

IN THE SUPREME COURT OF OHIO

CASE NO. 2015-1386

JILLIAN PAVILONIS )  
 )  
 Appellee, )  
 )  
 vs. )  
 )  
 CUYAHOGA COUNTY )  
 BOARD OF REVISION, et al. )  
 )  
 Appellants. )

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**REPLY BRIEF OF APPELLANTS CUYAHOGA COUNTY**

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## LAW AND ARGUMENT

**PROPOSITION OF LAW NO. 1: THE BTA DECISION THAT COMPLAINT IS NOT BARRED BY R.C. 5715.19(A)(2), AS A SECOND FILING IN THE TRIENNIUM IS UNREASONABLE AND UNLAWFUL, AND BASED ON AN INCORRECT LEGAL CONCLUSION, BECAUSE IT AFFIRMATIVELY APPEARS THAT THE BTA IGNORED BOR TESTIMONY, AND IGNORED DOCUMENTS, WHICH WERE NOT OBJECTED TO, BOTH WHICH SHOW THERE IS NO JURISDICTION FOR THE COMPLAINT HEREIN.**

County Appellants agree that no law prevents a husband from transferring property owned by his Limited Liability Company (“LLC”) to his wife. Such is not the issue herein. The issue is how the transfer relates to a second property valuation complaint filing for the property in the same triennium. Appellees argue the second filing is permissible, because his LLC and wife are not related. Such may appear true with a casual reading, where a complaint is filed under the wife’s maiden name of Pavilonis, and not her married name of Uchbar, however, when analyzed, it clearly is a fabrication, in attempt to avoid jurisdictional requirements. Appellees admit that the first complaint was filed by the husband’s LLC. It appears that Appellees have ignored marital property law, regarding the transfer of the husband’s LLC’s real property, to his wife, during their marriage, which makes both the husband and the wife the owner of the property.

Conversely, the wife was also an owner of the property when the first complaint was filed, and therefore, she is prohibited from filing a second complaint in the same triennium.

Pursuant to R.C. 3105.171(A)(3)(a), in relevant part: “Marital Property means, subject to division (A)(3)(b) of this section: (i) All real and personal property that currently is owned by either or both spouses...and that was acquired by either or both spouses during the marriage; (ii)

All interest that either or both of the spouses currently has in any real property....and that was acquired by either or both spouses during the marriage;...” The record herein applies only to what marital property is. There are no facts in the record, which would cause an analysis of exceptions to marital property under division (A)(3)(b).

Summarizing the husband’s board of revision (“BOR”) testimony, shows that he considers himself still to be the owner of the property, and is acting as the landlord-owner of the property. The BOR decision found the husband still to be the owner when it stated: “The transfer between parties was not an arm’s length transaction. The BOR believe that there is a jurisdictional issue due to a second filing by the complainant.” The term “at arm’s length” is relevant to the question at hand, because the BOR did not use the term in relation to value, but did use the term to question the legitimacy of the husband-wife transfer regarding a tax valuation complaint where the owners attempted to avert jurisdictional filing requirements.

Moreover, the appraisal, (Statutory Transcript, Exb. F) is relevant to both propositions. Herein, because the first page lists the client as Eric Uchbar, and does not name Jillian Pavilonis anywhere. The supplemental addendum states: “the function of this appraisal report is to assist Eric Uchbar in evaluating the subject property for tax valuation purposes...The client of the report is Eric Uchbar.” Summarizing the appraiser’s BOR testimony, she too knew Eric Uchbar to be the owner of the property in question.

No matter how the second filing is viewed, it was jurisdictional defective for two equal alternative reasons. The wife had an ownership interest, when her husband filed first, thereby prohibiting her from filing a second filing in the same triennium. Conversely, the husband still had an ownership interest, after he transferred the LLC into his wife’s name, thereby prohibiting the second filing in the triennium.

Accordingly, the BTA decision should be reversed, due to lack of jurisdiction, and the BOR decision affirming the fiscal officer's valuation should be reinstated.

