of the motion to strike was an excess of jurisdiction³ deliberately disregarding requirements of fairness and due process; additionally this action automatically defeats the assertion of federal rights⁴. I filed the proper application for leave prior to filing brief, I responded to the timely filing of a response to motion with objection; my specifically response was as follows: *"The local procedure do not specify that you must request the expected number of pages to be submitted. The Magistrates decision granted 35 pages, which is not sufficient to cover the unconstitutional issues, the misconduct by the court, the misconduct by officers of the court, and the incompetence of the trial court. The trial court didn't follow the rules or the law. Relator-Appellant has followed the procedures, and is not re-formatting the Brief."* Their actions did cause harm to the Relator.

The Judge Timothy Campbell (#0005527) is alleged with particularity to have committed FRAUD UPON THE COURT on Sep 12th 2014 because of his unconscionable scheme(s) to make misrepresentation(s), corruption of a court official and judicial fraud through the court system. Mr. Campbell specifically conducted FRAUD UPON THE COURT by awarding spousal support on the basis of unsupported claim losing a promotion due to Relator contacting her superior officers and a congressional complaint; It is well settled USAF policy to withhold a promotion due to misconduct of a member; specifically the Defendant was arrested⁵ for Domestic

³ *Cannon v. Commission on Judicial Qualifications, (1975) 14 Cal 3d 678, 694. Acts in excess of judicial authority constitutes misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process.

⁴ "The assertion of federal rights, when plainly and reasonably made, **are not to be defeated under the name of local practice.**" (emphasis added) Davis v. Wechler, 263 U.S. 22, 24; Stomberg v. California, 283 U.S. 359; NAACP v. Alabama, 375 U.S. 449.

Violence charges and subsequently reached a plea agreement to Disorderly Conduct. Sufficient cause for the USAF to withhold a promotion. The standard of conduct required of a military member is far above the average citizen. Additionally a military member is subject not only to the local laws of the state and county where they reside, they are also subject to the Uniform Military Code of Justice (UCMJ). The Defendant alone decided her course of actions that led to her arrest and subsequent conviction. The USAF alone decided an appropriate course of action in denying a promotion to a higher grade with additional rights and responsibilities. Mr. Campbell's actions clear and convincingly supersedes the federal authority of the Department of Defense-USAF; because of his actions, Mr. Campbell EXCEEDED HIS JURISDICTION and committed acts of judicial fraud. Mr. Campbell also sets the precedent that if you contact your publicly elected officials to report misconduct, you will be punished. Mr. Campbell demonstrated incompetence in regards to the DOD rights and privileges of a Dependent Spouse, a Reserve Military Component and an Active Military Component. The right to contact the military chain of command is a fundamental right of a military spouse. Mr. Campbell committed FRAUD UPON THE COURT by fraudulent procurement of jurisdiction over matters and actions taken solely within and on Federal Property.

The Judge Timothy Campbell (#0005527) is alleged with particularity to have committed FRAUD UPON THE COURT on Sep 12th 2014 because of his unconscionable scheme(s) to make misrepresentation(s), corruption of a court official and judicial fraud through the court system. Mr. Campbell specifically conducted FRAUD UPON THE COURT by awarding property that was separate property⁶ prior to the marriage and not in accordance with the antenuptial

⁶ Specifically Items 16 & 17 as listed in Plaintiff's Exhibit #12; GE Washer & Dryer. Separate property prior to marriage.

agreement; this is with beyond a reasonable doubt FAILURE TO FOLLOW STATUTORY PROCEDURE(s)⁷.

