Supreme Court of Ohio Clerk of Court - Filed June 24, 2016 - Case No. 2016-0939

IN THE SUPREME COURT OF OHIO

Richard D. Ellison,	:	
Appellant,	:	On Appeal from the Hamilton County Court of Appeals, First Appellate District
v.	:	
Jeanne K. Lee,	:	Court of Appeals Case No. C1500580
Appellee.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT RICHARD D. ELLISON

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This cause presents three issues that impede one's ability to get justice in an Ohio court: (1) whether a court may violate the law as part of its duty to enforce the law; (2) whether a court may ignore evidence of criminal conduct committed by the moving party; and (3) whether justice is denied to those who can't afford the high cost of counsel.

In Proposition of Law No. 1, evidence was presented to the court of appeals showing that the trial court, astonishingly, had erred in virtually every way it was possible for it to err: ruling in defiance of the statute *and* established Ohio case law; disregarding a mandate from this Supreme Court; misunderstanding what was going on within the case; ignoring compelling evidence presented by the defense, and making false statements in its final ruling.

The nature of these errors of process; the fact that they took place within a single case; and all of them falling to the disfavor of the respondent, confirms in principle court prejudice against the respondent, which is all the more disturbing where respondent had broken no laws. The pretext the court used to rule against the respondent was failing to file a hearing transcript —which would have been filed if not for yet another court error!

In affirming the trial court's decision, the court of appeal's decision constituted blanket permission for that court to violate Ohio law without constraint or reserve. For any court to permit lawbreaking by a court while it punishes the party whose only fault was a procedural technicality demonstrates the Ohio court system's lack of regard for what is really important: obeying the law. Any court that is charged with enforcing the law should never be allowed to disobey the law, and certainly not in so many ways as it did here.

Proposition of Law No. 2 highlights the court's inability to adapt to a new type of case the system has never seen before, as if the court was in denial that such a thing could happen. The justice system cannot fall into paralysis when it encounters something new. If evidence is presented of crimes that the plaintiff, not the defendant, has committed, it cannot allow itself to be a pawn in the commission of that crime. The court should at least look at the evidence, and if that evidence has a ring of truth to it, the matter should be forwarded to the appropriate authorities within the appropriate branch of that system, with a request to follow up on that evidence while the court suspends adjudication of that case. To do otherwise is to say to criminals: If you're clever enough to dupe us into abetting a crime, we have enough respect for that level of ingenuity to let you get away with it!

When this happens, and no one on earth can reliably say that it isn't possible, the court ends up punishing yet again the man who was already victimized by this criminal, while giving said criminal a free pass to commit more crimes.

Proposition of Law No. 3 asks the question: what is the point of a court system if the result is known in advance? As shown in the argument for Proposition of Law No. 1, it doesn't matter if the law is heavily on your side; if you're a *pro se* defendant, the case is treated as if there is nothing to decide. You lose. The system makes no effort to allow for your weakened posture; it coldly and cruelly rolls out procedural default sanctions whose objective is to weed out cases that are not prepared by a licensed attorney. If this were not true, law libraries that are accessible to the public would be required to prominently post all the procedural default traps to avoid, to help ensure that *pro se* litigants had a fighting chance to receive due process. Why else would a set of rules that can trump the legal merit of a case, exist? If a licensed

attorney fell for one of those traps, that would constitute ineffective assistance of counsel, and the litigant would get new counsel, who wouldn't repeat that mistake. But a *pro se* litigant who raised the exact same arguments a licensed attorney raised in a successful case, doesn't get that break, which means he does not get the same shot at justice when everything else is equal. And that, in turn, means that the system is rigged against a *pro se* litigant.

A question: has the court of appeals ever ruled in favor of a pro se litigant in the past thirty years, even once? It does appear that this has never happened. What more evidence of denial of due process does this Court need to tackle this issue?

In addition to being a case of public and great general interest as noted above, there is also the matter of one's Fifth and Fourteenth Amendment rights to due process, which is a substantial constitutional issue. Does not "due process" mean that a defendant has the right to have the issues he raises responsibly addressed, thereby ensuring equal protection under the law? That is the question this Court is being asked to contemplate, because in the instant case, issues raised in the trial and appeals courts never saw the light of day. They were skipped over, as if they hadn't even been brought up. In effect, this forces defendants to play a rigged game that is virtually if not literally impossible to win.