**PROPOSITION OF LAW NO. II: THE BTA DECISION IS UNREASONABLE, UNLAWFULL, AND AN ABUSE OF DISCRETION BECAUSE THE COMPLAINANT, AND ALLEGED OWNER, WHO APPARENTLY PREPARED THE COMPLAINT, DID NOT APPEAR BEFORE THE BOR AND BTA, AND WAS REPRESENTED BY HER HUSBAND, WHO ALTHOUGH HE IS NOT AN ATTORNEY, AND ALLEGEDLY NOT AN OWNER, MADE LEGAL ARGUMENTS, EXAMINED AN APPRAISAL WITNESS, AND UNDERTOOK OTHER TASKS THAT CAN BE PERFORMED ONLY BY AN ATTORNEY, THEREBY CAUSING THE DECISION TO BE BASED ON DEFECTIVE EVIDENCE, WHICH THEREBY THE CASE SHOULD HAVE BEEN DISMISSED FOR LACK OF JURISDICTION.**

The issue herein involves the unauthorized practice of law, by Eric Uchbar, at the BOR hearing, thereby depriving jurisdiction at all levels to consider the complaint. The issue does not involve the filing of the complaint, and is argued in the alternative to the first proposition of law.

A lay person may not make legal arguments, examine witness, or undertake any other tasks that can be performed only by an attorney before a BOR. *Dayton Supply & Tool., Inc. v. Montgomery Cty. Bd. of Revision* 111 Ohio St. 3d 367, 2006-Ohio-5852; and, may not prepare an exposition of legal arguments, which may be advanced through a hearing and a brief. *See, Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* 134 Ohio St. 3d 529, 2012-Ohio-5680, at par. 23.

Appellee wrongly reads *Dayton Supply, supra*, in support of their position, because a corporate officer did not file on behalf of a corporation herein. Furthermore, this is not even a case where the husband filed the complaint on behalf of a wife, because the complaint shows that the wife filed the complaint under her maiden name, and did not use the married name portion of her last name. (S.T., Exb. A) *Columbus, supra*, clearly allows a spouse to invoke jurisdiction by

filing a valuation complaint for a spouse. However, neither of the foregoing cases, allow a non-attorney corporate officer, nor a non-attorney husband to engage in the practice of law. Moreover at page 8 of their brief, appellees admit that the husband herein engaged in the unauthorized practice of law: "...the person who spoke on behalf of Pavilonis was in fact her husband....Mr. Uchbar to participate in a process in which Mrs. Uchbar was the complainant..."

Although the fact that husband Uchbar had the appraisal report prepared for himself, supports the conclusion that he is still owner of the property, it alternatively supports the conclusion, along with the other evidence he produced on behalf of his wife, and the direct examination of the appraiser, that he engaged in the unauthorized practice of law by preparing an exposition of legal arguments, which were advanced through a hearing.

County appellants contend that husband Uchbar's actions go further than those in *Richman Properties, L.L.C. v. Medina Cty. Bd. of Revision*, 139 Ohio St. 3d 549, 2014-Ohio-2439, where this Court did not find reversible error for unauthorized practice of law due to a non-attorney's cross-examination of a witness. Herein, appellees attempted to circumvent statutory jurisdictional requirements, with a sham transfer, and the non-attorney husband engaged in the unauthorized practice of law by gathering evidence, presenting the evidence, examining an appraisal witness, and making legal argument. Due to these facts, county appellants request that this Court find reversible error to deter such sham filings.

Moreover, even if this Court finds the foregoing not reversible error, the appraisal documents submitted to the BTA, without the appraiser testifying before the BTA, does not meet appellees burden of proof for a value reduction by the BTA. Proper authentication did not occur at the BOR, because the appraiser was examined by a non-attorney. In this case, the appraiser needed to appear before the BTA hearing examiner, who would have needed to question the

appraiser, to find, as the BTA erroneously did herein, that the appraisal was competent and probative and value conclusion reasonable and well-supported. *See, Freshwater v. Belmont Cty. Bd. of Revision* 80 Ohio St. 3d 26, 1997-Ohio-362 (“[a]n expert’s opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion.”).

Accordingly, the complaint herein should be dismissed due to lack of jurisdiction at all levels, due to the unauthorized practice of law. The fiscal officer’s value should be reinstated, because all evidence in support of appellee Pavilonis’ complaint is defective, because it was obtained through the unauthorized practice of law.

## **CONCLUSION**

The BOR was correct in its belief that there was a jurisdictional issue due to a second filing by the complainant, because the transfer between related parties was not arms-length, as it relates to relationship. The BOR analyzed the transfer between related parties in the context, that the related parties, were actually the same parties in both filings. The fact that the second complaint was not filed in the complainant’s, married name, a name that she had been using previously, and after, the second filing, infers that the related parties knew that there was a jurisdictional issue with the second filing in the same triennium. Also, when the BOR hearing testimony is considered in its full context, the only conclusion is that this complaint is a second filing in the same triennium. The prior complaint is not needed to physically review to reach this conclusion, as the BTA stated in its incorrect legal conclusion, because the husband orally admitted to the first filing. Moreover, the county’s documentary evidence submitted to the BTA prior to the hearing date, and not objected to by the related parties, supports the foregoing.