The Attorney David McNamee (#0068582) is alleged with particularity to have committed FRAUD UPON THE COURT and SPOILATION OF EVIDENCE on May 27th 2014 and Jun 6th 2014 because of his unconscionable scheme(s) to conduct concealment of evidence through the court system. Mr. McNamee did knowingly fail to produce the complete antenuptial agreement, because of his action he conducted and participated in "*spoliation of evidence*" which is direct FRAUD UPON THE COURT and FRAUD UPON THE RELATOR. Specifically when Relator personally contacted to request a duplicate copy of antenuptial agreement, Mr. McNamee did leave a threatening voicemail of which I have an audio recording of that characterizes his intent to withhold the antenuptial agreement; this voicemail recording is from May 27th 2014. On a subsequent call (not recorded), in speaking with Mr. McNamee he indicated that if requested by my Attorney Mr. Morrison via email he would produce the document as a "*professional courtesy*". Mr. Morrison did inform me that he contacted Mr. McNamee via email, Mr. McNamee did not produce the documents. Because of his direct concealment; by clear and convincing evidence great harm was done to Relator. Particular note related to the "*spoliation of evidence*", it has been well decided that treble damages apply. Additional evidence offered of Mr. McNamee's collusion and intent with Mr. Slicer to conduct FRAUD UPON THE COURT, at the Jun 6th 2014 hearing on motion for attorneys fees; Mr.

⁷ Ohio Revised Code 3105.171 (3)(b) "Marital Property" does not include any separate property. (6)(a) (ii) Any real or personal property or interest in real or personal property that was acquired by one spouse prior to the date of the marriage;. (6)(a)(v) Any real or personal property or interest in real or personal property that is excluded by a valid antenuptial agreement;. (6)(a)(vi) "Compensation to a spouse for the spouse's personal injury.....". (6)(b) The commingling of separate property with other property of any type does not destroy the identity of the separate property as separate property, except when the separate property is not traceable.

McNamee was to be Mr. Slicer's "expert witness". Specifically Rule 8.4 Misconduct items (a), (b), (c), (d), (e), (f) and (h), Rule 4.1 Truthfulness in Statements to Others (a) make a false statement of material fact or law to a third person, (b) fail to disclose a material fact when disclosure is necessary to avoid assisting an *illegal* or *fraudulent* act by a client.⁸ (emphasis added). His personal actions caused great harm and distress to the Relator.

The Defendant Keesha A. Barton is alleged with particularity to have committed FRAUD UPON THE COURT, FRAUD UPON THE RELATOR, BREACH OF CONTRACT and SPOILATION OF EVIDENCE on May 27th 2014 and Jun 6th 2014 because of her unconscionable scheme(s) to make misrepresentation(s) through the court system. Irrefutable facts are the Defendant was arrested for a Domestic Violence charge by City of Fairborn #CRB1301210⁹, because of her arrest and subsequent criminal protection order (protecting the Relator), the Relator was unable to reenter the marital residence to retrieve his copy of the antenuptial agreement. At the time of executing said contract, there was/is 3 original(s). One original was retained by Attorney David McNamee (#0068582), in whose office the executed contract was completed. The remaining two original(s) were mailed to 2352 Barnard Drive Fairborn, OH 45324 within approximately two weeks of executing the contract. Upon their arrival in the mail, the Defendant did open the enclosed documents and together we quickly examined them. The documents appeared to be in order. The Defendant then turned the documents over to me, I subsequently placed them on the desk in the room used as an office. I have direct specific knowledge of having last seen them in the marital residence. If a person negligently or intentionally withholds or destroys relevant information that will be required in an action is

⁸ Ohio Professional Rules of Conduct, page 187 (June 1, 2014)

⁹ State of Ohio v. Keesha A. Barton

liable for spoliation of evidence. The Defendant was under a restraining order. See also ORC 2921.32 Obstructing justice. The Defendant did knowingly and maliciously conduct FRAUD UPON THE COURT and FRAUD UPON THE RELATOR by withholding the contract. Her actions caused great harm directly to the Relator, and were Material BREACH OF CONTRACT and a direct SPOILATION OF EVIDENCE.