This Court is asked to step in to correct these above-noted failings of the system which impede a litigant's rights to due process and equal protection under the law.

STATEMENT OF THE CASE AND FACTS

This case arises from a civil protection order that was first applied for by Jeanne Lee on July 28, 2010 in the Hamilton County Domestic Relations Court, Case No. DV1000910. After the August 10, 2010 hearing which respondent Richard Ellison, Mrs. Lee's son, was unable to attend

because he was incarcerated, the petition was granted by the trial court on August 11, 2010 for a five-year term.

On July 21, 2015, just prior to the expiration of the protection order, petitioner Jeanne Lee filed a request for a five-year extension of the CPO. On July 27, 2015, Ellison filed a Memorandum in Response, citing insufficient evidence under Civil Rule 65.1 to support the proper granting of the protection order.

At the August 5, 2015 hearing, which respondent Ellison also did not attend based on a perceived threat to his liberty (see Motion for Extension of Time, filed July 27, 2015), Mrs. Lee acknowledged that no incident of a threatening nature had taken place for the duration of the original CPO, but said she was still fearful "because he lives so near to me.' The request for a five-year extension was granted by the magistrate. On August 14, 2015, Ellison filed his Respondent's Objections to Magistrate's Decision Dated August 6, 2015, and on September 14, 2015, filed a Respondent's Supplemental Memorandum to Objections, but on that same day the court filed its Judge's Decision Overruling Respondent's Objections, cancelling the hearing that was scheduled for September 25, 2015, and adopting the magistrate's decision to extend the protection order for another five-year term, until August 5, 2020.

Based on the indisputable fact that no event had taken place for well over a decade that could be construed as hostile or threatening, Ellison appealed that decision in the court of appeals, asserting that a CPO was never designed to stay in force for decades when there has been no hostile activity in all that time to support the need for it. A hearing was set for April 12, 2016. Ellison and Jeanne Lee's counsel were present. On May 13, 2016, the court of appeals affirmed the trial court's decision.

On June 1, 2016, the court of appeals overruled Ellison's App.R.26(A) Application for Reconsideration, saying only that the application was "not well taken."

In support of his position on these issues, the appellant presents the following argument:

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: An Ohio court may not carelessly violate Ohio law as part of the process of enforcing Ohio law.

In the filings submitted by appellant Richard Ellison in the instant case, many issues of law were submitted for consideration to the trial court, and subsequently to the appeals court. To support the claim that Ohio law did not permit the granting of a protection order under the circumstances of the case, Ellison presented language from (1) the R.C. 3113.31 statute; (2) case law rulings from six Ohio appellate courts; and (3) a mandate from this Supreme Court (see *Felton v. Felton* (1997), 79 Ohio St.3d 34), all of which unanimously supported the premise that Ohio law never intended for a civil protection order (CPO) to become a lifestyle choice that could go on for decades; that the provision for a CPO was created to deter an immediate and imminent threat only. In the instant case, there has been no threat or hostile incident for over eleven years, thus precluding the granting of a CPO, since the passage of so much time without incident has shown that an imminent, credible threat no longer exists, and likely never did. None of those issues of law were addressed by either the trial court or court of appeals at any time; not even the one from this highest court in Ohio, noted in this paragraph.

Evidence was also presented which revealed contradictions in the appellee's behavior, one of them being that, through things the appellee did or failed to do, the appellee herself was perpetuating the state of fear that she was complaining about.

Additional evidence was presented by the appellant which showed that the magistrate misunderstood key aspects of the case she was presiding over, and that the judge committed numerous errors of process, including (1) failure to address the legal arguments; (2) failure to address evidence of petitioner fraud; (3) cancelling a scheduled hearing that was vital to the defense; (4) failure to provide a reason for ruling against the appellant, and (5) making false statements in her final ruling of the case. Cumulatively, these oversights tainted the outcome of the case, and consequently denied the appellant due process.

Due process is guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. If due process has not been duly afforded to either party, the case outcome is in conflict with the Constitution. No court has the authority to disobey those Amendments. This Court, therefore, has a duty to appropriately deal with any threats to one's constitutional right to due process, such as what took place in the instant case.

<u>Proposition of Law No. 2</u>: A court of law must assess all evidence of criminal conduct, even if the evidence is against the moving party.