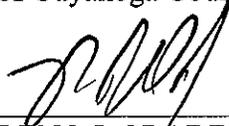
Accordingly, the County Appellants respectfully request that this Honorable Court reverse the decision of the BTA, and reinstate the BOR decision, which affirmed the fiscal officer's valuation \$48,000, because there is no jurisdiction herein, at any level, due to the second filing in the triennium.

In the alternative, it is requested, that this Honorable Court reach the same result, because the BTA abused its discretion by unlawfully and unreasonably, basing its incorrect legal conclusion, on improper defective evidence that was advanced by the unauthorized practice of law at the BOR hearing.

These requests are separate and distinct from each other, and the granting of one negates the other. If Eric Uchabr has an ownership interest, there is no jurisdiction due the second filing, although he could represent himself, if it was a first filing. If he does not have an ownership interest, then there is no jurisdiction due to his unauthorized practice of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing memorandum in response was sent, via regular U.S. mail this 4<sup>th</sup> day of February, 2016 to the following parties:

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## **3105.171 Equitable division of marital and separate property - distributive award.**

(A) As used in this section:

(1) "Distributive award" means any payment or payments, in real or personal property, that are payable in a lump sum or over time, in fixed amounts, that are made from separate property or income, and that are not made from marital property and do not constitute payments of spousal support, as defined in section 3105.18 of the Revised Code.

(2) "During the marriage" means whichever of the following is applicable:

(a) Except as provided in division (A)(2)(b) of this section, the period of time from the date of the marriage through the date of the final hearing in an action for divorce or in an action for legal separation;

(b) If the court determines that the use of either or both of the dates specified in division (A)(2)(a) of this section would be inequitable, the court may select dates that it considers equitable in determining marital property. If the court selects dates that it considers equitable in determining marital property, "during the marriage" means the period of time between those dates selected and specified by the court.

(3)

(a) "Marital property" means, subject to division (A)(3)(b) of this section, all of the following:

(i) All real and personal property that currently is owned by either or both of the spouses, including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage;

(ii) All interest that either or both of the spouses currently has in any real or personal property, including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage;

(iii) Except as otherwise provided in this section, all income and appreciation on separate property, due to the labor, monetary, or in-kind contribution of either or both of the spouses that occurred during the marriage;

(iv) A participant account, as defined in section 148.01 of the Revised Code, of either of the spouses, to the extent of the following: the moneys that have been deferred by a continuing member or participating employee, as defined in that section, and that have been transmitted to the Ohio public employees deferred compensation board during the marriage and any income that is derived from the investment of those moneys during the marriage; the moneys that have been deferred by an officer or employee of a municipal corporation and that have been transmitted to the governing board, administrator, depository, or trustee of the deferred compensation program of the municipal corporation during the marriage and any income that is derived from the investment of those moneys during the marriage; or the moneys that have been deferred by an officer or employee of a government unit, as defined in section 148.06 of the Revised Code, and that have been transmitted to the governing board, as defined in that section, during the marriage and any income that is derived from the investment of those moneys during the marriage.

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(b) "Marital property" does not include any separate property.

(4) "Passive income" means income acquired other than as a result of the labor, monetary, or in-kind contribution of either spouse.

(5) "Personal property" includes both tangible and intangible personal property.

(6)

(a) "Separate property" means all real and personal property and any interest in real or personal property that is found by the court to be any of the following:

(i) An inheritance by one spouse by bequest, devise, or descent during the course of the marriage;

(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;

(iii) Passive income and appreciation acquired from separate property by one spouse during the marriage;

(iv) Any real or personal property or interest in real or personal property acquired by one spouse after a decree of legal separation issued under section 3105.17 of the Revised Code;

(v) Any real or personal property or interest in real or personal property that is excluded by a valid antenuptial agreement;

(vi) Compensation to a spouse for the spouse's personal injury, except for loss of marital earnings and compensation for expenses paid from marital assets;

(vii) Any gift of any real or personal property or of an interest in real or personal property that is made after the date of the marriage and that is proven by clear and convincing evidence to have been given to only one spouse.

(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.