The Attorney Charles Slicer (#0059927) is alleged with particularity to have committed FRAUD UPON THE COURT and SPOILATION OF EVIDENCE on May 27th 2014 and Jun 6th 2014 because of his unconscionable scheme(s) to conduct concealment of evidence through the court system. Mr. Slicer did knowingly fail to produce and or conceal the complete antenuptial agreement, because of his action he conducted and participated in "*spoliation of evidence*" which is direct FRAUD UPON THE COURT and FRAUD UPON THE RELATOR. Specifically Rule 8.4 Misconduct items (a), (b), (c), (d), (e), (f) and (h), Rule 4.1 Truthfulness in Statements to Others (a) make a false statement of material fact or law to a third person, (b) fail to disclose a material fact when disclosure is necessary to avoid assisting an *illegal* or *fraudulent* act by a client.¹⁰ (emphasis added)

The Judge Stephen Hurley (#0016796) is alleged with particularity to have committed FRAUD UPON THE COURT on Nov 27th, and Dec 4th 2013 because of his unconscionable scheme(s) to make misrepresentation(s), corruption of a court official and judicial fraud through the court system. Mr. Hurley's position as the elected domestic relations judge places him in a position of responsibility for supervision¹¹ of the magistrates, court officers, and court

¹⁰ Ohio Professional Rules of Conduct, page 187 (June 1, 2014)

¹¹ S.Ct. Judicial Code of Conduct; RULE 2.12 Supervisory Duties (A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations

staff. His corrupted policies and continued practice to systematically deny certain litigants their civil rights, he has caused substantial distrust of the judiciary, culture of partiality, promotes deceptive policies that do not protect the due process of the citizens of Greene County causing substantial harm beyond the case at hand. Mr. Hurley specifically failed to properly supervise Magistrate Martin on Nov 27th and Dec 4th 2013, because of his lack of proper and sufficient supervision this resulted in denial of due process. He failed to institute proper policies and safeguards to ensure the protection of civil rights and due process, because of his direct failure to supervise, the hearing on Dec 4th 2013 was not granted pursuant to O.R.C 3113.31 (...must grant a hearing within 10 days). Mr. Hurley's failure to review the orders issued by magistrates demonstrates an unconscionable scheme of misrepresentation to the court¹², corruption¹³ and judicial fraud.

LAW CITATIONS & REFERENCES

Chapter 29, First Statute of Westminster (1275) {also known as "*The Fraud Act*"} It is provided also, that if any serjeant, pleader, or other, do any manner of deceit or collusion in the king's court, or consent unto it, in deceit of the court, or to beguile the court, or the party, and thereof be attainted, he shall be imprisoned for a year and a day, and from thenceforth shall not be heard to plead in that court for any man; and if he be no pleader, he shall be imprisoned

under this code. (B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

¹² The "*court*" is an entity not the individual officers (judicial, attorneys, et. al). I offer my apology to the "*court*" or to the "*people*" for stating previously Fraud of the Court, this was a unintentional misunderstanding on my part. This does not constitute an apology to any individual.

¹³ **CORRUPTION**: An act done with an intent to give some advantage inconsistent with official duty and the rights of others. It includes bribery, but is more comprehensive; because an act may be corruptly done, though the advantage to be derived from it be not offered by another. <http://www.lectlaw.com>

in like manner by the space of a year and a Day at least; and if the trespass require greater punishment, it shall be at the king's pleasure.

Wilfong v. Petrone, 2013-Ohio-2434 – Ohio: Court of Appeals, 9th D 2013

{¶11} "The elements of fraud are: (a) a representation or, where there is a duty to disclose, concealment of a fact, (b) which is material to the transaction at hand, (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, (d) with the intent of misleading another into relying upon it, (e) justifiable reliance upon the representation or concealment, and (f) a resulting injury proximately caused by the reliance." Burr v. Stark County Bd. of Comm'rs, 23 Ohio St.3d 69 (1986), paragraph two of the syllabus.

A void judgment or order is one that is entered by a court lacking jurisdiction over the parties or the **subject matter**, or lacking the inherent power to enter the particular order or judgment, **or where the order was procured by fraud**. In re Adoption of E.L., 733 N.E.2d 846, (Ill. App. 1 Dist. 2000).

Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or **acted in a manner inconsistent with due process**, Fed Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A.; U.S.C.A. Const Amend. 5. Klugh v. U.S., 620 F.Supp. 892 (D.S.C. 1985).