There is probably no case law to support this proposition of law because it involves a crime that no court has likely ever seen: a man from Terrace Park, Ohio found a way to turn the justice system into his personal playground; a vendetta service that does his bidding. This was surprisingly easy. All it takes is to have a good story; knowledge of the intended target; be the one to strike first, and say the magic words to the authorities: "I'm in fear of that man." Upon hearing those words, the justice system will scramble its fighter jets and wreak holy havoc upon the victim of this fraud, which in this case was appellant Richard Ellison.

When Mr. Ellison tried to bring this fraud to the attention of the trial and appeals courts, neither court would even bother to listen. The court system went into paralysis, refusing to

accept the possibility that anyone could be bold enough and clever enough to pull it off. The system could not handle a reality it had never seen before. It was too set in its ways to process something so different and unique.

It should be noted, here and now, that it was the appellee's husband who engineered this scheme, and later, instructed the appellee to follow through with it after his death.

Ohio courts have to be prepared to deal with every actionable issue that is raised, even when the issue seems implausible because it is so unique. When faced with an unprecedented situation, a court of law must not ignore the evidence and then impose a routine decision just to close out the case and be done with it. It has to adapt, because the court is the one and only place where justice under the law can be obtained. Justice cannot take a back seat to the quest for an easy or convenient outcome. A court has a solemn duty to provide justice. The decision a court renders is a much more serious matter than deciding what hat to wear, because a human life can be ruined through an erroneous outcome.

At the trial court level, there were red flags up and down every inch of the appellee's case. Things the appellee had done were contradictory; didn't make sense; didn't add up. It didn't take a genius to see that some kind of scheming was going on. The appellee was taking risks that a truly fearful person would never take; was self-creating the state of fear from which she was seeking refuge; and the basis for the CPO was a repetition of events from six years ago that was replete with falsehoods that were added in after the fact. And yet it worked. Jeanne Lee had the sympathy of both courts, because the court system puts all its focus on helping the designated victim, never stopping to question whether said victim might not really be a victim, but is instead perpetrating a fraud upon the court.

What does it take for some court, somewhere, to at least consider the possibility that things might not be what they appear to be?!

It is inexcusable for a court of law to fail to assess all the evidence in any type of case in pursuit of a conclusion that may end up rewarding the perpetrator and punishing the innocent, and at the end of it all assume that justice has been done. The world is not a simple place, and getting a true and just result is seldom a simple task.

A side note: what could cause the trial court to make all the errors of process that are noted in Proposition of Law No. 1? This proposition of law explains it: the court didn't perform a full and fair review of the evidence submitted by the appellant. It was trying to assemble a puzzle in a situation where half the pieces were missing. So the judge quietly said to herself: "It doesn't matter. I'll cancel the hearing and get the outcome I want because then the appellant won't have a chance to file the hearing transcript."

This Court may accurately assert that this is speculation, but what other reason could it come up with that makes as much sense?

<u>Proposition of Law No. 3</u>: The 'doors to justice' must be open to everyone, including those too poor to pay the exorbitantly high cost of counsel.

In the Hamilton County Court of Appeals, one can almost hear the snickering of the judges as they seem to ask each other toward the conclusion of a case: "Doesn't this idiot know that we're never going to side with a *pro se* appellant, particularly if it means putting trial court errors on display for the world to see? Doesn't he know that we cannot and will not ever allow an indigent man to make this powerful system look bad?"

If it isn't evident in their condescending attitude, you can see it in their stony faces, or in their App.R.26(A) ruling that offers no reason beyond "not well taken." What we're seeing here is the face of unbridled contempt for the poor, as if those judges are mad as hell that you would attempt to get justice when you don't have big money to pay for it. They don't even try to mask their contempt for *pro se* litigants. It would be refreshing if they just came out and admitted that the result of your case is a forgone conclusion because you are poor and therefore have no right to expect to get justice.

The United States Supreme Court addressed this flaw in the system with its decision in *Haines v. Keaner, et. al*., 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652, ruling that *pro se* complaints should be held to "less stringent standards than formal pleadings drafted by lawyers," unless the litigant "can prove no set of facts in support of his claim that would entitle him to relief." Another case from that court said that "Rule 8(f) provides that 'pleadings shall be so construed as to do substantial justice.' We frequently have stated that *pro se* pleadings are to be given liberal construction." *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 104 S.Ct. 1723, 80 L.Ed.2d 196, 52 U.S.L.W. 3751.