(B) In divorce proceedings, the court shall, and in legal separation proceedings upon the request of either spouse, the court may, determine what constitutes marital property and what constitutes separate property. In either case, upon making such a determination, the court shall divide the marital and separate property equitably between the spouses, in accordance with this section. For purposes of this section, the court has jurisdiction over all property, excluding the social security benefits of a spouse other than as set forth in division (F)(9) of this section, in which one or both spouses have an interest.

(C)

(1) Except as provided in this division or division (E) of this section, the division of marital property shall be equal. If an equal division of marital property would be inequitable, the court shall not divide the marital property equally but instead shall divide it between the spouses in the manner the court determines equitable. In making a division of marital property, the court shall consider all relevant factors, including those set forth in division (F) of this section.

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(2) Each spouse shall be considered to have contributed equally to the production and acquisition of marital property.

(3) The court shall provide for an equitable division of marital property under this section prior to making any award of spousal support to either spouse under section 3105.18 of the Revised Code and without regard to any spousal support so awarded.

(4) If the marital property includes a participant account, as defined in section 148.01 of the Revised Code, the court shall not order the division or disbursement of the moneys and income described in division (A)(3)(a)(iv) of this section to occur in a manner that is inconsistent with the law, rules, or plan governing the deferred compensation program involved or prior to the time that the spouse in whose name the participant account is maintained commences receipt of the moneys and income credited to the account in accordance with that law, rules, and plan.

(D) Except as otherwise provided in division (E) of this section or by another provision of this section, the court shall disburse a spouse's separate property to that spouse. If a court does not disburse a spouse's separate property to that spouse, the court shall make written findings of fact that explain the factors that it considered in making its determination that the spouse's separate property should not be disbursed to that spouse.

(E)

(1) The court may make a distributive award to facilitate, effectuate, or supplement a division of marital property. The court may require any distributive award to be secured by a lien on the payor's specific marital property or separate property.

(2) The court may make a distributive award in lieu of a division of marital property in order to achieve equity between the spouses, if the court determines that a division of the marital property in kind or in money would be impractical or burdensome.

(3) The court shall require each spouse to disclose in a full and complete manner all marital property, separate property, and other assets, debts, income, and expenses of the spouse.

(4) If a spouse has engaged in financial misconduct, including, but not limited to, the dissipation, destruction, concealment, nondisclosure, or fraudulent disposition of assets, the court may compensate the offended spouse with a distributive award or with a greater award of marital property.

(5) If a spouse has substantially and willfully failed to disclose marital property, separate property, or other assets, debts, income, or expenses as required under division (E)(3) of this section, the court may compensate the offended spouse with a distributive award or with a greater award of marital property not to exceed three times the value of the marital property, separate property, or other assets, debts, income, or expenses that are not disclosed by the other spouse.

(F) In making a division of marital property and in determining whether to make and the amount of any distributive award under this section, the court shall consider all of the following factors:

(1) The duration of the marriage;

(2) The assets and liabilities of the spouses;

(3) The desirability of awarding the family home, or the right to reside in the family home for reasonable periods of time, to the spouse with custody of the children of the marriage;

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- (4) The liquidity of the property to be distributed;
- (5) The economic desirability of retaining intact an asset or an interest in an asset;
- (6) The tax consequences of the property division upon the respective awards to be made to each spouse;
- (7) The costs of sale, if it is necessary that an asset be sold to effectuate an equitable distribution of property;
- (8) Any division or disbursement of property made in a separation agreement that was voluntarily entered into by the spouses;
- (9) Any retirement benefits of the spouses, excluding the social security benefits of a spouse except as may be relevant for purposes of dividing a public pension;
- (10) Any other factor that the court expressly finds to be relevant and equitable.

(G) In any order for the division or disbursement of property or a distributive award made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property has been equitably divided and shall specify the dates it used in determining the meaning of "during the marriage."

(H) Except as otherwise provided in this section, the holding of title to property by one spouse individually or by both spouses in a form of co-ownership does not determine whether the property is marital property or separate property.

(I) A division or disbursement of property or a distributive award made under this section is not subject to future modification by the court except upon the express written consent or agreement to the modification by both spouses.

(J) The court may issue any orders under this section that it determines equitable, including, but not limited to, either of the following types of orders:

(1) An order granting a spouse the right to use the marital dwelling or any other marital property or separate property for any reasonable period of time;

(2) An order requiring the sale or encumbering of any real or personal property, with the proceeds from the sale and the funds from any loan secured by the encumbrance to be applied as determined by the court.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Amended by 128th General Assembly File No. 37, HB 238, §1, eff. 9/8/2010.

Effective Date: 09-21-2000; 2008 HB395 04-07-2009

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