Ohio courts have inherent authority to vacate a void judgment. Patton v. Diemer (1988), 35 Ohio St.3d 68.

"A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect

of depriving one of a constitutional right, is an excess of jurisdiction." Wuest v. Wuest, 127 P2d 934, 937.

SUMMARY OF CLAIMS

So lets compare the 5 elements¹⁴ of Fraud to one of specific allegation above. The example will be the Antenuptial Agreement. First element: duty to disclose or concealment of fact; CHECK- self-explanatory. Second Element: material to the transaction at hand; CHECK-not only material "critical". Third element: made falsely, with knowledge of its falsity; CHECK- Defendant, Mr. Slicer & Mr. McNamee all knew there was originals and ACTIVELY concealed it. Fourth Element: intent of misleading another to relying upon it; CHECK - In this specific instance the court was lead to believe they (schedules) didn't exist (omission). Fifth Element: reliance upon the representation or concealment; CHECK – Mr. Campbell states as such in his final order. To complete the circle of FRAUD: was there a resulting injury proximately caused by the reliance; CHECK. So the next logical step is how does this or other instance(s) of FRAUD becomes FRAUD UPON THE COURT; it is *directed* at the judicial machinery itself to materially skew the judgment for one party who would have had judgement against them if the FRAUD and FRAUD UPON THE COURT had not occurred.

Some of the specific paragraphs of FRAUD UPON THE COURT may not meet every single item by themselves. It's further concealment. They have disregarded their duties, failed to set standards, failed to maintain the standards, and generally failure of leadership. You (officers of the court-collectively) would not even be trusted to guard the grass grow. Your utter reliance on the "finality of judgment" is your downfall. The cover up is always worse than the crime.

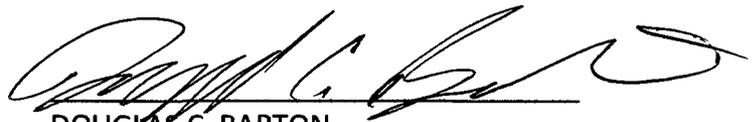
¹⁴ *Wilfong v. Petrone, 2013-Ohio-2434 – Ohio: Court of Appeals, 9th D 2013*

Same is true here. To take full context of the FRAUD UPON THE COURT as a whole, I refer you to the DEMAND FOR DETERMINATION OF VOID JUDGMENT filed in the corrupt trial court on 9/10/15.

RELIEF SOUGHT

Relator's **MOTION FOR RELIEF OF JUDGMENT** be granted, because **FRAUD UPON THE COURT** has been substantiated and any other relief(s) applicable. Specifically voiding the granting of the motion to dismiss, and dismissal of cause. Subsequently allowing due consideration of the cause.

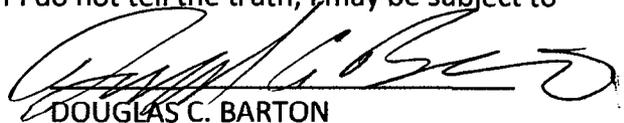
Submitted,



DOUGLAS C. BARTON,
RELATOR, PRO SE
437 WARWICK PLACE
FAIRBORN, OH 45324
513-508-7515

AFFIDAVIT

I, **DOUGLAS C. BARTON**, Relator herein, swear or affirm that I have read this document and, to the best of my knowledge and belief, the facts and information stated in this document are true, accurate and complete. I understand that if I do not tell the truth, I may be subject to penalties for perjury.

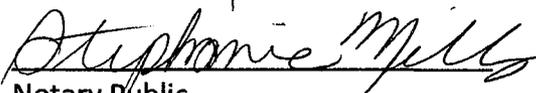


DOUGLAS C. BARTON

Sworn before me and signed in my presence this day 21st of September, 2015.



Stephanie Mills
Notary Public, State of Ohio
My Commission Expires 05-23-2017



Notary Public
My Commission Expires:
05/23/2017

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion for Relief of Judgment, Supporting Document #1 & #2 was served by first class mail via the US Postal Service on the 30th day of sep, 2015, upon the following:

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