What the above are saying is that if the law is on your side (as it was for the appellant in the instant case), your case should prevail. The system may not deny justice to you because your shoelaces are untied. Compliance with the law trumps everything else.

The Hamilton County Court of Appeals is out of step with those federal requirements. It does appear that the First Appellate District Court of Appeals sees itself as a guardian of the image of the trial courts. The timeworn argument they offer is that they don't want to second-guess the court's decision from a hearing they weren't there to witness, but at the hearing in

question, only the petitioner was present and offered only one argument: that she fears the respondent because "he lives so near to me." There is nothing to second-guess about one person voicing a single complaint during a five-minute hearing.

In the court of appeals' Judgment Entry of May 13, 2016 for the instant case at page 3, that court stated that:

> "While Ellison has filed the transcript of the hearing before the magistrate in this court with his appeal, the trial court never had the opportunity to review the transcript when considering his sufficiency and weight-of-the-evidence objections to the magistrate's decision. In the absence of a transcript, the trial court was incapable of conducting an independent review of the evidence * * * "

The "trial court was incapable of conducting an independent review of the evidence" because it didn't have the transcript? That court is where the transcript is generated! The court of appeals ruled against a party who failed to go to the court to get the transcript, so that he could spoon-feed it *back to the court,* as if the court is a helpless baby bird that can't reach into its back pocket to retrieve what was there the whole time? Is this justice: killing a case over a chore that the court could have done more easily than the appellant? The court has a staff that could handle such a simple task! This is just an excuse to deny justice to a *pro se* litigant who shouldn't be expected to know everything that a licensed attorney knows. And that is the point of rulings like *Haines v. Keaner, et. al.,* that was quoted from on the previous page.

How hard would it be for the court to get the transcript itself for a pro se litigant who might not know about that unforgiving rule, or to remind the litigant that this will need to be done as the deadline for it approached? A postcard that a court staffer mailed out would do it. The fact that the trial court seized the opportunity to kill the appellant's case by cancelling the hearing over a silly issue like that demonstrates court prejudice against all *pro se* litigants in its

purest form. One can imagine the expression of glee on the face of the judge as she cancelled the hearing, knowing she wouldn't have to answer for all the mistakes of process she made! And that, ladies and gentlemen, is your motive for what the trial court did at the conclusion of the instant case.

This is not an example of a highly-functioning court system doing its duty to enforce the law; this is a malfunction of process of the highest degree.

The court of appeal's decision to affirm the trial court's ruling was therefore based on a faulty premise, and resulted, in this case, in the appeals court giving the lower court a free hand to violate Ohio law in any way it sees fit, while also providing assurance to that court that the substantial quantity of mistakes it made are now buried and gone.

Any child who can add two and two could see that the court of appeals is trying to block any attempts to get justice that make the trial court look bad. Justice is thus perceived as being secondary to the need to protect the court's image of integrity. But can this Court answer this question: how does a cover-up campaign advance the cause of integrity?

Cronyism is an ever-present danger whenever a system polices itself. And it does appear as though that figures into these attempts by the courts to frustrate this appellant's quest for justice. If this Court will accept jurisdiction over this case and work toward reducing this threat to the proper adjudication of Ohio cases, however, that gesture would go a long way toward proving that justice in Ohio is not dead; is not prejudiced against the poor, and that Ohio courts do in fact see themselves as being accountable to the public they serve.

It would seem to be inconceivable that any case this Court takes on in the calendar year 2016 could do more to show that this Court will fight for justice for *everyone.*

CONCLUSION

For the foregoing reasons, this case involves matters of public and great general interest and a substantial constitutional question. The appellant asks this court to accept jurisdiction in this case so that these important issues can be reviewed on the merits.

Respectfully submitted,

/s Richard D. Ellison
Richard D. Ellison, appellant, *pro se*

Certificate of Service

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by certified U.S. mail to counsel for appellee, Amy L. Kurlansky at Pro Seniors, Inc., 7162 Reading Road, Suite 1150, 45237, on June 23, 2016.

/s Richard D. Ellison
Richard D. Ellison, appellant, *pro se*